

**BROKERAGE, RISK MANAGEMENT,  
PROGRAM ADMINISTRATION  
AND ACCOUNTING COORDINATOR CONTRACT**

This agreement, made and entered into effective this first day of July 2003 between the AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY, a Joint Powers Authority hereinafter referred to as "ACCEL," and DRIVER ALLIANT INSURANCE SERVICES, hereinafter referred to as "PROGRAM ADMINISTRATOR."

WITNESSETH

This agreement supersedes all previous agreements between ACCEL and the Program Administrator, and

WHEREAS, ACCEL requires risk management, and insurance consulting, program administration services and accounting coordination, hereinafter referred to as "Program," and

WHEREAS, the Program Administrator possesses the necessary expertise in public entity risk management and program administration services, and

WHEREAS, ACCEL desires to engage the Program Administrator to administer ACCEL's programs.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants hereinafter contained to be kept and performed do agree as follows:

SERVICES. Program Administrator agrees to provide to ACCEL services as outlined in **Attachment A – Scope of Services**.

PERFORMANCE MEASURES The Program Administrator agrees to be evaluated by the performance measures enumerated in **Attachment C** to this agreement for the first year of the three year agreement. Performance measures shall be developed and agreed upon for each of the subsequent two years prior to the anniversary date and shall be attached and subject to the terms of this agreement.

TAXES AND FEES; USE OF INTERMEDIARIES

1. Surplus Lines Fees and Taxes. In certain cases, placements made by the Program Administrator on behalf of ACCEL may require the payment of surplus lines assessments, taxes and/or Fees to state regulators, boards or associations. Such assessments, taxes and/or Fees will be charged to ACCEL and identified separately on invoices covering these placements. The Program Administrator shall not be responsible for the payment of any such Fees, taxes, or assessments

except to the extent such taxes or fees have been collected by the Program Administrator from ACCEL.

2. Intermediaries. The Program Administrator may determine from time to time that it is necessary or appropriate to utilize the services of intermediaries (such as surplus line brokers, underwriting managers, London market brokers, and reinsurance brokers) to assist in marketing the Program. These intermediaries may be affiliates of the Program Administrator or may be unrelated intermediaries. Compensation of such intermediaries will be paid by the insurance company out of paid insurance premiums. Where a placement through such an intermediary will result in compensation to a the Program Administrator affiliate, the Program Administrator will fully disclose in writing to ACCEL its relationship to the affiliate and the reason that placement of coverage through that intermediary is in the best interest of ACCEL.

OBLIGATIONS OF ACCEL. ACCEL will reasonably cooperate with the Program Administrator in the performance of the Program Administrator's brokerage, risk management and program administration duties by providing the Program Administrator with reasonable access to ACCEL's personnel and information, including providing the Program Administrator, where available, reasonably complete and accurate information as to ACCEL's loss experience, risk exposures and any other pertinent information that the Program Administrator requests. ACCEL shall promptly review coverage documents concerning the Program delivered by the Program Administrator for consistency with ACCEL's specifications. ACCEL shall designate one or more officers or committees of ACCEL to receive and provide significant intervening substantive review, and independently evaluate any and all recommendations or proposals made to ACCEL by the Program Administrator, which are significant, substantive in nature and under which any benefit shall accrue to the Program Administrator or the Program Administrator's affiliates a Material Financial Impact, under the terms of this Contract. Such officer(s) or committee(s) shall then provide their own recommendations concerning such matters to the officer or board of ACCEL having ultimate decision-making authority on such matters.

COMPENSATION. It is agreed that an annual fee, paid July 1, 2003 for program administration and accounting coordination services rendered for each year of this agreement, shall be \$153,000. (This fee will increase a minimum of \$3,000 effective July 1, 2004 resulting from expanded Accounting Coordinator responsibilities. Any other mid-contract adjustment in the fee due to a change of service hours shall not result in a change more or less than 20% of the initial annual amount. (The annual fee does not include compensation for brokering optional programs offered to ACCEL members as defined in Article XV of the Bylaws.)

