

**FIRST AMENDED JOINT POWERS AGREEMENT OF
FIRE DISTRICTS ASSOCIATION OF CALIFORNIA
EMPLOYMENT BENEFITS AUTHORITY**

This First Amended Joint Powers Agreement (the initial Joint Powers Agreement and this First Amended Joint Powers Agreement are collectively referred to as the “Agreement”) is made and entered into in the County of Sacramento, State of California, by and among various public agencies, hereafter collectively referred to as “Agencies” and individually as “Agency” who have or may hereafter execute this Joint Powers Agreement pursuant to the authority conferred by Government Code Section 6500 et seq.

RECITALS

WHEREAS, each of the Agencies who have executed this Agreement is a “public agency” as that term is defined in Section 6500 of the California Government Code; and

WHEREAS, California Government Code Section 6500 et seq. provides that two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, California Government Code Sections 53200, 53201(a), 53202, 53202.2, 65205, 53205.1, 53205.16, 53206, 53208 and Health and Safety Code Section 13800 et seq. provides that a local public agency may provide for any health and welfare benefits for the benefit of its existing and retired officers, employees, and members of its legislative body, which health and welfare benefits include, but are not limited to hospital, medical, surgical, disability, legal expense, dental, vision, life, and income protection insurance or benefits, whether provided on an insurance basis, self-funded basis, or some combination of insurance and self-funding; and

WHEREAS, Government Code Section 53202 states that in providing such health and welfare benefits, a public agency may approve self-funded plans or may contract with one or more admitted insurers, health service organizations or legal service organizations for such plans of health and welfare benefits as the public agency determines to be in the best interest of the public agency and its existing and retired officers, employees and legislative body; and

WHEREAS, Government Code Section 53202.2 provides that a public agency may prescribe such rules, regulations and procedures as are necessary to properly implement a system to administer the provision of such health and welfare benefits; and

WHEREAS, Government Code Section 53205 provides that the legislative body of a public agency may expend public agency funds for the premiums, dues or other charges for health and welfare benefits of its existing and retired officers, employees, and members of its legislative body; and

WHEREAS, Government Code Section 53206 provides that a public agency may pay the premiums, charges or other costs of health and welfare benefits from amounts derived from either employer contributions, employee payroll deductions, or both, directly to the contracting insurers or service organizations providing such health and welfare benefits; and

WHEREAS, each of the parties hereto has the power to establish, administer, operate, manage and pay for health and welfare benefits for their respective existing and retired officers, employees, and members of its legislative body, in addition to other powers which are common to each of them; and

WHEREAS, each of the Agencies which are parties to this Agreement desire to join together with other Agencies in order to collectively establish, operate, manage, and administer health and welfare benefits for their existing and retired officers, employees, and members of its legislative body, either through collectively self-funding the cost of such health and welfare benefits, jointly purchasing insurance programs, benefits and services to provide such health and welfare benefits, or some combination thereof; and

WHEREAS, each of the Agencies which are parties to this Agreement find it to be to its mutual advantage and in the public benefit to utilize any power common to them, and all those powers available to a Joint Powers Authority pursuant to the Joint Powers Act at Government Code Section 6500 et seq., to coordinate the organization, management, administration and operation of health and welfare benefit programs for the benefit of its existing and retired officers, employees and members of its legislative body; and

WHEREAS, the Fire Districts Association of California is a non-profit public benefit corporation organized and existing to assist and promote the interests of its member Agencies which are public agencies in California providing one or more of the following services to the public: (1) fire suppression services; (2) emergency medical services; (3) hazardous material response services; (4) medical transport and ambulance services; (5) rescue services; and

WHEREAS, it is the desire of the Agencies which have executed this Agreement to enter into this First Amended Agreement to better define the existence, functions, and operations of this Joint Powers Authority and to specify a continuing working relationship between the Authority and the Fire Districts Association of California for the benefit of member Agencies of the Authority; and

WHEREAS, Section 14 of this Agreement provides that this agreement may be amended by an amendment in writing signed by two-thirds of the Agencies then parties to this Agreement; and

WHEREAS, it is to the mutual advantage of and in the best interest of the parties to this Joint Powers Agreement to establish this Joint Powers Authority for the purposes stated.

