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# JOINT POWERS AGREEMENT CALIFORNIA JOINT POWERS INSURANCE AUTHORITY

AMENDED JULY 17, 2019

INTEGRITY

EXCELLENCE

INNOVATION

Attachment 2

TEAMWORK

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**JOINT POWERS AGREEMENT**

**CREATING THE CALIFORNIA**

**JOINT POWERS INSURANCE AUTHORITY**

THIS AGREEMENT is made and entered into by and among the public entities organized and existing under the Constitution or laws of the State of California, hereinafter collectively referred to as “Members” and individually as “Member,” that are parties signatory to this Agreement. Said Members are sometimes referred to herein as “parties.”

**RECITALS:**

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 Section 990.4 provides that a local public entity may self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these; and

WHEREAS, California Government Code Section 990.8 provides that two or more local public entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling their self-insured losses and jointly purchasing excess insurance and administrative services in connection with one or more joint protection programs for said parties; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement to do so;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

## **ARTICLE 1 - DEFINITIONS**

The following definitions shall apply to the provisions of this Agreement:

- (a) “Advisory Committee” shall mean the Managers Committee, Finance Officers Committee, Risk Managers Committee and any other committee created by the Board of Directors or Executive Committee for the purpose of providing specialized advice to the Board of Directors or Executive Committee on the subject matter brought before it.
- (b) “Alternate” shall mean that person or persons selected by the legislative body of each Member to represent the Member at the Board of Directors meeting in the absence of the Director, pursuant to Article 7 of this Agreement.
- (c) “Authority” shall mean the California Joint Powers Insurance Authority created by this Agreement.
- (d) “Board of Directors” or “Board” shall mean the governing body of the Authority.
- (e) “Chief Executive Officer” shall mean that employee of the Authority who is appointed by the Executive Committee, and is granted authority and responsibility for the management and administration of the Authority and its joint protection programs.
- (f) “Claims” shall mean demands made against the Authority, a Member, or Members arising out of occurrences that are within an Authority joint protection program as developed by the Executive Committee.
- (g) “Contribution” shall mean an amount determined by the Executive Committee that is to be paid by the Member as its established share of funding required to cover the financial obligations of each joint protection program in which the member participates.
- (h) “Director” shall mean that person selected by and from the legislative body of each Member to represent the Member on the Board of Directors pursuant to Article 7 of this Agreement.
- (i) “Executive Committee” shall mean the Executive Committee of the Board of Directors of the Authority.
- (j) “Finance Officers Committee” shall mean the committee of the Authority composed of the Finance Directors or chief finance officers of the Members by whatever title locally designated.
- (k) “Fiscal Year” shall mean that period of twelve months that is established as the fiscal year of the Authority.

(l) “Insurance” shall mean and include pooled self-insurance through a funded program and/or any commercial insurance, excess insurance, or reinsurance contract purchased on behalf of the Authority to protect the funds of the Authority against catastrophes or an unusual frequency of losses during a specific protection period.

(m) “Managers Committee” shall mean the committee of the Authority composed of the City Managers, City Administrators, or chief executive officers of the Members by whatever title locally designated.

(n) “Risk Managers Committee” shall mean the committee of the Authority composed of the Risk Managers or risk officers of the Members by whatever title locally designated.

(o) “Secretary” shall mean the person selected by the Executive Committee from among its members to serve as Secretary of the Authority.

(p) “Treasurer” shall mean the person selected by the Executive Committee to serve as Treasurer of the Authority.

## **ARTICLE 2 - PURPOSES**

This agreement is entered into by the Members pursuant to the provisions of California Government Code Sections 990, 990.4, 990.8, and 6500 et seq. in order to provide more comprehensive and economical protection from financial loss, to reduce the amount and frequency of their losses, and to decrease the cost incurred in the handling and litigation of claims. This purpose shall be accomplished through the exercise of the powers of the Members jointly in the creation of a separate entity, the California Joint Powers Insurance Authority (the Authority), to administer joint protection programs wherein Members will pool their losses and claims, jointly purchase insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, training, legal, and related services.

