

## **AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY**

This agreement is made by and among the undersigned public entities, all of which are public entities organized and operating under the laws of the State of California.

### **RECITALS**

1. The following state laws, among others, authorize the Member Agencies 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 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 Sections 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 Section 6500-6515; and
- E. Government Code Section 6500-6515 permitting two or more local public entities to jointly exercise under an agreement any power which is common to each of them.

2. Each of the parties to this Agreement desires to join with the other parties for the purposes of:

- A. Developing effective risk management programs to reduce the amount and frequency of their losses;
- B. Pooling their self-insured losses; and
- C. Jointly purchasing excess insurance and administrative services in connection with any of the pooled coverage programs for said parties.

3. The governing board of each undersigned public entity has determined that it is in its own 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 AUTHORITY FOR CALIFORNIA EXCESS LIABILITY**

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 create a public agency, separate and apart from the parties hereto, to be known as the Authority for California Cities Excess Liability, hereinafter called the Authority.

### **ARTICLE II**

#### **PURPOSES**

This Agreement is entered into by Member Agencies pursuant to the provisions of California Government Code Section 990, 990.4, 990.8 and 6500, et seq., to:

- A. Develop effective risk management programs to reduce the amount and frequency of their losses;
- B. Share the risk of self-insured losses; and
- C. Jointly purchase excess insurance and administrative and other services including, but not limited to: claims adjusting, data processing, risk management, loss prevention and legal services in connection with any of the pooled coverage programs for said parties. These purposes shall be accomplished through the exercise of the powers of the Member Agencies jointly in the creation and operation of the Authority.

It is also the purpose of this Agreement 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 be-

come parties to this Agreement and members of the Authority, subject to Article XVII.

It is also the purpose of this Agreement to provide for the removal of Member Agencies for cause or upon request.

**ARTICLE III**  
**DEFINITIONS**

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

- A. "Authority" shall mean the Authority for California Cities Excess Liability created by this Agreement.
- B. "Board" or "Board of Directors" shall mean the governing body of the Authority.
- C. "Deposit" shall mean the estimated amount determined by the Board for each Member Agency necessary to fund the Authority for the coming fiscal year.
- D. "Excess Insurance" shall mean that insurance purchased by the Authority to cover Member Agencies' losses in excess of the coverage limits provided Authority.
- E. "Member Agency" shall mean any of the public entities which are a party to this Agreement.
- F. "Memorandum of Coverage" shall be the document issued by the Authority to Member Agencies specifying the type and amount of pooled coverage provided to each Member Agency by the Authority.
- G. "Fiscal Year" shall mean a period of time as defined in Article XI, to be used in determining Deposits, Incurred Losses, and Retrospective Adjustments.
- H. "Pooled Coverage Programs" shall include, but not be limited to, property, workers' compensation, and liability coverages as may be determined by the Board from time to time.
- I. "Retrospective Adjustment" shall mean the amount necessary to periodically adjust each Member's Deposit to reflect the estimated changes in each

Member's share of losses, reserves, expenses and interest income for each fiscal year of the Authority.

**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 XVIII. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Article XIX or XX, shall not affect this Agreement or the remaining parties' intent to contract as described above with the other parties to the Agreement then remaining.

**ARTICLE V**  
**TERM OF AGREEMENT**

This Agreement shall become effective when executed by five or more public agencies and shall continue in full force until terminated in accordance with Article XXII.

**ARTICLE VI**  
**POWERS OF THE AUTHORITY**

The Authority is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement as referred to in Article II, including, but not limited to:

- A. Make and enter into contracts;
- B. Incur debts, liability and obligations, but no debt, liability or obligation of the Authority is a debt, liability or obligation of any Member Agency except as otherwise provided by Articles XX and XXI;
- C. Acquire, hold or dispose of real and personal property;
- D. Receive contribution 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. Lease real or personal property, including that of a Member Agency; and
- H. Receive, collect, invest and disburse monies.
- I. Undertake such other activities as may be necessary to carry out the purpose of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

**ARTICLE VII**  
**MEMBER AGENCY**

A. **MEMBER AGENCY - RESPONSIBILITIES**

The Member Agencies shall have the following responsibility:

1. To appoint a representative to the Board of Directors.
2. 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;
3. To pay deposits and any adjustments thereto promptly to the Authority when due;
4. 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
5. 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 and to comply with the Bylaws and all policies and procedures adopted by the Board.