NOW THEREFORE, for and in consideration of the execution of this Agreement by other Agencies, each of the parties hereto does hereby agree as follows:

SECTION 1: PURPOSE

It is the purpose of this Agreement to establish, pursuant to the Joint Exercise of Powers Act, an authority to be known as the FIRE DISTRICTS ASSOCIATION OF CALIFORNIA EMPLOYMENT BENEFITS AUTHORITY (the “FDAC Employment Benefits Authority” or the “Authority”) for and with the purpose of establishing, operating, managing, and administering health and welfare benefit programs for existing and retired employees, officers, and members of legislative body of Agencies who execute this Agreement. This Agreement is entered into by Agencies in order to jointly fund and develop programs to provide health and welfare benefits for participating member Agencies either through a program of collective self insurance, the purchase of insurance coverages and/or programs, or a combination thereof. It is the further purpose of this Agreement to make more efficient use of the common powers of participating member Agencies to design, establish, acquire, purchase, fund, operate and administer health and welfare benefit programs for the benefit of existing and retired officers, employees, and members of the legislative body of participating member Agencies to increase the efficiency and decrease the cost of such health and welfare programs. To achieve such purposes, the Authority and its participating member Agencies who have executed this Agreement are hereby granted the authority to enter into agreements with themselves and third parties that specifically govern and define their respective rights, obligations, duties and entitlements related to the establishment, operation and administration of particular health and welfare benefit programs including, but not limited to hospital insurance, medical insurance, surgical insurance, long term and short term disability insurance, legal expense insurance, dental insurance, vision insurance, life insurance, and income protection insurance or benefits. These purposes shall be accomplished through a joint exercise of powers by said Agencies pursuant to the terms of this Agreement and the creation of a separate Joint Powers Authority.

SECTION 2: CREATION OF JOINT POWERS AUTHORITY

Pursuant to Section 6500 et seq. of the California Government Code, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Fire Districts Association of California Employment Benefits Authority (FDAC Employment Benefits Authority). A notice of this Agreement shall be filed with the Secretary of State within 30 days after the effective date as required by Government Code Section 6503.5.

SECTION 3: MEMBERSHIP

Each Agency which is a party to this Agreement must be a public agency which is duly organized and existing under the laws of the State of California with the power to provide at least one of the following services: (1) fire suppression services, (2) emergency medical services, including emergency disease response, prevention and control services; (3) hazardous material response services (4) medical transport and/or ambulance services, including emergency transportation services (5) rescue services; (6) any other emergency response services provided

pursuant to the California Emergency Services Act (Government Code section 8550 et seq.). “Emergency” is defined as any condition of disaster or of extreme peril to the safety of persons and/or property caused by such conditions as air pollution, fire, flood, hazardous material incident, storm, epidemic, riot, drought, plant or animal infestations or disease, earthquake, terrorism, or sudden and severe energy shortage. Each Agency must be approved for participation in the Authority in the manner provided in the Bylaws of the Authority.

SECTION 4: PARTIES TO AGREEMENT

Each Agency which has signed this Agreement certifies that it intends to and does contract with the Authority, and with all other Agencies who have signed this Agreement, and, in addition, with each Agency which may later be added as a party to and may sign this Agreement. Each Agency which has or may hereafter sign this Agreement also certifies that the deletion of any Agency from this Agreement by voluntary withdrawal, involuntary termination, or otherwise, shall not affect this Agreement nor each Agency’s intent to contract as described above with the then remaining Agencies.

SECTION 5: TERM OF AGREEMENT

After becoming effective upon the execution of the initial signatory Agencies who have been admitted to membership in the Authority, this Agreement shall continue thereafter until terminated as provided herein. This Agreement shall become effective as to each initial signatory Agency of the Authority upon the date of its execution by such Agencies; and shall become effective as to Agencies who later execute this Agreement upon approval of the Agencies membership by the Board of Directors of the Authority, execution of this Agreement by the Agency and by the Authority, and by payment by the Agency of its initial contribution for participation in one or more health and welfare benefit programs offered by the Authority.

SECTION 6: POWERS OF THE AUTHORITY

The Authority shall have all the powers common to its participating Agencies and all additional powers set forth in the Joint Powers Authority Act relating to the creation, establishment, financing, use, operation, and administration of health and welfare benefit programs for the benefit of existing and retired officers, employees, and members of the legislative body of participating member Agencies. This Joint Powers Authority hereby is authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents and employees and/or to contract for services from third party consultants;
- (c) to incur debts, liabilities and obligations;
- (d) to acquire property by gift, grant, exchange, devise, or purchase;
- (e) to hold, lease, convey, sell, encumber, or dispose of property;

- (f) to sue and to be sued in its own name;
- (g) to receive contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and other governmental entities;
- (h) to issue or caused to be issue bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted by law by Articles 2 and 4, Chapter 5, Division 7, Title 1 of the Government Code or otherwise including, but not limited to, bonds or other evidences of indebtedness issued on behalf of the Authority or its member Agencies;
- (i) obtain in its own name all necessary permits, licenses, opinions and rulings;
- (j) whenever necessary to facilitate the exercise of its powers, to form and administer nonprofit corporations to perform one or more of the functions which the Authority is empowered to perform, or to perform any other proper corporate function, and to enter into agreements with such nonprofit corporations;
- (k) exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or otherwise authorized by law.

