

AGREEMENT BETWEEN
THE AUTHORITY OF CALIFORNIA CITIES EXCESS LIABILITY
JOINT POWERS AUTHORITY

AND

CARL WARREN & COMPANY

AGREEMENT FOR PROFESSIONAL SERVICES

THE AUTHORITY OF CALIFORNIA CITIES EXCESS LIABILITY JOINT POWERS
AUTHORITY AGREEMENT FOR CLAIMS ADMINISTRATION SERVICES

This Agreement is between the AUTHORITY OF CALIFORNIA CITIES EXCESS LIABILITY JOINT POWERS AUTHORITY, a public agency of the State of California, organized and existing as the AUTHORITY OF CALIFORNIA CITIES EXCESS LIABILITY Joint Powers Authority hereinafter referred to as the "Authority", and CARL WARREN & COMPANY, a corporation of the State of California hereinafter referred to as "Contractor".

Explanatory Recitals

1. The Authority is a duly organized joint powers authority under the Government Code of the State of California for the purpose of sharing liability and risk amongst the member cities.
2. This Agreement is entered into with Contractor after the Authority's Board approved a three-year agreement between the Authority and Contractor for claims administration services at the April 2008 Board meeting.
3. The Authority desires to retain Contractor, and Contractor desires to perform the services required by the Authority according to the terms set forth hereinafter.

Terms of Agreement

1. Scope of Work
 - a. The Authority hereby engages Contractor to provide the Authority the services described in detail in the Scope of Services attached hereto as Exhibit A.
 - b. Additional services may be requested and ordered through the issuance of a written amendment to this agreement. All written amendments for professional services must be completed and signed by both parties prior to proceeding with services.
2. Time and Term

Time is of the essence in the performance of services under this Agreement. This Agreement is in effect from **July 1, 2008** through **June 30, 2011**, subject to earlier termination pursuant to Section 22. The Authority shall have an option to extend this Agreement for two additional one-year periods, exercisable by Authority by notifying Contractor of such extension prior to the anniversary date. This Agreement shall have an anniversary date each July 1st, for the purpose of reviewing Compensation and optional extensions. This Agreement supersedes and replaces all previous Agreements or contracts.
3. Agreement Administrator
 - a. The acceptability of all services performed for this Agreement shall be determined by the Authority's Board of Directors. To the extent not otherwise established herein, the Authority will establish the scope of services, timetable for

completion of services, and any due dates for preliminary work or reports submitted to the Authority.

4. Key Personnel

It is the intent of both parties to this Agreement that Contractor shall make available the professional services of **Mr. Keyan “Yani” Aghili (Primary Contact), and Mr. John “Chris” Hunt (Secondary Contact)**, who shall administer all work under this Agreement and shall coordinate directly with the members of the Authority and the Board of Directors. Should such personnel become unavailable to perform services for the Authority, Contractor agrees to replace, as soon as practical, such personnel with personnel of comparable skills and experience as determined by Authority’s evaluation and subject to Authority’s right of refusal for any reason. Any substitution of key personnel must be mutually agreed upon and made in writing by the parties. The Agreement shall be amended to reflect any changes, subject to and contingent upon, the approval of the Board of Directors.

5. Independent Contractor

Contractor agrees to furnish claims administration services in the capacity of an independent contractor and neither Contractor nor any of its employees shall be considered to be an employee or agent of the Authority.

6. Compensation

a. Compensation is agreed and pursuant to the **Schedule of Fees** marked as Exhibit B and shall not be amended unless in writing and agreed by both parties.

7. Billings and Payments

a. Contractor shall submit monthly invoices for work on files reported to the Contractor to the Authority’s Claims Chairperson. Each invoice shall indicate Contractor’s name and mailing address, the claimant name, Authority’s member reporting the claim, actual work performed billed in tenths of an hour and listing of any other additional costs associated with the work on the claim.

b. Any mailing address change must be submitted in writing to Authority’s Claim Chairperson and the Program Administrator. Without proper notification of an address change, Contractor’s invoice payment may be delayed.

8. Successors and Assignment

This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Contractor cannot assign or transfer its interest in this Agreement or subcontract any services to be performed without the express written consent of the Authority.

