

JOINT POWERS AGREEMENT

CREATING THE



CALIFORNIA JOINT POWERS

RISK MANAGEMENT AUTHORITY

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CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

JOINT POWERS AGREEMENT

This Agreement is made by and among the undersigned public entities, all of which are public entities generally organized and operating under the laws of the State of California or public entities specifically organized and operating under section 6507 of the California Government Code and related provisions of law which authorize the creation and operation of governmental joint powers authorities under California Law.

RECITALS

- I. The following state laws, among others, authorize the *member entities* to enter into this agreement:
 - A. Labor Code section 3700(b) allowing a local public entity to fund its own workers' compensation *claims*;
 - B. Government Code sections 989 and 990, and Education Code section 15802, permitting a local public entity to insure itself against liability and other losses;
 - C. Government Code section 990.4 permitting a local public entity to provide insurance and self-insurance in any desired combination;
 - D. Government Code section 990.8 permitting two or more local public entities to enter into an agreement to jointly fund such expenditures under the authority of Government Code sections 6500 - 6515; and
 - E. Government Code sections 6500 - 6515 permitting two or more local public entities to jointly exercise, under an agreement, any power which is common to each of them.
- II. The governing board of each undersigned public entity has determined that it is in its best interest and in the public interest that this present Agreement be executed and that it shall participate as a member of the public entity created by this Agreement.

NOW, THEREFORE, the undersigned, by, between and among themselves, in consideration of the mutual benefits, promises and agreements set forth below, hereby agree as follows:

AGREEMENT

ARTICLE I

**CREATION OF THE CALIFORNIA JOINT
POWERS RISK MANAGEMENT AUTHORITY**

Pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with section 6500), the parties hereto hereby have created a public agency, separate and apart from the parties hereto, now to be known as the California Joint Powers Risk Management Authority, hereinafter called the *Authority*. This Agreement amends and supersedes the Agreement filed with the Secretary of State on April 21, 1986 entitled "Joint Powers Agreement Creating the California Joint Powers Insurance Authority".

ARTICLE II

PURPOSES

This amended Agreement is entered into by *member entities* pursuant to the provisions of California Government Code sections 990, 990.4, 990.8, and 6500 et seq. in order to:

- A. share the risk of covered losses;
- B. jointly purchase *excess insurance* and administrative and other services as determined by the *Board of Directors*; and
- C. assist the *member entities* to develop and maintain risk management programs to reduce the severity and frequency of their losses.

ARTICLE III

DEFINITIONS

Unless the context otherwise requires, the following terms shall be defined as herein stated:

- A. **Authority** shall mean the California Joint Powers Risk Management Authority created by this Agreement;
- B. **Board or Board of Directors** shall mean the governing body of the *Authority* composed of one representative of each *member entity*;
- C. **Cash Assessment** shall mean an amount determined by the *Board of Directors*, to be paid by each *member entity* as necessary to meet the *Authority's* obligations;
- D. **Cash Contribution** shall mean the annual dollar amount determined by the *Board of Directors* which is payable by each *member entity* as its established share of the funding required to cover the financial obligations of each *pooled coverage program* in which the *member entity* participates;
- E. **Certificate of Coverage for Additional Covered Party** shall be the document issued by the *Authority* to third parties specifying the type and amount of pooled coverage provided to the *member entity* by the *Authority* and extended to the named third party for the specified purpose;
- F. **Claims** shall mean demands made against the *member entities* or the *Authority* arising out of occurrences which may be within the *Authority's pooled coverage programs*;
- G. **Covered Loss** shall mean any loss resulting from a *claim* or *claims* against a *member entity* or the *Authority* which is in excess of the *member entity's* respective *self-funded retention*, and is covered by any *Memorandum of Coverage* issued by the *Authority* or any *purchased coverage programs* and shall include loss payments, defense costs and other charges directly attributable to the resolution of the matter including defense costs incurred by the *Authority*;
- H. **Excess Insurance** shall mean that commercial insurance purchased by the *Authority* to cover losses in excess of the *Authority's* pooled limits and/or each *member entity's self-funded retention*;
- I. **Executive Committee** shall mean that body composed of the President, Vice-President and five additional members of the *Board of Directors* elected in accordance with the Bylaws of the *Authority*;
- J. **Incurred Loss** shall mean the sum of monies paid or reserved by the *Authority* to investigate, defend and satisfy a *covered loss* sustained by a *member entity* or the *Authority*;
- K. **Member Entity** shall mean each of the public entities which is a party to this Agreement;
- L. **Memorandum of Coverage** shall be the document issued by the *Authority* to *member entities* specifying the type, amount and conditions of pooled coverage provided to each participant by the *Authority*;