During the term of this Contract, the Program Administrator will disclose any commissions received in connection with any insurance placements and may reimburse ACCEL for such commissions as permitted by law. As used in this section, the term "commissions" refers to compensation made to the Program Administrator by insurance carriers with respect to a specific placement of insurance with those carriers, and does not include payments made, if any, by such carriers to any Program Administrator affiliates or contingent payments or allowances by insurance carriers, markets or companies based on the overall levels of insurance premiums on policies placed by the Program Administrator and/or its affiliates.

TERM The term of this agreement shall be for three twelve (12) month periods commencing July 1, 2003 and ending June 30, 2006.

KEY PERSONNEL Prior to change in Account Manager(s) assigned to provide service to ACCEL, Program Administrator shall provide written notice to ACCEL at least fifteen (15) days prior to such change, and ACCEL shall have the right to reject the assignment.

TERMINATION OF AGREEMENT. ACCEL or the Program Administrator can terminate this Contract with or without cause, at any time, by giving 60 days written notice.

In the event of termination, the Program Administrator shall transfer to ACCEL originals (or, if unavailable, copies) of all products, files, records, computations, quotations, studies and other data prepared or obtained in connection with this Contract; which originals (or copies) are, and shall remain the permanent property of ACCEL.

In the event of early termination of this Contract by ACCEL, other than as a result of a breach of this Contract by the Program Administrator, the Program Administrator will be deemed to have earned its annual Fee, in accordance with the following schedule:

In the event of Termination, the earning by the Program Administrator of its annual **Fee shall be on a monthly, pro-rata basis; i.e., if termination were to occur on November 30, 19xx, ACCEL would pay Program Administrator five-twelfths (5/12) of its annual Fee.**

In the event that ACCEL's operations change substantially and materially by either the addition or deletion of other operations or entities or there is substantial change in the scope and nature of the Program, the Program Administrator and ACCEL will negotiate in good faith to revise the **Fee**, as may be appropriate.

Contract expiration or termination releases the Program Administrator from all account responsibilities including, but not limited to, the reporting of claims to carriers. Program Administrator and ACCEL may agree to hourly rates for services for handling run on/run off claims and other ongoing services.

HOLD HARMLESS. The Program Administrator agrees to indemnify, hold harmless, reimburse and defend ACCEL at all times against any claim, costs, expense, liability, obligation, loss or damage (including reasonable legal fees) of any nature, incurred by or imposed upon ACCEL and based upon any errors or omissions of the Program Administrator, its agents or employees, with respect to the services provided by the Program Administrator under this Contract; except to the extent the error or omission arises from the Program Administrator's reliance on information provided by ACCEL or from the Program Administrator's following instructions from ACCEL. In the event that ACCEL tenders its defense in any such claim, etc., to the Program Administrator, and the Program Administrator accepts such tender, the defense of ACCEL shall be conducted by counsel selected and paid by the Program Administrator. Program

Administrator shall provide a certificate of insurance evidencing insurance coverage acceptable to ACCEL.

GENERAL.

A. ASSIGNMENT. This Contract shall not be assigned in whole or in part by either party without the prior written consent of the other party.

B. NOTICES. All notices hereunder shall be given in writing and mailed, postage prepaid, be certified mail, addressed as follows:

ACCEL: c/o DRIVER ALLIANT INSURANCE SERVICES  
500 Washington Street, Suite 300  
San Francisco, CA 94111-2933

TO PROGRAM ADMINISTRATOR:

DRIVER ALLIANT INSURANCE SERVICES  
500 Washington Street, Suite 300  
San Francisco, CA 94111-2933

C. COSTS AND ATTORNEY FEES. The prevailing party in any action brought to enforce the terms of this Contract or arising out of this Contract may recover its reasonable costs and attorney's fees expended in connection with such action from the other party to such action.