9. Change in Ownership or Control

Contractor shall notify the Authority and the Program Administrator, in writing, of any change in ownership or control of Contractor’s firm. Change of ownership or control of Consultant’s firm constitutes a material change in circumstances, and the Authority may, on thirty (30) days written notice, terminate this Agreement. An election by Authority to continue the Agreement will require amendment to the Agreement, upon such terms as the parties may agree.

10. Use of Materials

a. The Authority's member cities will make available to Contractor such materials from its files as may be required by Contractor to perform services under this Agreement to the extent legally capable of providing said materials. Such materials shall remain the property of the Authority while in Contractor's possession. Upon termination of this Agreement, or completion of work under this Agreement, Contractor shall turn over to the Authority, Program Administrator and/or its members any property of the Authority and its members in its possession and any calculations, notes, reports, electronic files, or other materials prepared by Contractor in the course of performing the services under this Agreement. Contractor shall at all times maintain the confidentiality of the Authority's materials, disclosing such materials and any information as may be contained therein only as necessary in the course of the work of the Contractor for the Authority, and giving immediate and timely notice to the Authority if a request, whether in the form of a subpoena or other court order, or Public Records Act Request, or the like, seeks such information from Contractor outside the ordinary course of Contractor's work for the Authority.

b. The Authority may utilize any material prepared or utilize work performed by Contractor pursuant to this Agreement, including computer software, in any manner, which the Authority and its members deems proper without additional compensation to Contractor. Contractor shall have no responsibility or liability for any revisions, changes, or corrections made by the Authority, or any use or reuse pursuant to this paragraph unless Contractor accepts such responsibility in writing.

11. Intellectual Property

All right, title and interest in all intellectual property conceived or developed in the course of Contractor's work for the Authority under this Agreement shall be the property of the Authority and its members. As used herein, the term "intellectual property" includes, but is not limited to, all inventions, patents, copyrightable subject matter, copyrights, test data, trade secrets, other confidential information and software.

a. Contractor shall not use or disclose any intellectual property conceived or developed in the course of Contractor's work for the Authority, except: (i) intellectual property in the public domain through no fault of Contractor, (ii) intellectual property which Contractor can prove was received by him or her from a third party owing no duty to the Authority, and (iii) intellectual property for which Contractor has received express, written permission from the Authority, or from the Authority's counsel/attorney or designated agent, or is authorized or required to use or disclose under the terms of this Agreement.

b. Contractor shall promptly notify the Authority and Program Administrator, in writing, of all intellectual property conceived or developed in the course of Contractor's work for the Authority and its members under this Agreement.

c. Contractor shall assign and does hereby assign to the Authority all right, title and interest to intellectual property conceived or developed by Contractor in the course of Contractor's past and future work for the Authority.

d. Contractor shall cooperate in the execution of all documents necessary to perfect the Authority's right to intellectual property under this Agreement.

12. Nonuse of Intellectual Property of Third Parties

Contractor shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this Agreement, except for intellectual property for which Contractor has a license. Contractor shall indemnify and hold the Authority and its members harmless against all claims raised against the Authority based upon allegations that Contractor has wrongfully used intellectual property of others in performing work for the Authority.

13. Legal Requirements

Contractor shall secure and maintain all licenses or permits required by law and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to the work.

14. Guarantee and Warranty

a. Contractor guarantees and warrants that the work shall be performed and completed in accordance with generally accepted industry standards, practices, and principles applicable to the work.

b. The Authority and its members' representatives shall at all times have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement.

15. Access to the Authority's Members' Premises

a. Contractor shall notify the Authority's members in advance of its intended locations and durations of work on the Authority's members' premises. Except in extraordinary circumstances, all work on the Authority's premises shall be scheduled during normal working days and hours. The Authority and its members shall make a good faith effort to accommodate Contractor's request.

16. Indemnity

Contractor assumes all risk of injury to its employees, agents, and contractors, including loss or damage to property.

Contractor shall defend, indemnify, and hold harmless the Authority, its Board of Directors, officers, employees, and agents from and against all claims, suits, or causes of action for injury to any person or damage to any property arising out of any intentional or negligent acts or omissions arising out of Contractor's performance of work under this Agreement, including any claims, suits, or causes of action by any employee of Contractor.