- M. **Pooled Coverage Programs** shall consist of coverages provided directly by the *Authority* pursuant to a *Memorandum of Coverage* and/or provided by a *purchased coverage program*. These may include, but not be limited to, property, workers' compensation and liability coverages as may be determined by the *Board*;
- N. **Program Year** shall mean a period of time determined by the *Board*, usually 12 months, into which each *pooled coverage program* shall be segregated for purposes of accounting and record keeping;
- O. **Purchased Coverage Program** shall mean any transfer of risk by the *Authority* through the purchase of commercial *excess insurance*, participation in a joint powers authority, risk retention group or similar mechanism;
- P. **Self-Funded Retention** shall mean the amount of a claim which the *member entity* must incur or become liable for before the *Authority*, or any applicable *purchased coverage program*, is obligated to pay.

ARTICLE IV

PARTIES TO AGREEMENT

Each party to this Agreement certifies that it intends to, and does, contract with all other parties who are signatories of this Agreement and, in addition, with such other parties as may later be added as parties to, and signatories of, this Agreement pursuant to Article XX. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Article XXI or XXII, shall not affect this Agreement or the remaining parties' intent to contract as described above with the other parties to the Agreement then remaining. Each party to this Agreement must, at all times, participate in the Automobile/General Liability Program as defined in Article X of the Bylaws.

ARTICLE V

TERM OF AGREEMENT

This Agreement shall become effective as of the date of adoption and shall continue in full force until terminated in accordance with Article XXIV.

ARTICLE VI

POWERS OF THE AUTHORITY

The *Authority* is authorized, in its own name, to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or as otherwise authorized by law, including but not limited to the power to:

- A. make and enter into contracts;
- B. incur debts, liabilities and obligations; but no debt, liability or obligation of the *Authority* is a debt, liability or obligation of any *entity* which is a party to this Agreement, except as otherwise provided by Articles XXI and XXII;
- C. acquire, hold or dispose of real and personal property;
- D. receive contributions and donations of property, funds, services and other forms of assistance from any source;
- E. sue and be sued in its own name;
- F. employ agents and employees;
- G. acquire, construct, manage and maintain buildings;
- H. lease real or personal property including that of a *member entity*; and
- I. receive, collect, invest and disburse monies.

ARTICLE VII

MEMBER ENTITY RESPONSIBILITIES

The *member entities* shall have the following responsibilities:

- A. to cooperate fully with the *Authority* in determining the cause of losses and in the settlement of *claims*, as defined in the *Memorandum of Coverage*;
- B. to pay *cash contributions*, *cash assessments* and other charges, promptly to the *Authority* when due;
- C. to provide the *Authority* with such statistical and loss experience data and other information as may be necessary for the *Authority* to carry out the purposes of this Agreement;
- D. to establish and maintain risk management programs including but not limited to loss control, risk transfer and employee safety programs;
- E. to cooperate with and assist the *Authority* and any insurer, *claims* adjuster or legal counsel retained by the *Authority*, in all matters relating to this Agreement;
- F. to comply with the Bylaws and all policies and procedures adopted by the *Board*; and,
- G. to appoint a representative and alternate to the *Board of Directors*.