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 become parties to this Agreement.

### **ARTICLE 3 - 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 22. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Articles 24, 26, 27, or 28 shall not affect this Agreement nor such party's intent to contract as described above with the other parties to the Agreement then remaining.

### **ARTICLE 4 - TERM OF AGREEMENT**

This Agreement became effective on June 29, 1977, and shall continue until and unless terminated as hereinafter provided.

### **ARTICLE 5 - CREATION OF 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 California Joint Powers Insurance Authority. Pursuant to Government Code Section 6508.1, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any party to this Agreement; except with respect to public retirement system liabilities, which shall be governed by Sections 6508.1 and 6508.2.

### **ARTICLE 6 - POWERS OF AUTHORITY**

(a) The Authority shall have the powers common to its Members and is hereby authorized to do all acts necessary for the exercise of said common powers, including, but not limited to, any or all of the following:

1. To make and enter into contracts;
2. To incur debts, liabilities or obligations;
3. To acquire, hold or dispose of property, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;
4. To sue and be sued in its own name; and
5. To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law.

(b) Said powers shall be exercised pursuant to the terms hereof and in the manner provided by law and are subject to the restrictions upon the manner of exercising the powers of the City of Lakewood.

## **ARTICLE 7 - BOARD OF DIRECTORS**

(a) The Authority shall be governed by the Board of Directors that is hereby established and that shall be composed of one representative Director from each Member, who shall be selected from the legislative body of that Member by the process chosen by the Member.

(b) Each legislative body, in addition to appointing its Director of the Board, shall appoint at least one alternate who shall be an officer or employee of the Member. The alternate shall have the authority to attend, participate in, and vote at any meeting of the Board when the regular Director for whom he or she is an alternate is absent from said meeting.

## **ARTICLE 8 - POWERS OF THE BOARD OF DIRECTORS**

The Board of Directors of the Authority shall have the following powers and functions:

(a) The Board shall elect from its members pursuant to Article 10 of this Agreement an Executive Committee, to which it may give authority to make and implement any decisions, including those involving the administration of the Authority, except those decisions that would require an amendment of this Agreement, under Article 34 herein.

(a) The Board shall adopt the operating budget of the Authority.

(b) The Board may review all acts of the Executive Committee, including development of the memoranda of coverage, and shall have the power to modify and/or override any decision or action of the Executive Committee upon a majority vote of a quorum of the Board of Directors.

(c) The Board shall receive and review periodic accountings of all funds under Articles 18 and 19 of this Agreement.

(d) The Board shall have the power to conduct on behalf of the Authority all business of the Authority, including that assigned to the Executive Committee, that the Authority may conduct under the provisions hereof and pursuant to law.

(e) The Board shall have such other powers and functions as are provided for in this Agreement.

(f) The Board shall not have the power to overturn the decisions of the Claims Committee in regard to the settlement of claims.

## **ARTICLE 9 - MEETINGS OF THE BOARD OF DIRECTORS**

(a) Meetings. The Board shall provide for its regular, adjourned regular, and special meetings; provided, however, that it shall hold at least one regular meeting annually at a time and place determined by the Executive Committee.

(b) Minutes. The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board.

(c) Quorum. A majority of the Directors or Alternates of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. A vote of the majority of those Directors or Alternates present at a meeting shall be sufficient to constitute action by the Board.

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

## **ARTICLE 10 - EXECUTIVE COMMITTEE**

There shall be an Executive Committee of the Board of Directors that shall consist of nine (9) members. Two of the members of the Executive Committee shall be the President and Vice President of the Board of Directors. The other members of the Executive Committee shall be elected by the Board of Directors at the Annual Meeting for the terms provided in the Bylaws. The President of the Authority, or the Vice President in his or her absence, shall serve as the Chairperson of the Executive Committee.

## **ARTICLE 11 - POWERS OF THE EXECUTIVE COMMITTEE**

The Executive Committee of the Board of Directors shall have the following powers:

(a) The Executive Committee shall determine and select joint protection programs for the Authority including adoption of language of the Memoranda of Coverage and any limitations or endorsements to such Memoranda.