17. Insurance

During the performance of service hereunder, Claims Administrator shall maintain at least the following insurance coverage:

a. Personal Injury, Bodily Injury and Property Damage Liability Insurance including coverage for General Liability, Contractual Liability and Auto Liability including owned automobiles and non-owned automobiles with at least a One Million Dollar (\$1,000,000) single limit of liability.

b. Workers' Compensation Insurance as required by applicable state laws for all employees engaged in service under this AGREEMENT.

c. Errors and Omissions Insurance in the amount of not less than One Million Dollars (\$1,000,000).

These policies of Insurance:

a. May contain a deductible amount not to exceed Ten Thousand Dollars (\$10,000) per claim.

b. Will contain a provision to ACCEL at least a thirty (30) day notice of cancellation, non-renewal or material change.

18. Audit

a. Contractor shall be responsible for ensuring the accuracy and propriety of all billings and shall maintain all supporting documentation.

b. The Authority will have the right to audit Contractor's invoices and all supporting documentation for purposes of compliance with this Agreement for a period of two years following completion of services under this Agreement.

c. Upon reasonable notice from the Authority, Contractor shall cooperate fully with any audit of its billings conducted by the Authority and shall permit access to its books, records and accounts as may be necessary to conduct such audits

19. Nondiscrimination Practices

a. Contractor shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

b. Contractor shall, in solicitations for advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to the protected categories listed above.

c. Contractor shall permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with this Article.

20. Conflict of Interest and Gift Restrictions

a. Contractor represents that it has advised the Authority in writing prior to the date of signing of this Agreement of any known relationships with a third party, the Authority's Board of Directors, or employees which would (1) present a conflict of interest with the rendering of services under this Agreement, (2) prevent Contractor from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

b. Contractor agrees not to accept any employment during the term of this Agreement from any other person, firm or corporation where such employment is a conflict of interest or where such employment is likely to lead to a conflict of interest between the Authority's interest and the interests of such person, firm or corporation or any other third party. Contractor shall immediately inform the Authority, throughout the term of this Agreement, if any employment contemplated may develop into a conflict of interest, or potential conflict of interest.

c. Contractor is hereby aware that the California Political Reform Act ("PRA") and regulations of the Fair Political Practices Commission ("FPPC") prohibit the Authority and its Board members, officers and employees from receiving or agreeing to receive, directly or indirectly, any compensation, reward or gift from any source except from his or her appointing authority or employer, for any action related to the conduct of the Authority's business except as provided by the PRA and FPPC. Contractor agrees not to provide any prohibited compensation, reward or gift to any Authority Board member, officer or employee.

21. Release of Information

Contractor shall not make public information releases or otherwise publish any information obtained or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the Authority.

22. Termination

The Authority may terminate this Agreement with or without cause by providing advance written notice delivered or mailed to Contractor of not less than 30 days prior written notice of an effective termination date. Except for this transition assistance, Contractor's obligation to provide services to Authority will cease at 12:01 a.m. upon the effective date of termination or expiration. The Authority's only obligation in the event of termination will be payment of fees and expenses incurred up to and including the effective date of termination. Service and Administration fees will be pro-rated.

23. Notices

Any notice or communication given under this Agreement shall be effective when deposited, postage prepaid, with the United States Postal Service and addressed to the contracting parties as follows:

The Authority of California Cities
Excess Liability Joint Powers
Authority

Carl Warren & Company
500 N. Central Avenue, #400
Glendale, CA 91203

c/o Alliant Insurance Services
600 Montgomery Street, 9th Floor Attention: Mr. Keyan "Yani" Aghili
San Francisco, CA 94111
Attention: Mr. Michael Simmons

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

24. Severability

If any provision of this Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

25. Disputes, Jurisdiction and Venue

This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Any dispute arising under the terms of this Agreement which is not resolved within a reasonable period of time by authorized representatives of the Contractor and the Authority shall be brought to the attention of the Chief Executive Officer (or designated representative) of the Contractor and the Chair (or designee) of the Authority for joint resolution. At the request of either party, the Authority shall provide a forum for discussion of the disputed item(s). If unresolved, both parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California.

26. Waiver

No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

27. Entire Agreement

a. This writing contains the entire agreement of the parties relating to the subject matter hereof; and the parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal amendment thereto.

b. Notwithstanding the foregoing, and to realize the purpose of this Agreement, the Authority may issue a written modification to the Scope of Work, if this modification will not require a change to any other term of this Agreement.