ARTICLE VIII

BOARD OF DIRECTORS

There shall be a *Board of Directors* to govern the affairs of the *Authority*. It shall be composed of one representative from each *member entity* who shall be an employee or officer of that *member entity*. Each *member entity* shall appoint an alternate to serve in the absence of the representative. The powers of the *Board* shall be all of the powers of the *Authority* not specifically reserved to the *member entities* by this Agreement.

POWERS OF MEMBER ENTITIES

The governing boards of the *member entities* hereby retain the following powers:

- A. the appointment of their representative and alternate to the *Board of Directors*;
- B. approval of amendments to this Agreement as specified in Article XXVII; and
- C. termination of the *Authority* in accordance with Article XXIV.

BOARD OF DIRECTORS - APPOINTMENTS

The members of the *Board of Directors* shall be appointed by the respective *member entities* in writing to the business office of the *Authority*. The representative shall serve at the pleasure of the *member entity* until written notice of the appointment of a successor is received by the *Authority*.

The alternate shall have all the powers of the representative in their absence except that the alternate shall not exercise the powers of an officer of the *Authority* or serve on the *Executive Committee*.

ARTICLE IX

COMMITTEES

The *Board of Directors* shall have the authority to establish committees as it deems appropriate to conduct the business of the *Authority*. The Board is authorized to dissolve any committee established pursuant to this Article.

ARTICLE X

EXECUTIVE COMMITTEE

There shall be a seven member *Executive Committee* of the *Board of Directors*, composed of the President and Vice President and five Directors elected by the *Board* to serve on the committee in accordance with the Bylaws.

EXECUTIVE COMMITTEE - POWERS

The powers of the Executive Committee shall be those powers delegated to it by the *Board of Directors* which may include but are not limited to:

- A. personnel matters concerning salary, benefits and working conditions of staff;
- B. approval of warrants;
- C. approval of requests for *Certificates of Coverage for Additional Covered Parties*;
- D. *covered loss* settlement authority in an amount as determined by the *Board*;
- E. approval of contracts for routine services (claims audit, financial audit, actuarial study, etc.); and
- F. other authority as delegated by the *Board*.

ARTICLE XI

MEETINGS

BOARD OF DIRECTORS MEETINGS

The *Board of Directors* shall hold at least four regular meetings each year, one of which shall be designated the Annual Membership Meeting. The Board shall fix the date, hour and location at which each regular meeting is to be held. The General Manager/Secretary may request special meetings as needs dictate. Special meetings may also be called by the President or at least one-third of the Directors. A regular or special meeting may be postponed or cancelled, as provided in the Bylaws, except the Annual Membership Meeting may not be cancelled.

EXECUTIVE COMMITTEE MEETINGS

The *Executive Committee* shall hold at least six regular meetings each year which may coincide with *Board* meetings or the Annual Membership Meeting, and may hold other meetings as designated by the *Board of Directors*. The President shall fix the date, hour and location at which the regular meetings are to be held. The President or General Manager/Secretary or a majority of the *Executive Committee* may request special meetings as needs dictate.

GENERAL

The General Manager/Secretary shall keep minutes of all regular, special and adjourned regular or special meetings of the *Board* and *Executive Committee*. As soon as possible after each meeting, a copy of the minutes shall be forwarded to each *member entity*.

The *Board* shall cause Bylaws and an Administrative Policies and Procedures Manual to be developed, which are consistent with applicable law and this Agreement, to govern the day-to-day operations of the *Authority*. Each *member entity* shall receive a copy of any Bylaws and Administrative Policies and Procedures Manual developed under this Article. Thereafter, the *Board* may revise such Bylaws and administrative policies and procedures so long as they shall be and remain consistent with both applicable law and this Agreement. To the extent such Bylaws and administrative policies and procedures are in conflict with this Agreement, the terms and provisions of this Agreement are controlling. The General Manager/Secretary shall send to each *member entity* each Bylaw amendment and administrative policy and procedure change promptly after its adoption by the *Board*.