D. ENTIRE CONTRACT; MODIFICATION; INTERPRETATION. This Contract sets forth the full and final understanding of the parties as respects the matters described herein, and supersedes any and all prior agreements and understandings between them, whether written or oral with respect to the subject matter hereof. This Contract may be amended, but then only in a written addendum to this Contract executed by the parties. This Contract shall be governed by the law of the State of California. If any term of this Contract is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Nothing in this Contract is intended or shall be construed to confer upon or to give any person, firm or corporation other than the parties hereto, their parents, subsidiaries, successors and assigns, any rights or remedies under or by reason of this Contract.

E. ARBITRATION. In the event that any dispute arises between the parties to this Contract with respect to the interpretation of this Contract, the rights of any party hereunder, or any other matter arising from, in connection with, or relating to this Contract, whether such dispute arises before or after the termination of this Contract, such dispute shall be submitted to final and binding arbitration upon the

mutual agreement of both of the parties. Such arbitration shall be conducted under the auspices of, and in accordance with the procedures and rules of the American Arbitration Association. Any hearings held in the course of any such arbitration shall be held in the City of Sacramento, California, unless the parties mutually agree in writing to another location.

- F. **AUTHORITY.** ACCEL and the Program Administrator each represent and warrant to the other that: (i) the execution and delivery of this Contract and their performance hereunder have been duly authorized and approved by all requisite corporation action; and (ii) neither the execution, delivery, nor performance of this Contract does or will violate, or require any consent under, any law, any order of any court or other agency of government, the Articles of Organization or Bylaws of ACCEL or the Program Administrator, respectively.
- G. **OWNERSHIP OF RECORDS.** All records, whether written or stored electronically, of the administration, operation and activities of ACCEL shall be the property of ACCEL, and the Program Administrator shall either provide reasonable access to the records and deliver such records to ACCEL upon request, or at the end of the term of this Agreement, or upon termination, Program Administrator shall promptly deliver these files/records which are the permanent property of ACCEL. Program Administrator shall not be required to maintain records beyond termination of the Agreement if provided to ACCEL, except as otherwise required.

IN WITNESS WHEREOF, ACCEL has caused this contract to be executed by its President and Program Administrators has caused the same to be executed by its duly authorized officer, all as of the day and year first above written.

#### DRIVER ALLIANT INSURANCE SERVICES

By \_\_\_\_\_  
Managing Director

#### AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

By \_\_\_\_\_  
President

## **ATTACHMENT A – SCOPE OF SERVICES**

Program Administrator agrees to provide to ACCEL the following services:

### **A. INSURANCE AND PROGRAM ADMINISTRATION.**

1. Act as ACCEL's insurance broker and perform all customary duties of an insurance broker for ACCEL's risk management program ("Program") including, without limitation, marketing the Program to insurance carriers, reviewing and verifying insurance documents received from insurers, providing insurance documents to ACCEL, forwarding questions from ACCEL and/or its participating member public agencies to their insurance carriers, identifying, reviewing and commenting on loss-control activities and recommendations by insurers, evaluating the appropriateness of insurance coverages and offering alternatives based on comparison of quotations; and preparing coverage certificates regarding the Program as requested by ACCEL and/or its participating members. This may include the brokering of optional insurance programs available to ACCEL members as defined in the ACCEL Bylaws, Article XV.
2. Act, upon request, as a liaison for communications among or between all parties involved in the Program, including ACCEL, its participating members, insurance carriers and others.
3. Develop and recommend to ACCEL insurance and other risk financing or loss funding programs, techniques and methods, including incidental insurance purchases such as Trustee's Errors & Omissions and Public Employee Dishonesty.
4. Develop underwriting information, structure offerings to insurers and purchase insurance in excess of self-insurance from financially acceptable insurance companies.
5. Review marketing strategy with ACCEL prior to approaching insurers or potential insurers on Program.
6. Review insurance policies, binders, certificates and other documents related to the Program for accuracy and obtain revisions in such documents when needed.
7. Monitor the Program to assure its continuing balance of coverage scope, cost, service and stability.
8. Prepare written reports to ACCEL management to include:
  - a. Reports as needed of pending rate, coverage or renewal problems including significant changes in the financial status of major insurers, re-insurers for the Program.