- (b) The Executive Committee shall determine and select all insurance necessary to carry out the joint protection programs of the Authority.
- (c) The Executive Committee shall have the authority to approve membership in the Authority and Member participation in one or more joint protection programs in accordance with Articles 22 and 23.
- (d) The Executive Committee shall have the authority to cancel Member participation in one or more joint protection programs in accordance with Articles 26 and 28.
- (e) The Executive Committee shall develop the operating budget of the Authority.
- (f) The Executive Committee shall have authority to contract for or develop various services for the Authority, including, but not limited to, claims adjusting, loss control, and risk management consulting services.
- (g) The Executive Committee shall receive and act upon reports of the Advisory Committees and the Chief Executive Officer.
- (h) The Executive Committee shall appoint the Treasurer and Chief Executive Officer of the Authority.
- (i) The Executive Committee shall have the power to hire such persons as the Executive Committee deems necessary for the administration of the Authority.
- (j) The Executive Committee shall have the general supervisory and policy control over the day-to-day decisions and administrative activities of the Chief Executive Officer of the Authority.
- (k) The Executive Committee shall have such other powers and functions as are provided for in this Agreement or as delegated by the Board of Directors, including the power to create committees it deems necessary.

## **ARTICLE 12 - MEETINGS OF THE EXECUTIVE COMMITTEE**

The meetings of the Executive Committee shall be held and conducted in the same manner as the meetings of the Board of Directors, provided for in Article 9 of this Agreement. In addition, the Committee shall make periodic reports to the Board of Directors, advising the Board of its decisions and activities concerning the implementation of the joint protection programs of the Authority.

### **ARTICLE 13 - CLAIMS COMMITTEE**

The Executive Committee members, together with the Chairs of the Managers Committee and the Finance Officers Committee, shall sit as the Claims Committee of the Authority. The Claims Committee shall have authority to make all determinations regarding defense, indemnity, and settlement of claims under the Memoranda of Coverage. Decisions of the Claims Committee regarding settlement of claims shall be final and not subject to further review. Decisions regarding coverage for defense or indemnity of claims shall be final, but subject to the Member's appeal rights as detailed in the applicable Memorandum of Coverage.

### **ARTICLE 14 - OFFICERS OF THE AUTHORITY**

(a) President and Vice President. The Board shall elect a President and Vice President of the Authority, each to hold office for a two-year term, except as hereinafter provided, and until a successor is elected. The election of the President and Vice President shall be on alternate years. In the event the President so elected ceases to be a member of the Board, or for other reasons is unable to serve, the Vice President shall assume the position of President and serve the remainder of the prior President's unexpired term. In the event the Vice President so elected ceases to be a member of the Board, or for other reasons is unable to serve, the Executive Committee shall select from among its membership a new Vice President who shall serve the remainder of the unexpired term.

(b) Chief Executive Officer. The Chief Executive Officer shall be authorized and responsible for the overall management and administration of the Authority and its joint protection programs and shall select and appoint all employees.

(c) Secretary. The Secretary shall be responsible for all minutes, notices and records of the Authority and shall perform such other duties as may be assigned by the Executive Committee.

(d) Treasurer. The duties of the Treasurer are set forth in Articles 18 and 19 of this Agreement.

(e) Attorney. The Executive Committee shall select an attorney for the Authority. The attorney shall serve at the pleasure of the Executive Committee.

(f) The Executive Committee shall have the power to appoint such other officers as may be necessary in order to carry out the purposes of this Agreement.

## **ARTICLE 15 - ADVISORY COMMITTEES**

The Board of Directors or Executive Committee may establish Advisory Committees as deemed necessary. Such Committees shall meet from time to time as deemed necessary by them, and shall make recommendations to the Executive Committee based upon their expertise.