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

There shall be a Board of Directors to govern the affairs of the Authority. The Authority's Board shall be comprised of one representative from each Member Agency. Said representative shall have authority to bind the Member Agency on all matters pertaining to this agreement.

The powers of the Board shall be all of the power of the Authority not specifically reserved to the Member Agencies by this Agreement and shall include, but not be limited to, Article II of said Agreement and the following:

1. Approval of the Memorandum of Coverage.
2. Approval of the cost allocation plan.
3. Election of Officers.
4. Approval of excess insurance.
5. Approval of service providers, including but not limited to:
  - a. Legal counsel
  - b. Auditors
  - c. Claims adjusters
  - d. Loss prevention consultants.

## **ARTICLE IX**

### **MEETINGS AND RECORDS**

#### **A. BOARD MEETINGS**

The Board shall hold at least one regular meeting each fiscal year as defined in Article XI of this Agreement. The Board shall fix the date, hour, and place at which each regular meeting is to be held. Special meetings may be called by the President or upon written request of at least one-third of the Board. Notice of such special meetings shall be delivered personally or by mail to each Board Member at least seven days before such meeting.

Each meeting of the Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act (Section 54950, et seq. of the Government Code).

#### **B. RECORDS**

The Secretary shall keep or have kept minutes of all regular, adjourned-regular and special meetings of the Board. As soon as possible after each meeting, the Secretary shall forward a copy of the minutes to each member of the Board.

No business may be transacted by the Board without a quorum of its members being present. A quorum shall consist of a simple majority of its members. A simple majority of the members present must vote in favor of a motion to approve it, except as otherwise provided in this Agreement. The Board shall conduct its business in accordance with the Roberts Rules of Order.

## **ARTICLE X**

### **BYLAWS AND ADMINISTRATIVE POLICY AND PROCEDURES**

The Board shall, through resolution, adopt, rescind or amend ByLaws and Administrative Policies and Procedures consistent with applicable law and this Agreement to govern the day-to day operation of the Authority. Each Board member shall receive a copy of any by-laws and administrative policies and procedures developed under this Article.

The Secretary shall promptly send to each Board member each bylaw amendment and administrative policy and procedure change after its adoption by the Board.

## **ARTICLE XI**

### **FISCAL YEAR**

Fiscal years of the Authority shall begin on July 1 and end on June 30.

**ARTICLE XII**

**BUDGET**

The Board shall adopt an annual budget prior to the beginning of each fiscal year.

**ARTICLE XIII**

**ANNUAL AUDITS AND AUDIT REPORTS**

A. **FINANCIAL AUDIT**

The Board of Directors shall cause an annual financial audit to be made with respect to all receipt, disbursements, and other transactions by a Certified Public Accountant. A report of such financial audit shall be filed as a public record with each of the Member Agencies. Such report shall be filed no later than required by law. All costs of such financial audit shall be paid by the Authority and shall be charged against the Member Agencies in the same manner as all other administrative costs.

B. **CLAIMS AUDIT**

The Board of Directors shall cause an annual claims audit to be made on each of the Member Agencies' claims prior to the annual retrospective calculations for retrospective premium adjustments, and a report of such claims shall be filed with each Member Agency. All costs of such claims audit shall be paid by the Authority and shall be charged against the Member Agencies in the same manner as all other administrative costs.

**ARTICLE XIV**

**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 provision of law relating to the subject, particularly Section 6505 of the California Government Code.

All of the funds of the Authority may be invested in common. However, each program year shall be accounted for separately on a full accrual basis.

The Treasurer shall receive, invest and disburse funds only in accordance with the procedures established by the Board through resolution in conformity with applicable law.

**ARTICLE XV**

**DEPOSITS**

The deposit for each Member Agency shall be calculated and paid as stated in the Bylaws.

**ARTICLE XVI**

**RETROSPECTIVE ADJUSTMENTS**

Retrospective adjustments to each year's deposit premium shall be calculated and paid as approved by the Board through resolution.