- b. At least 30 days prior to Program anniversary, a written report stating anticipated renewal terms and conditions and other indications of market conditions, trends and anticipated changes.
  - c. A comprehensive summary report (within 30 days of purchasing coverage) outlining the Program. Such report shall contain the following information:
    - 1) Summary of insurances and their terms and conditions.
    - 2) Summary of financial conditions of insurers providing coverage.
  - d. Annually during the term of this Contract or at such other interval agreed between the Parties, the Program Administrator will prepare a stewardship report which will include a complete list of insurance in force, an evaluation of the overall insurance Program (including recommendations for change) and a forecast of expected market conditions and estimated premiums. At the time of the presentation of the stewardship report, the Program Administrator will advise the officer(s) or committee(s) of ACCEL so designated by ACCEL of any changes which are appropriate in services to be performed for ACCEL by the Program Administrator during any succeeding term of this Contract, for substantive review by such person(s) or committee(s).
  - e. On a six-month basis, provide a report on the services rendered for the period and a projection of work to be accomplished during the next six-month period.
9. Evaluate (i) ACCEL's loss exposures and draft insurance policy specifications which address such exposures; (ii) existing insurance policies as to the adequacy of coverage; (iii) appropriate retention levels; and (iv) significant restrictions in coverage, the existence of warranties, concurrency of coverage, duplications or gaps in coverage, suitability of forms, and other related matters. Upon such evaluation, make recommendations regarding these subjects to the officer(s) or committee(s) designated by ACCEL, for substantive review by such officer(s) or committee(s).
10. Evaluate the financial status and service capabilities of the insurers affording coverage or making quotations of coverage under the Program, based upon the available data. ACCEL recognizes and agrees that Driver is not responsible for any change in the financial condition of any insurance carrier after an insurance placement is made.
11. Deliver binders or other evidences of insurance within ten (10) calendar days after the placement of any insurance under the Program to be effective until such time as the policy or policies for the placement are received by ACCEL from the insurance carriers. Such binders shall be signed by an authorized agent or

employee of the insurance carrier. The Program Administrator shall use best efforts to secure a correct policy or policies within sixty (60) days of placement of any insurance under the Program. The Program Administrator shall not be responsible for the failure of members to make premium payments.

12. In the event that any excess insurance is written for the Program, unless ACCEL gives the Program Administrator contrary written instructions, the Program Administrator will implement the practice of notifying all excess insurance carriers whenever ACCEL or one of its members has requested that notice of a claim be given to the primary carrier.
13. Assist ACCEL, and where applicable ACCEL's third party claims administrator, in settlement issues with insurance carriers. However, it is understood and agreed that the Program Administrator is not providing claims management services under this Contract.
14. Coordinate, as requested by ACCEL and/or its participating members, safety/loss control programming and development of loss prevention materials.
15. Review coverage provided by ACCEL to its members.
16. Collect comprehensive underwriting data on each city applying for membership to ACCEL. Analyze data and loss information. Provide a written report to the Underwriting Committee, summarizing the exposures, loss experience and risk management structure as required by ACCEL. Provide support documentation on all areas of concern, which need to be addressed by either the Committee or Board regarding possible exclusions of undesirable exposures.
17. Issue, amend, endorse and maintain Memorandum of Coverage forms and insurance policies.
18. Issue, secure and maintain Certificate of Coverage on behalf of ACCEL.
19. Provide ongoing information on the status of the insurance industry and the markets.
20. Prepare agendas, set up meetings, and provide other general administrative functions.
21. Record and distribute minutes of meetings to all Board members.
22. Meet at members sites as requested and necessary.
23. Act as the central clearing-house for dissemination of information.