Each meeting of the *Board* and *Executive Committee*, including, without limitation, regular, special and adjourned regular or special meetings, shall be called, noticed, held and conducted in accordance with applicable state law.

ARTICLE XII

OFFICERS & EMPLOYEES

The Officers of the *Authority* shall be the President, Vice President, Treasurer and General Manager/Secretary. The President and Vice President shall be elected by the *Board* from among its own members, as individuals, not as the *member entities* they represent. The term of office for President and Vice President shall be two years and they shall assume the duties of their offices upon election. The Treasurer will be appointed by a majority of the entire *Board* and shall serve at the pleasure of the *Board*. If the President or Vice President ceases to be a member of the *Board* or is removed from office, the resulting vacancy shall be filled, for the unexpired term, at the next regular or special meeting of the *Board* held after the vacancy occurs.

The General Manager shall be the Secretary and Chief Administrative Officer of the *Authority*. The *Board* shall appoint the General Manager/Secretary who shall serve at the pleasure of the *Board*. The responsibilities and duties of the officers of the *Authority* shall be as defined in the Bylaws and as assigned by the *Board*. The *Board* may appoint such other officers and employees and may contract with such persons or firms as it considers necessary to carry out the purposes of this Agreement.

Any *member entity* which agrees to have an employee or other representative assigned duties pursuant to this Article may be reimbursed by the *Authority* for that individual's time and services rendered on behalf of the *Authority*, at the discretion of the *Board*. Any such employee, while acting for or on behalf of the *Authority*, will be entitled to defense and indemnification by the *Authority* to the extent provided in California Government Code sections 825 *et. seq.* and 995 *et. seq.*

ARTICLE XIII

FISCAL YEAR

The first fiscal year of the *Authority* under this Agreement shall be the period from July 1, 1990 thru June 30, 1991 and subsequent fiscal years of the *Authority* shall end on June 30 of each succeeding year.

ARTICLE XIV

BUDGET

An annual budget shall be presented by the General Manager/Secretary to the *Board* not later than thirty (30) days prior to the beginning of each fiscal year and shall be adopted no later than July 31 of each year. At the discretion of the *Board*, a multi-year budget may be adopted, thereby eliminating the requirements of annual presentation and adoption during the term of such multi-year budget.

ARTICLE XV

ANNUAL AUDITS AND AUDIT REPORTS

FINANCIAL AUDIT

The *Executive Committee* shall cause an annual financial audit in accordance with generally accepted auditing standards to be made with respect to all receipts, disbursements, other transactions and entries into the books by a Certified Public Accountant, and a report of such financial audit shall be filed as a public record with each of the *member entities*. All costs of such financial audit shall be paid by the *Authority* as a general and administrative expense.

RISK MANAGEMENT AUDITS

The *Board* may cause an audit to be made of any of the member *entity's* risk management programs. All costs of such audits shall be paid by the *Authority* as a general and administrative expense.

ARTICLE XVI

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

The *Authority* shall be responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with all provisions of law relating to the subject, particularly section 6505 of the California Government Code.

All of the funds of the *Authority* shall be held in common and strictly accounted for.

The Treasurer or *Board's* designee shall receive, invest and disburse funds only in accordance with the procedures established by the *Board* and in conformity with applicable law. The General Manager/Secretary shall have the authority to expend funds which have been budgeted, as provided in the Bylaws.

An Investment Policy shall be adopted by the Board and reviewed annually.

ARTICLE XVII

CASH CONTRIBUTION

Each *member entity* shall make a *cash contribution* for each year of participation in each *pooled coverage program* in an amount approved by the *Board of Directors*. The amount of such *cash contribution* shall be determined in accordance with a formula contained in the Bylaws of the *Authority* or a policy established pursuant to the Bylaws and shall be sufficient, when combined with the *cash contributions* of all other participants in such *pooled coverage programs*, to cover the outstanding liabilities, actuarially predicted losses, loss adjustment expenses, defense costs, *excess insurance* premiums and administrative expenses of the *Authority*.