## **ARTICLE 16 - COVERAGE**

(a) The coverage provided for Members through the Authority's joint protection programs may include protection for Personal Injury, Errors and Omissions, Contractual and Comprehensive Liability, Workers' Compensation and such other areas of coverage as the Executive Committee may determine. Such coverage may be through insurance as defined in Article 1.

(b) The Authority shall maintain limits of coverage for Members determined by the Executive Committee to be adequate. The Executive Committee may arrange for a group policy to be issued for Members interested in obtaining additional coverage above the limits of coverage at an additional cost to those participating Members.

(c) The Executive Committee shall arrange for the purchase of insurance it deems necessary to protect the funds of the Authority against catastrophes. The Executive Committee shall have the authority to discontinue purchase of this insurance, if at a future time the Executive Committee determines that it is no longer needed to protect the Authority's funds.

## **ARTICLE 17 - DEVELOPMENT OF THE JOINT PROTECTION PROGRAMS**

(a) The joint protection programs provided by the Authority shall extend to agencies or authorities as determined in the Memorandum of Coverage of each program.

(b) The cost allocation formula for each joint protection program shall be adopted by the Executive Committee.

(c) The contribution for each Member's participation in a joint protection program shall be determined by the Executive Committee.

(d) The cost allocation formula adopted by the Executive Committee for each joint protection program may provide for retrospective adjustments, and each Member shall pay any additional contribution required by such retrospective adjustment.

(e) The Executive Committee may provide for payment of a portion of such contributions to be made over a period of time on terms set by the Executive Committee.

(f) The Executive Committee may expand the Authority's offerings of joint protection programs to make available for Members' protection in addition to that which is provided for in this Agreement.

(g) Contributions held by the Authority for each joint protection program shall be accounted for separately, so that only Members participating in the program will share in pooled losses and expenses of that program. This separate accounting shall not prohibit the Authority from commingling contributions for purposes of investment, nor from paying losses or expenses when due from all available funds. As deemed appropriate, the Executive Committee may provide for inter-program transfers in the forms of loans, letters of credit, or other financial arrangements that stipulate that the lending program will be made whole by the borrowing program through the timely repayment of principal and compensation for the value of lost investment earnings during the financing period.

## **ARTICLE 18 - ACCOUNTS AND RECORDS**

(a) Budget. The Authority shall adopt an operating budget, pursuant to Article 11(e) of this Agreement.

(b) Funds and Accounts. The Treasurer of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practice or by the Executive Committee. Books and records of the Authority in the hands of the Treasurer shall be open to any inspection at all reasonable times by representatives of a Member.

(c) Treasurer's Report. The Treasurer, within 270 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board and to each Member.

(d) Annual Audit. The Executive Committee shall provide for a certified, annual audit of the accounts and records of the Authority. The audit shall conform to generally accepted auditing standards. When such an audit of the accounts and records is made by a Certified Public Accountant, a report thereof shall be filed as a public record with each of the Members. Such report shall be filed within nine months of the end of the year under examination.

(e) Costs. Any costs of the audit, including contracts with, or employment of, Certified Public Accountants, in making an audit pursuant to this Article, shall be borne by the Authority and shall be considered included within the term “administrative costs.”

## **ARTICLE 19 - RESPONSIBILITY FOR MONIES**

(a) The Treasurer of the Authority shall have the custody of and disburse the Authority's funds. He or she shall have the authority to delegate the signatory function of Treasurer to such persons as are authorized by the Executive Committee.

(b) A bond or other insurance protection providing coverage for embezzlement or other criminal acts in an amount determined by the Executive Committee to be adequate shall be required of all officers and personnel authorized to disburse funds of the Authority. The cost of such bond or insurance protection shall be paid for by the Authority.

(c) The Treasurer of the Authority shall perform the duties described in California Government Code Sections 6505.5 and 6505.6 pertaining to the receipt, safekeeping, payment, and reporting of Authority funds.

## **ARTICLE 20 - RESPONSIBILITIES OF THE AUTHORITY**

The Authority shall perform the following functions in discharging its responsibilities under this Agreement:

(a) Provide loss protection as necessary, through various means including but not limited to insurance or other financial risk transfer, by negotiation or bid and purchase.