**ARTICLE XVII**

**POOLED COVERAGE PROGRAMS**

The coverage(s) provided by the Authority shall be as specified in the Memorandum(s) of Coverage.

**ARTICLE XVIII**

**NEW MEMBERS**

Admission to the Authority requires approval of two-thirds of the Board and is conditioned upon the applicant executing the Agreement. Membership shall become effective upon the date established by the Board. Prospective members may apply for participation in the Authority as provided for in the Bylaws.

**ARTICLE XIX**

**WITHDRAWAL**

Any Member Agency of the Authority who has been a member for at least three full fiscal years may withdraw from its status as a member and as a party to the Joint Powers Agreement. The withdrawal may be effective only at the end of a fiscal year. Any withdrawing Member Agency must notify the Authority in writing at least six (6) months prior to the end of the fiscal year that it intends to withdraw. After withdrawal, the withdrawing member

shall continue to be responsible for any retrospective adjustments made for years of membership.

Upon withdrawal of a sufficient number of members from the Authority, the Board may determine that the public interest will not be served by the continuance of the Authority and may, by a two-thirds vote of Member Agencies, order the Authority dissolved and the Authority shall be automatically dissolved at the end of the fiscal year specified by the Executive Committee.

## **ARTICLE XX**

### **EXPULSION**

The Authority may expel any Member Agency, with or without cause, as a participant in any program or as a member of the Authority by a two-thirds vote of the Board.

## **ARTICLE XXI**

### **EFFECT OF WITHDRAWAL OR EXPULSION**

The withdrawal or expulsion of any Member Agency after the inception of its participation in any program shall not terminate its responsibility to:

- A. Cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the coverage agreement;
- B. Pay any Retrospective Adjustments determined by the Board to be due and payable for each program year in which it participated;
- C. 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. Cooperate with and assist the Authority, any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement.

## **ARTICLE XXII**

## **TERMINATION AND DISTRIBUTION**

This Agreement may be terminated any time during the first three years by the written consent of all Member Agencies, and thereafter by the written consent of two-thirds of the Member Agencies; 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.

Upon termination of this Agreement, all assets of the Authority shall be distributed only among the parties that have been participants in its programs, including any of those parties which previously withdrew pursuant to Articles XIX and XX of this Agreement, in accordance with and proportionate to their deposit and retrospective premium payments made during the term of this Agreement. The Board shall determine such distribution within six months after the last pending claim of loss covered by 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 Agencies, including those which were program participants at the time the claim arose or at the time the loss was incurred, to pay their share of any retrospective premium adjustment deemed necessary by the Board for final disposition of all claims and losses covered by this Agreement.

## **ARTICLE XXIII**

### **NOTICES**

Notices to Member Agencies under this Agreement shall be sufficient if mailed to their respective address on file with the Authority. Notices to the Authority shall be sufficient if mailed to the address of the Authority as contained in the Bylaws.

## **ARTICLE XXIV**

### **PROHIBITION AGAINST ASSIGNMENT**

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

**ARTICLE XXV**  
**AMENDMENTS**

This agreement may be amended by a two-thirds vote of the Board of the Authority at any regular or special meeting of the Board, provided that any amendment is compatible with the purposes of this Agreement and has been submitted to the Board Members at least ninety(90) days in advance. Any such amendment shall be effective immediately, unless otherwise designated.

**ARTICLE XXVI**  
**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 be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

**ARTICLE XXVII**  
**HOLD HARMLESS AND INDEMNIFICATION**

Member Agencies agree and covenant to save free and hold harmless and indemnify the Authority, its Member Agencies, elected officers, employees, and volunteers for any claim, damage or liability in connection with claims handling, claims administration, retrospective adjustments, assessments, deposits, coverage, errors and omissions, and/or decisions to expel a Member Agency, with or without cause, by two-thirds vote of the Board.

**ARTICLE XXVIII**  
**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.

## **ARTICLE XXIX**

### **EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but altogether shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the Joint Powers Agreement for the pooling of self-insurance as of the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

CITY OF: \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
City

Clerk

**JOINT POWERS AUTHORITY**  
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**AMENDED**

**JOINT POWERS AGREEMENT**

**CREATING THE**

**AUTHORITY FOR CALIFORNIA CITIES EXCESS**

**LIABILITY**