The *cash contribution* shall be billed to the *member entities* prior to the beginning of each *program year* and is due and payable by the date of commencement of the *program year*. Any *cash contributions* not received by the *Authority* within thirty (30) days following the date of commencement of the *program year* shall be in arrears and subject to interest and/or penalties in accordance with the Bylaws or any policy adopted pursuant to the Bylaws of the *Authority*.

ARTICLE XVIII

CASH ASSESSMENT

The *Board* by a two-thirds vote of the entire body shall have the authority to levy a *cash assessment* upon a determination that it is necessary to meet the *Authority's* obligations.

All *cash assessments* shall be determined and payable in accordance with the policy contained in the Bylaws.

ARTICLE XIX

POOLED COVERAGE PROGRAMS

The pooled coverage for each program shall be as specified in the Bylaws and applicable policies and procedures. Each *member entity* electing coverage in the Automobile/General Liability program commencing on July 1, 1990, which was a member of such program on July 1, 1989, shall have an initial one-year noncancellable commitment to the program and the *Authority*. Any other *member entity* accepted for membership in the *Authority* shall have an initial three *program year*, noncancellable commitment. Each *member entity* may participate in such other *pooled coverage programs* as are offered by the *Authority* on such terms, for such time periods and with such *cash contributions* as are determined by the *Board*.

At the conclusion of the initial noncancellable commitment, *member entities* may continue to participate with subsequent one *program year* commitments. All *member entities* must participate in the Automobile/General Liability Program in order to maintain their membership in the *Authority* and participate in any other *pooled coverage programs*.

Member entities shall have the ability to determine, from year to year, which *Board* established *self-funded retention* level they will assume in the Automobile/General Liability program.

Such determinations must be communicated in writing to the *Authority* by December 31, 1990 and thereafter at least one hundred eighty (180) days prior to the commencement of each succeeding *program year*.

Member entities electing to participate in an existing *pooled coverage program* of the *Authority* may do so only upon the affirmative vote of two-thirds of the participants in that *pooled coverage program* at the time of their application to participate.

ARTICLE XX

NEW MEMBERS

It is the intent of the *member entities* to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional public entities, organized and existing under the Constitution or laws of the State of California, as may desire to become parties to this Agreement and members of the *Authority*.

The *Board* shall review all applications for participation in the *Authority*. Those *entities* seeking membership must be approved by the affirmative vote of a two-thirds majority of the entire *Board of Directors*.

Entities applying under this Article shall be required to pay their share of organizational expenses, as determined by the *Board*, including those costs necessary to analyze their loss data and determine their *cash contributions*.

Cash contributions for *entities* joining the *Authority* at other than the beginning of the *Authority's* *program year*, shall be prorated for the remainder of the *program year*.

ARTICLE XXI

WITHDRAWAL FROM PROGRAM AND/OR CJPRMA

An *entity* which is accepting membership in the *Authority's* Automobile/General Liability Program for coverage commencing on July 1, 1990 and which is a participant on July 1, 1989, shall not withdraw from that program or the *Authority* for a one *program year* period. All other *member entities* shall have an initial three *program year, noncancellable* commitment to the program and the *Authority*. At the conclusion of such noncancellable commitment, a *member entity* may continue to participate with successive one *program year* commitments.

A *member entity* may withdraw from the Automobile/General Liability Program, which will result in automatic withdrawal from all other *pooled coverage programs* and from the *Authority*, by giving written notice of such withdrawal no later than six months prior to the conclusion of the *program year* in which the *member entity's* noncancellable commitment is completed, or any subsequent *program year*.

A *member entity* may withdraw from other *pooled coverage programs* by written notice in accordance with deadlines established by the *Board*.

Any *member entity* which withdraws as a participant of any *pooled coverage program* or as a party to this Agreement, shall not be re-admitted except upon the affirmative vote of two-thirds of the participants of such *pooled coverage program* or the *Authority*.