24. Assist members on matters of liability insurance coverage required of contractors.
25. Work with ACCEL committees and coordinate the activities of the committees.
26. Produce an annual stewardship report and bulletins to members throughout the year.
27. Attend meetings of ACCEL as requested.
28. Serve as custodian of official records of ACCEL except as otherwise provided for.
29. Meet performance standards established by the Board.

**B. WEBSITE MAINTENANCE.**

Update and maintain ACCEL Website; [www.accelpool.org](http://www.accelpool.org). and other program documentation.

**C. ELECTRONIC DATA MAINTENANCE.**

1. Retrospective Rating Calculations.
2. Prepare Budget and Quarterly Year-to-date Statements.
3. Estimated Earnings Report Maintenance.

**D. ACCOUNTING FUNCTIONS.**

Provide general accounting services as established by the ACCEL Board based on the recommendations of the Finance Committee and in compliance with **Attachment B – ACCEL Accounting Functions**.

**ATTACHMENT B – ACCEL ACCOUNTING FUNCTIONS**

*Page 1 of 2*

**DUTIES OF ACCEL ACCOUNTANT**

1. Check *writing* for administrative expenses;
2. Reconciliation of administrative check (checking) account activity monthly;
3. Preparation of monthly checking account activity statement;
4. Receipt of monthly reports from Investment Advisor;

5. Preparation of cover letters for review of ACCEL Treasurer on monthly report of investments;
6. Preparation of monthly report of investment cover letters for review by ACCEL Treasurer;
7. Gathering of data quarterly for preparation and compilation of Estimated Interest Earning Report;
8. Preparation of Balance Sheet, Profit and Loss YTD Comparison, and Profit and Loss Previous Year Comparison Monthly;
9. Gathering of data to submit to auditors annually;
10. Requesting estimated and final payroll information from cities;
11. Tracking on spreadsheet payroll information to compare estimated to actual payrolls;
12. Submit invoices to cities for:
  - Annual premium;
  - Annual admin fee; and
  - Final payments based on actual payroll.
13. File State Controllers report annually;
14. Annual budget preparation (to be reviewed by ACCEL Treasurer);
15. Tracking on spreadsheet of expenditures/appropriates to present to each ACCEL meeting;
16. Assist ACCEL Treasurer in request of monies from investment accounts;

## **ATTACHMENT B – ACCEL ACCOUNTING FUNCTIONS**

*Page 2 of 2*

17. Gathering of financial data to send to Program Administrators for meetings;
18. Monitoring and distribution of retrospective refunds to members;
19. Keeper of financial records;
20. Provide Auditor with all required information;
21. Provide Program Administrators a list of all outstanding Final Audit items necessary for meeting Critical Path deadlines;
22. Identify missing vendor “Confirmations”;
23. Preparation of (Quarterly Compilation); and
24. Preparation of Quarterly Estimated Interest Earning Report.