SECTION 7: BOARD OF DIRECTORS

All powers of the Authority shall be exercised by and through its Board of Directors. Said Board of Directors is hereby designated as the agency to administer and execute this Agreement pursuant to Government Code Section 6506. The Board of Directors shall be composed of five members, each of whom is appointed by a member Agency which is elected by a majority vote of participating member Agencies as specified in the By-laws. Each member of the Board of Directors shall have one vote. The Board of Directors shall have the authority to conduct all business and govern all affairs of this Joint Powers Authority under the provisions hereof and pursuant to law and shall have such powers and functions as are provided for herein, in the Bylaws, or by law.

SECTION 8: POWERS OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers:

- (a) Exercise all powers and conduct all business of this Joint Powers Authority.
- (b) Determine the details of and select health and welfare benefit programs including, but not limited to, hospital insurance, medical insurance, surgical insurance, long term and short term disability insurance, legal expense insurance, dental insurance, vision insurance, life insurance, and income protection insurance or benefits to be offered by this Joint Powers Authority to existing and retired officers, employees, and members of the legislative body of participating member Agencies.

- (c) Contract for or develop various services for the Authority including, but not limited to, insurance consulting and brokerage services; claims adjustment services, loss control and risk management services; accountancy, auditing and actuarial services; and legal and legislative advocacy services.
- (d) Appoint committees, appoint staff, and employ such persons as the Board of Directors deems necessary for the administration of this Joint Powers Authority.
- (e) Determine and purchase all necessary insurance coverage to carry out the programs offered by the Authority.
- (f) Fix and collect contributions from participating member Agencies in consideration for participation in the health and welfare benefit programs offered by the Authority to such participating member Agencies.
- (g) Deposit all funds received in separate bank accounts in the name of FDAC Employment Benefit Authority.
- (h) Invest funds on hand in any manner authorized by law for the investment of funds of a public agency.
- (i) Direct the payment, adjustment, and defense of all claims for health and welfare benefits which are the liability of participating member Agencies during their period of membership in and participation in this Authority.
- (j) Expend funds of the Authority only for the purpose of carrying out the provisions of the Joint Powers Agreement and the Bylaws as they now exist or may hereafter be amended.
- (k) Provide administrative services, consulting services, claims management services, financial services, accountancy and actuarial services, legal representation and other services necessary or proper to carry out the purposes of the Authority either through its own employees or by contract with one or more third parties.
- (l) Purchase liability insurance, directors and officer's liability insurance, and such other insurance as the Board of Directors may deem necessary or proper in order to protect the Authority, its employees and the participating member Agencies.
- (m) Obtain a fidelity bond in such amount as the Board of Directors may determine for any person or persons who have charge of or the authority to expend funds of the Authority.
- (n) Acquire property by gift, grant, exchange, devise, or purchase; or hold, lease, convey, sell, encumber, or dispose of all property necessary or appropriate to carry out the powers and operations of the Authority.
- (o) Establish policies and procedures for the operation of the Authority.
- (p) Enter into any and all contracts or agreements necessary or appropriate to carryout the purposes and functions of the Authority.

SECTION 9: RESTRICTIONS ON POWER

Such powers enumerated in Section 6 hereof are subject to the restrictions upon the manner of exercising power by a Fire Protection District formed and operating pursuant to the provisions of Health and Safety Code Section 13800 et seq. or its successor, pursuant to California Government Code Section 6509.

SECTION 10: ADMINISTRATIVE SERVICES

Pursuant to California Government Code Section 6506, the Fire Districts Association of California, a California non-profit public benefit corporation, shall provide all administrative services to the Authority under the direction of the Board of Directors of the Authority on a continuing basis. In consideration for such services the Fire District Association of California may charge the Authority an annual administrative fee as may be agreed upon from time to time by the Board of Directors of the Authority and the Board of Directors of the Fire District Association of California, as set forth in the Bylaws of the Authority.

SECTION 11: BYLAWS

The Bylaws of the FDAC Employment Benefits Authority, a copy of which is attached hereto and marked Exhibit A, are hereby incorporated into this Agreement and made a part hereof. Each party to this Agreement by the execution hereof agrees to be bound by and to comply with all the terms and conditions of this Agreement and of said Bylaws as they now exist or may hereafter be amended. The FDAC Employment Benefits Authority shall operate and conduct its business and affairs pursuant to the terms of this Agreement and said Bylaws.

SECTION 12: WITHDRAWAL OR INVOLUNTARY TERMINATION

Any Agency, after completing three full calendar years as a participating member Agency, may voluntarily withdraw from membership as provided in the Bylaws; or an Agency may be involuntarily terminated as a provided in the Bylaws. Such withdrawal or involuntary termination by any participating member Agency shall not terminate this Agreement as to the remaining participating member Agencies or the existence of the Authority. Said withdrawing or terminated Agency shall remain subject to any and all outstanding obligations arising out of any benefit program agreement to which said withdrawn or terminated Agency is a signatory.