ARTICLE XXII

EXPULSION

The *Board*, by a three-fourths vote of all Directors, may expel any *member entity* from the *Authority* after ninety (90) days written notice to the *member entity*. Such expulsion shall be effective at the conclusion of the Automobile/General Liability *program year* in which the notice is given, unless extended by the *Board*.

ARTICLE XXIII

EFFECT OF WITHDRAWAL OR EXPULSION

The withdrawal or expulsion of any *member entity* after the inception of its participation in the *Authority* or any *pooled coverage program* shall not terminate its responsibility:

- A. to cooperate fully with the *Authority* in determining the cause of losses and in the settlement of *claims* incurred during the coverage period, as defined in the *Memorandum of Coverage*;
- B. to pay any cash assessments or other amounts determined by the *Board* to be due and payable for each *program year* of each program in which it participated until all *claims*, or other unpaid liabilities, covering such periods have been finally resolved;
- C. to provide the *Authority* with such statistical and loss experience data and other information as may be necessary for the *Authority* to carry out the purposes of this Agreement; and
- D. to cooperate with and assist the *Authority* and any insurer, *claims* adjuster or legal counsel retained by the *Authority*, in all matters relating to this Agreement.

Coverages under all *pooled coverage programs* in which that *member entity* participated will remain in effect and continue until the conclusion of their respective *program years*.

ARTICLE XXIV

TERMINATION AND DISTRIBUTION

This Agreement may be terminated any time by the written consent of three-fourths of the *member entities'* governing boards provided however that all *member entities* are notified in writing at least ninety (90) days in advance; provided, however, that this Agreement and the *Authority* shall continue to exist for the purpose of disposing of all *claims*, distribution of assets and all other functions necessary to wind up the affairs of the *Authority*. Notification of the action of the *member entities'* governing boards in terminating this Agreement may be delivered by mail to the *Authority* or in person by each *member entity's* representative or alternate at a regular or special meeting of the *Board of Directors*. Upon termination of this Agreement, all assets of the *Authority* shall be distributed only among the parties which have been participants in its *pooled coverage programs*, including any of those parties which previously withdrew or were expelled pursuant to Articles XXI and XXII of this Agreement, and in accordance with the terms and conditions of the Bylaws of the *Authority*. The *Board* shall determine such distribution within six months after the last pending claim or *covered loss* subject to this Agreement has been finally resolved.

The *Board* is vested with all powers of the *Authority* for the purpose of concluding and dissolving the business affairs of the *Authority*. These powers shall include the power to require *member entities*, including those which were program participants at the time the claim arose or at the time the *covered loss* was incurred, to pay their share of any *cash assessment* deemed necessary by the *Board* for final disposition of all such *claims* and *covered losses* subject to this Agreement.

ARTICLE XXV

NOTICES

Notices to *member entities* under this Agreement shall be sufficient if mailed, first class, to their respective addresses on file with the *Authority*. Notices to the *Authority* shall be sufficient if mailed, first class, to the address of the *Authority* as contained in the Bylaws.

ARTICLE XXVI

PROHIBITION AGAINST ASSIGNMENT

No *member entity* may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any *member entity* shall have any right, claim, or title to any part, share, interest, or asset of the *Authority*.

ARTICLE XXVII

AMENDMENTS

This Agreement may be amended by the vote of three-quarters or more of the *member entity's* governing boards, provided that any amendment is compatible with the purposes of this Agreement and has been submitted to the *member entities* at least thirty (30) days in advance. Any such amendment shall be effective immediately upon receipt by the *Authority* of votes sufficient for passage, unless otherwise designated. Notification of the action of the *member entity's* governing boards may be delivered by mail, return receipt requested, to the *Authority* or in person by each *member entity's* representative or alternate at any regular or special meeting of the *Board*.

ARTICLE XXVIII

SEVERABILITY

Should any portion, term, condition or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California or the United States, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

ARTICLE XXIX

AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.