Joint Powers Agreement

Background:
A Joint Powers Agreement (JPA) is a contract between two or more public agencies to exercise, jointly, all power(s) common to each of them, for the purpose of accomplishing specific goals they may have in common. The California Government Code (GC) sections 6500-6536 provide the authority for public agencies to enter into JPAs. JPAs may formed between local entities for reasons such as, but not limited to, acquisition of land, construction, maintenance, and operation of facilities by e.g., regional water districts, energy agencies, cities, counties or any other entity described in Government Code section 6500. JPAs can also be used by agencies for the purposes of determining fiscal aents and sharing regional responsibilities.

Essentially, the Authority created by a JPA confers on its members the powers that they hold individually, along with the powers they hold in common. On the surface, that would appear to allow for regional centers to perform grant processes with braided funds that are currently solely within the purview of only the Chancellor’s Office. The Sacramento Council of Governments (SACOG) is a local example of an Authority formed through a JPA to coordinate regional transportation planning and funding. SACOG is made up of 6 area counties and 22 cities. It serves as a forum for the study and resolution of regional issues. In addition to preparing the region’s long-range transportation plans, SACOG approves the distribution of affordable housing in the region and assists in planning for transit, bicycle networks, clean air and airport land uses. SACOG’s website is at http://www.sacog.org/about/. It is very informative, with Requests for Proposals listed on the homepage, and even a copy of their JPA!

Attached is a copy of the JPA to give a more complete picture of a successful JPA and Authority.

As with most standard contracts, all pertinent aspects of a JPA must be set forth in the JPA itself. This includes membership, purpose, timelines, authority, accountability, fiscal, grants, composition of the Authority’s governing board and advisory committee, if any. An annual audit is required, the terms and conditions of which should be contained in the JPA. As to funding, a separate account must be established that will contain all funds received by the Authority. The Authority would be responsible for any liabilities incurred. The groups and/or individuals comprising the Authority would have no liability for any debts the Authority incurred. A JPA becomes effective upon the execution of the agreement by all parties.

Analysis:

Government Code (GC) sections 6500-6536, et. seq., titled the Joint Exercise of Powers Act (GC §6500.1), set forth the requirements for entry into a JPA, its implementation, operation, accountability, and termination.

Section 6500 identifies the entities that are authorized to enter into JPAs, as follows:
As used in this article, “public agency” includes, but is not limited to, the federal
government or any federal department or agency, this state, another state, or any state
department or agency, a county, county board of education, county superintendent of
schools, city, public corporation, public district, regional transportation commission of
this state or another state, a federally recognized Indian tribe, or any joint powers
authority formed pursuant to this article by any of these agencies.

Although not specifically included in GC section 6500, section 6516.6(c)(4)(E) provides the
following clarification as to eligible entities:

The phrase “school district” . . . includes all school districts of every kind or class,
including, without limitation, community college districts and county superintendents
of school.

Although that section relates to Fairs and Exhibitions, it is clear that both the System and the
colleges fall into the category of eligible agencies. This is bolstered by the wording throughout
the Article — “but not limited to . . . “ and the references to county boards of education and
county superintendent schools).

Many of the Government Code sections on JPAs were written for specific entities or purposes,
e.g. collection of delinquent taxes (GC §6516.6(b); Orange County’s authority to issue bonds
(GC §6516.3); insurance risk pooling for childcare businesses (GC §6516.7); insurance risk
pooling for higher education (GC §6516.9), to name just a few. I have not found any JPAs or
 Authorities formed for the purpose of allocating grant funding on a regional basis rather than
directly to specific programs at specific districts, as proposed. However, GC section 6516.9,
which relates to entities that conduct fairs, exhibitions, or “educational programs and
activities” (emphasis added), and specifically includes the California Community Colleges.

There are two ways to set up a JPA; the first is that the signatories to the JPA create a “Joint
Powers Authority” (Authority), which would be a separate entity authorized through the JPA to
conduct the business of the Authority. As noted above, all members of the JPA may exercise
any of the powers granted to the other members. If this route is chosen, the Authority — I’ll
call it Weaving for Dummies Authority (WDA) — must establish a governing board and an
advisory committee and appoint the members of those two bodies, along with selecting one or
more person(s) who would have the authority to conduct business for (WDA). The JPA would
spell out all of the powers held by WDA.

A JPA may also be entered into without the creation of a separate agency. In that case, the
members of the JPA would have to designate a person(s) that would serve the JPA as
something like an executive director. He/she would operate the JPA, and would possess the
powers and responsibilities he/she is charged with by the JPA. Individual members of the JPA
could be appointed as the executive director, or in any other capacity, as agreed to by all of the
parties. The person so chosen must provide a bond in an amount to be agreed on, or for the
amount of the funds of the JPA. Within thirty (30) days of execution of the agreement, a copy
of the JPA must be provided to the Department of General Services and the State Controller.