(b) Assist Members in obtaining coverage for risks not included within the joint protection programs of the Authority.

(c) Assist each Member's assigned risk manager with the implementation of that function within the Member.

(d) Provide loss prevention and safety and consulting services to Members as required, which may include programs for grants or loans to Members for loss prevention or safety purposes.

(e) Provide claims adjusting and subrogation services for claims covered by the Authority's joint protection programs.

(f) Provide loss control and analysis by the use of statistical analysis, data processing, and record and file keeping services, in order to identify high exposure operations and to evaluate proper levels of self-retention and deductibles.

(g) Provide contract review when requested by Members to determine sufficiency of indemnity and insurance provisions.

(h) Conduct risk management evaluations of each Member to encourage implementation of best risk management practices.

(i) The Authority shall have standing and shall pursue recovery in its own name or in the name of a Member for losses covered by a joint protection program. Such recovery may be through subrogation, cross complaint, or salvage, as appropriate.

(j) The Authority shall have such other responsibilities as deemed necessary by the Board of Directors or Executive Committee in order to carry out the purposes of this Agreement.

## **ARTICLE 21 - RESPONSIBILITIES OF MEMBERS**

Members shall have the following responsibilities:

(a) The legislative body of each Member shall appoint a representative and at least one alternate representative to the Board of Directors, pursuant to Article 7 of this Agreement.

(b) Each Member shall appoint an employee to be responsible for the risk management function of that Member, and to serve as a liaison between the Member and the Authority as to risk management.

(c) Each Member shall maintain an active safety officer and/or committee, and shall consider all recommendations of the Authority concerning unsafe practices or exposures.

(d) Each Member shall pay its contribution and any retrospective adjustment promptly to the Authority when due. After withdrawal or termination, each Member shall pay promptly to the Authority its share of any additional contribution, when and if required of it by the Executive Committee under Articles 24, 25, 26, 27, and 28 of this Agreement.

(e) Each Member shall report all claims to the Authority in accordance with the policies and procedures governing the joint protection program to which the claim applies.

(f) Each Member shall provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the joint protection programs under this Agreement.

(g) Each Member shall cooperate with and assist the Authority in the pursuit of recoveries for losses covered by a joint protection program, including assigning its right to recover subrogated amounts, and if necessary, executing a written agreement to effect such assignment.

(h) Each Member shall in any and all ways cooperate with and assist the Authority, and any insurer of a joint protection program, in all matters relating to this Agreement and covered losses, and will comply with all bylaws, rules and regulations adopted by the Board of Directors and Executive Committee.

(i) Each Member shall actively participate in the Authority's Risk Management Evaluation and Loss Control Action Plan (LossCAP) programs.

## **ARTICLE 22 - NEW MEMBERS**

The Authority shall allow entry of new Members approved by the Executive Committee.

(a) Executive Committee approval for new Members shall be according to the following procedure:

1. Investigation of each potential member by Authority staff and preparation of a report;
2. Review of the report by the Underwriting Committee, which shall then be forwarded to all Directors for review and comment;
3. Review by the Directors and submittal of comments to the Chief Executive Officer during the comment period; and
4. Approval by a two-thirds vote of the Executive Committee.

(b) Membership is effective immediately upon approval by the Executive Committee and execution of this Agreement by the new Member to join the Authority.

(c) A Member entering under this Article may be required to pay its share of organization expenses as determined by the Executive Committee including those necessary to analyze its loss data and determine its contributions.

(d) Should the Board of Directors rescind the membership approval made by the Executive Committee pursuant to Article 8(b), the Member shall be given at least ninety days advance notice of the effective date of termination of Membership, and the Member shall be

treated as if it had withdrawn on the effective date, and shall have the same responsibilities as if the Member had voluntarily withdrawn on the effective date.