28. Joint Drafting

Both parties have participated in the drafting of this Agreement.

29. Definitions

(1) ALLOCATED LOSS EXPENSE: Means any cost or expense Claims Administrator incurs on ACCEL's behalf as a result of Claims Administrator engaging the service of firms or persons outside Claims Administrator organization for work in connection with the investigation, adjustment, settlement or defense of a Claim. Allocated Loss Expense includes, but is not limited to the following: Subrogation; rehabilitation; automobile or other physical damage appraisal; all court costs, fees and expenses; services of undercover operations and detectives; fees of independent adjusters or attorneys for investigation or adjustment of Claims in areas removed from reasonable access to Claims Administrator salaried employees; the cost of employing experts for the purpose of preparing maps, photographs, diagrams, and chemical or physical analysis, or for expert advice or opinion; the cost of obtaining copies of any public records; and the costs of depositions and court reporters or recorded statements. Allocated Loss Expenses are not included in Claim Transaction Fees.

(2) CANCELLATION: Means the termination of this Agreement prior to the expiration or any renewals thereof.

(3) CLAIM: Means each monetary or unspecified demand against ACCEL based upon damage resulting from physical injury to or destruction of tangible property, loss of the use of the tangible property, or bodily injury, sickness or disease (including death resulting there from), if the demand:

(a) Is based on or arises out of an accident or occurrence which takes place after April 1, 1986, or in the case of a new City joining the Authority, after the effective date of a new city joining the ACCEL Authority:

(b) Is reported to Claims Administrator in writing during the contract period;

(c) Falls or potentially falls within the protection provided by ACCEL; and/or

(d) Constitutes a type of Claim covered by and set forth in the ACCEL memorandum of coverage.

(4) CLAIMS: Means more than one Claim as defined above.

(5) SERVICE FEE: Means Claims Administrator fee for services as set forth in Exhibit B- Schedule of Fees.

(6) TERMINATION: Means the termination of this Agreement at the end of the stated term or renewals thereof or pursuant to Section 22 of this Agreement entitled Termination.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date last written below.

THE AUTHORITY OF CALIFORNIA CITIES
EXCESS LIABILITY JOINT POWERS
AUTHORITY

CARL WARREN & COMPANY

By _____

Date _____

By _____

Thomas Vance, Board President

Date _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President, or any Vice President.)

Federal ID No. 95-2917562

EXHIBIT A

SCOPE OF SERVICES

The Authority hereby engages Contractor to provide third party claims administrative and adjustment services for the Authority of California Cities Excess Liability Joint Powers Authority, Including:

1. Monitoring and reviewing all reported claims to the Contractor, which will or may potentially expose the Authority, including, but not limited to, coverage verification, investigation, reserving, evaluation, litigation management, and preparation of periodic claims status reports to the Authority?
2. Instituting reporting procedures and forms whereby member cities and/or its claims administrators report claims which will or may potentially expose the Authority. These reporting procedures are contained in the Authority's Policies and Procedures for reporting to the Authority. Contractor will also be responsible for reporting any and all reported claims to the Authority's excess carriers that will or may potentially expose the Authority in excess of its shared risk layer, if any for that fiscal year.
3. Attending all Board meetings and Claims Committee meetings as required by the Authority.
4. Utilizing its computerized claims management information system to input all claims reported including development of necessary forms and training.
5. Maintaining a claim file on each reported claim. The claim files will be the Authority's property and will be available for inspection by the Authority upon request.
6. Providing statistical and loss experience reports concerning the claims status at each claims administration meeting in writing.
7. Engaging at its discretion and with the Authority's prior approval the services of persons such as defense counsel, coverage counsel and investigators. Expenses for all such services shall be an "allocated expense."
8. Being available and involved as necessary for consultation on various claims and related issues potentially involving ACCEL.

The Authority's Obligations:

The Authority's obligations are:

1. Develop in cooperation with Claims Administrator and its member cities reporting procedures for reporting claims to it.
2. Do everything necessary to assure that the member cities comply with these procedures.
3. Approve or disapprove settlements recommended by Claims Administrator
4. Approve or disapprove recommendations to try cases, appeal cases, etc.
5. Arrange for a system to quickly and efficiently pay claims and allocated expenses
6. Pay Claims Administrator the amounts set forth in Schedule B of this agreement.
7. Comply with all other terms and conditions of this agreement.