SECTION 13: TERMINATION OF FDAC EMPLOYMENT BENEFITS AUTHORITY

The FDAC Employment Benefits Authority may be terminated at any time upon the Agreement of two-thirds of the then participating member Agencies, provided, however, that the Authority shall continue to exist for the purpose of disposing of all claims, distribution of all assets, and all other functions necessary to wind up the affairs of the Authority. Upon termination, and after making proper provisions for the winding up of the affairs of the Authority, the Authority shall pay to the then participating member Agencies their pro rata share of the net assets of the Authority pursuant to the provisions of the Bylaws.

SECTION 14: AMENDMENTS

This Joint Powers Agreement may be amended by an amendment in writing signed by two-thirds of the Agencies then parties to this Agreement. Upon signature of any amendment by two-thirds of the then participating member Agencies, any member Agency failing or refusing to sign such amendment may be involuntarily terminated as a party to this Agreement as provided in the Bylaws.

SECTION 15: ENFORCEMENT

The FDAC Employment Benefits Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce any term of this Agreement or any term of the Bylaws against any Agency which has signed this Agreement, the Agency agrees to pay such sums as the court may fix as attorney fees and costs in said action.

SECTION 16: NON-LIABILITY OF MEMBER AGENCIES AND THE FIRE DISTRICTS ASSOCIATION OF CALIFORNIA

Nothing in the Joint Powers Agreement or in the Bylaws adopted pursuant thereto shall be construed as imposing liability upon any member Agency, or any officer, employee or member of the legislative body thereof, or upon the Fire Districts Association of California, a non profit corporation, or any of its employees, officers, or directors, for the payment of any benefits claimed pursuant to the health and welfare benefit programs offered by the Authority to its participating member Agencies, the sole recourse of claimants being against funds of those insurance programs and/or self funded programs administered by the Authority for the payment of such benefits. Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the FDAC Employment Benefits Authority shall not be the debts, liabilities or obligations of the Districts which are parties to the Joint Powers Agreement or of the Fire Districts Association of California, unless assumed in a particular case by resolution of the legislative body of a participating member Agency pursuant to specific benefit program agreements that the participating member Agency anticipates entering into in accomplishing the purposes of the Authority.

SECTION 17: NON-LIABILITY OF DIRECTORS, OFFICERS, ADMINISTRATOR, AGENTS AND EMPLOYEES

The Authority and its directors, officers, administrator, agents, and employees shall not be liable to the Authority, to any participating member Agency, or to any other person for any actual or alleged breach of duty, mistake of judgment, neglect, error, misstatement, misleading statement, or any other act or omission in the performance of their duties hereunder; for any action taken or admitted by any director, officer, administrator, agent, or employee, for loss incurred through the investment or failure to invest funds; or loss attributable to any failure or omission to procure or maintain insurance; except in the event of fraud, gross negligence, or intentional misconduct of such director, officer, administrator, agent, or employee. No director,

officer, administrator, agent, or employee shall be liable for any action taken or omitted by any other director, officer, administrator, agent, or employee.

SECTION 18: INDEMNIFICATION OF BOARD OF DIRECTORS, OFFICERS, ADMINISTRATOR, AGENTS, AND EMPLOYEES

As a public entity, the Authority shall defend and shall indemnify and hold harmless its directors, officers, administrator, agents, and employees against any claim or action arising out of any act or omission occurring within the scope of employment pursuant to the provisions of Division 3.6, Title 1, of the California Government Code, commencing at Government Code Section 810. The Authority may purchase insurance to provide coverage for acts or omissions of its directors, officers, administrator, agents and employees.

SECTION 19: MISCELLANEOUS PROVISIONS

(a) This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of the Authority and to the successors in interest of each participating member Agency in the same manner as if such parties had been expressly named herein.

(b) This Agreement shall be governed by the law of the state of California. This Agreement together with the documents incorporated into the Agreement by reference constitute the entire Agreement between the parties regarding its subject matter. If any provisions in this Agreement are held by any court to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall nevertheless continue in full force and effect.

SECTION 20: EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts and shall be as fully effective as though executed in one document.

(Name of Public Agency)

By: _____

By: _____

EXECUTION BY FDAC EMPLOYMENT BENEFITS AUTHORITY

The FDAC Employment Benefits Authority (the Joint Powers Authority created by this Joint Powers Agreement), hereby executes this Agreement and accepts the Agency named above as a member Agency in FDAC Employment Benefits Authority subject to all the terms and conditions set forth in this Joint Powers Agreement and in the Bylaws, effective on _____, 20____.

FDAC EMPLOYMENT BENEFITS AUTHORITY

By: _____
Chairman of the Board of Directors

By: _____
Secretary of the Board of Directors