# ATTACHMENT C – ACCEL PERFORMANCE MEASURES

Page 1 of 2

Key Result Area	Performance Standard	Quantifiable Measures		Descriptive Measures*				
		YES	NO	1	2	3	4	5
<b>I. JPA Administration</b>								
<b>Agenda Preparation, Meeting Preparation, Collection &amp; Maintenance of Documents</b>								
	➤ Prepare five (5) Board of Directors Agendas and Minutes	YES	NO					
	➤ Mail Agendas to be received five (5) working days prior to meeting	YES	NO					
	➤ Work with Standing Committees and assist where needed							1 2 3 4 5
	➤ Contact Committee Chairs on their timely agenda items							
	➤ Provide cover sheets for all action items			1	2	3	4	5
	➤ State staff or committee recommendation on Agenda cover sheets	YES	NO					1 2 3 4 5
	➤ Perform Retrospective Calculations each April - June	YES	NO					
	➤ Prepare the Annual Stewardship Report in September							1 2 3 4 5
	➤ Quarterly Updates Website and other Program Documentation	YES	NO					
	➤ Quarterly Updates "SF Office Consultant Guide"	YES	NO					
<b>II. Secretarial Duties &amp; Financial Oversight</b>								
<b>Managing Coordination of Documents Between the Board and Other Service Provider/Committee Heads</b>								
	➤ Monitor Estimated Interest Earnings Report							1 2 3 4 5
	➤ Provide input on report structure and content							1 2 3 4 5
	➤ Maintain Service Provider Contracts							1 2 3 4 5
	➤ Maintain official documents and files							1 2 3 4 5
	➤ Annually distribute, collect and file Fair Political Practices Commission, Form 730	YES	NO					
	➤ Annually make Public Agency Roster filings with Secretary of State and County Clerk	YES	NO					
	➤ Annually file Joint Powers Agreement changes with Secretary of State	YES	NO					
	➤ Biannually provide a report on the services rendered for the period and a projection of work accomplished during the next six-month period	YES	NO					
	➤ Deliver binders or other evidence of insurance within ten (10) calendar days after the placement of any insurance under the program	YES	NO					
<b>III. Client Service</b>								
<b>Meeting deadline Commitments; Timelines of Response, Appropriate Documentation</b>								
	➤ Return phone calls within 24 hours							1 2 3 4 5
	➤ Respond to e-mails within 48 hours							1 2 3 4 5
	➤ Maintain orderly and complete files							1 2 3 4 5
	➤ Issue Evidence of Coverage within four (4) working days of member's request	YES	NO					
	➤ Issue Weekly Updates via e-mail as needed	YES	NO					

## ATTACHMENT C – ACCEL PERFORMANCE MEASURES

Page 2 of 2

### IV. Exposure Identification & Problem Resolution

#### Contract review; Coverage Issues & Review

- |  |            |           |           |
|--|------------|-----------|-----------|
| ➤ <i>Annually maintain/revise/distribute Electronic Contracts Manual</i> | <i>YES</i> | <i>NO</i> |           |
| ➤ Review member contracts as requested                                   |            |           | 1 2 3 4 5 |
| ➤ Provide, as requested, Loss Control advice and resources               |            |           | 1 2 3 4 5 |

### V. Development of New Members & Programs

#### New Member to Existing Programs; Development of New Programs

- |  |   |   |   |   |           |
|--|---|---|---|---|-----------|
| ➤ Assist in adding one (1) new Liability Program member            | 1 | 2 | 3 | 4 | 5         |
| ➤ Evaluate and report on potential programs that may be of benefit |   |   |   |   | 1 2 3 4 5 |
| ➤ Develop appropriate new programs per Boards request              |   |   |   |   | 1 2 3 4 5 |

### VI. ACCEL Program Insurance Placements

#### Insurance Options for Necessary Coverages (Net Commissions)

- |   |            |           |
|---|------------|-----------|
| ➤ <i>Provide Errors &amp; Omissions</i>             | <i>YES</i> | <i>NO</i> |
| ➤ <i>Provide Fidelity</i>                           | <i>YES</i> | <i>NO</i> |
| ➤ <i>Provide \$9 x \$1 million Excess Liability</i> | <i>YES</i> | <i>NO</i> |

### VI. Special Projects

#### Site Visits and Reports; Presentations; Special Reports; Nonrecurring Issues

- |   |   |   |   |   |           |
|---|---|---|---|---|-----------|
| ➤ Report on pertinent events and industry environment | 1 | 2 | 3 | 4 | 5         |
| ➤ Address and resolve unusual problems                |   |   |   |   | 1 2 3 4 5 |
| ➤ Act on behalf of the Authority as directed          |   |   |   |   | 1 2 3 4 5 |
| ➤ Research and develop issues as requested            |   |   |   |   | 1 2 3 4 5 |
| ➤ Address City Councils or committees as requested    |   |   |   |   | 1 2 3 4 5 |

\* Descriptive Measures

5 = *Outstanding*

4 = *Excellent*

3 = *Satisfactory*

2 = *Needs Improvement*

1 = *Unsatisfactory*