Reports and Risk Management Information System (RMIS)

1. Contractor shall provide the Authority with (electronic or hard copy) tabulated loss run reports for all reported incidents. Loss run reports shall include, but not be limited to, the following: 1) contractor claim number; 2) the status of each open incident assigned to Contractor; 3) summary of each incident; 4) outstanding financial reserves, and 5) details of all claims and expense payments for each excess layer. Contractor will provide monthly loss run information to the Program Administrator directly upon request. .

Assistance with Legal Services and Litigation

The Authority's or Member's legal counsel will handle litigation of claims. Once litigation has commenced, Contractor will work in conjunction with legal counsel assigned by the Authority or Member Agency in defense of the claim and remain the point of contact for the Authority during the entire pendency of the litigation, including, but not limited to, the recommendation of settlements and further litigation strategy subject to the supervision of the Authority's Claim Chairperson. Contractor will also ensure compliance with the Authority's Policies and Procedures.

Contractor will attend mediations, settlement conferences and any other hearings or court dates as necessary. Contractor will assist in gathering documents for production requests, ensure that defense counsel is properly reporting to the Authority and the

Authority's excess carriers, subject to any conflicts of interests and review and recommend payment of all reasonable litigation expenses.

Management Component

1. Contractor shall provide the Authority and its members with continuing information on the progress of individual claims and recommend loss prevention actions and other cost control measures regarding any of the afore-mentioned programs.
2. Contractor shall make observations and recommendations in regards to claims handling; provide input on regulatory or legislative changes or industry trends that effect liability, potential liability or property claims.

EXHIBIT B- Schedule of Fees

1.	Service Fee	\$80,000
2.	Administration Fee	\$12,000
	Services:	\$75.00 / hour
	Mileage:	Current IRS allowable rate
	Photographs:	\$ 2.00 per photo
	Loss History Records:	\$ 35.00 per claim set up

(1) SERVICE FEE:

Claims Administrator will provide a budgeted amount to ACCEL for approval each fiscal year as follows:

The formula shall be based on the total ACCEL caseload and the number of average hours per case. The conditions of the contract determine the hourly charges and additional applicable charges, if any.

The Claims Administrator will prepare a cost projection based on the previous 12 months average caseload. A report will be prepared and presented to the Claims Committee at the April Board of Directors meeting each year. The Claims Committee will negotiate and make specific recommendations for discussion at the next appropriate Board of Directors meeting. The agreed upon budget amount will be effective the following July 1st and apply for that policy year. That amount will be deemed part of and attached annually after BOARD ACTION. Written documentation will be attached to the Agreement.

The service fee will be for file handling of cases reported to the Claims Administrator. The service fee is a Maximum, not to exceed, amount. Each file to be billed for time and expenses according to Appendix 1, but in no case shall exceed the approved budgeted amount approved by the ACCEL Board.

(2) ADMINISTRATION FEE:

In addition to the Service Fee, the Claims Administrator will charge a fee, to be paid monthly to cover:

- (1) Unallocated Loss Adjustment expenses
- (2) Attendance at ACCEL Board Meetings
- (3) Attendance at ACCEL Claims Committee Meetings
- (4) Travel Expenses
- (5) Maintenance of the RMIS Loss Run
- (6) Special Reporting, Ad Hoc Reports
- (7) Meetings with Auditors and Program Administrators
- (8) Miscellaneous administration expenses unrelated to file handling
- (9) Profit and Overhead i.e. internal audit, copies mailings and similar charges and expense

(3) ACCEL MANAGED CASES:

Certain claim files will not be considered part of the annual Service Fee. These will be files that the Claims Committee authorizes **Special Handling**¹, and will be billed on a time and expense basis. The fee schedule is attached as Exhibit B.

(4) NEW MEMBERS:

If new members are added or members withdraw so as to significantly increase or decrease the case load in any fiscal year, then the parties will negotiate any additional or diminution of the annual Service Fee.

¹ SPECIAL HANDLING claims are those approved by the Board to have additional file charges applied due to above normal service necessary in the management of the claim.