(e) New Members, accepted into membership after July 1, 2016, shall have provisional membership status throughout the initial five years of membership. During the provisional membership period:

1. The Authority reserves the right to retrospectively adjust the cost of coverage for provisional Members based on actual claims development, in the event that it varies materially from claims data provided to the Authority at the time of the initial underwriting; and
2. The Authority reserves the right to terminate membership of any provisional Member at the end of a protection period, with or without cause, by a two-thirds vote of the Executive Committee, provided the Executive Committee gives the provisional Member at least ninety days advance notice of the effective date of the termination of membership.
3. A provisional Member subject to termination under Paragraph 2, above, may appeal said termination to a panel of five chief executives randomly selected from the other Members.

(f) If a provisional Member does not complete five successive years of membership in good standing, due to withdrawal or termination, that provisional Member is not eligible to receive in any refunds, dividends, or equity distributions that may occur during the provisional membership period or at any time thereafter.

### **ARTICLE 23 - PROGRAM PARTICIPATION**

The Authority shall allow for the participation of Members in the joint protection programs as approved by the Executive Committee.

(a) Executive Committee approval for new Members shall be according to the following procedure:

1. Investigation of a potential participant by Authority staff and preparation of a report;
2. Consideration of the report by the Underwriting Committee with a recommendation to the Executive Committee; and



3. Approval by a two-thirds vote of the Executive Committee,
- (b) Program participation is effective immediately upon approval by the Executive Committee and execution of appropriate resolutions and/or other documents by the new participant allowing participation in the joint protection program.
- (c) A Member entering into a joint protection program may be required to pay its share of program development expenses as determined by the Executive Committee including those necessary to analyze its loss data and determine its contributions.
- (d) Should the Board of Directors rescind the program participation approval made by the Executive Committee pursuant to Article 8(b), the Member shall be given at least ninety days advance notice of the effective date of termination of program participation, and the Member shall be treated as if it had withdrawn on the effective date, and shall have the same responsibilities as if the Member had voluntarily withdrawn on the effective date.

#### **ARTICLE 24 - WITHDRAWAL**

- (a) A Member that enters into this Agreement may not withdraw as a party to this Agreement and as a Member of the Authority for a three-year period commencing on the effective date of its membership.
- (b) A Member that enters into a joint protection program may not withdraw as a participant in that program for a three-year period commencing on the effective date of its participation in the joint protection program.
- (c) After the initial three-year non-cancellable commitment to membership in the Authority or participation in a joint protection program, a Member may withdraw only at the end of any protection period, provided it has given the Authority a twelve-month written notice of its intent to withdraw from this Agreement and/or any joint protection programs in which it participates.

#### **ARTICLE 25 - EFFECT OF WITHDRAWAL**

- (a) The withdrawal of any Member from this Agreement shall not terminate the Agreement, and no Member by withdrawing shall be entitled to payment or return of any deposits, contributions, consideration or property paid, or donated by the Member to the Authority, or to any distribution of assets.

(b) The withdrawal of any Member from participation in a joint protection program shall not terminate the Member's responsibility to contribute its share of contributions or funds to the program until all claims, or other unpaid liabilities, covering the period the Member was signatory hereto have been finally resolved and a determination of the final amount of payments due from the Member or credits to the Member for the period of its participation has been made by the Executive Committee. In connection with this determination, the Executive Committee may exercise similar powers to those provided for in the Article 30(c) of this Agreement.

#### **ARTICLE 26 - CANCELLATION OF PROGRAM PARTICIPATION**

The Executive Committee shall have the right to cancel any Member's participation in one or more joint protection programs upon the recommendation of the Chief Executive Officer and in accordance with the Healthy Members Practices and Procedures protocol. Any Member so cancelled shall on the effective date of the cancellation be treated the same and shall have the same responsibilities as if the Member had voluntarily withdrawn from the joint protection program.

#### **ARTICLE 27 - CANCELLATION OF MEMBERSHIP**

The Board of Directors shall have the right to cancel the membership of any Member based upon a three-fourths vote of the entire Board of Directors. Any Member so cancelled shall on the effective date of the cancellation be treated the same as if the Member had voluntarily withdrawn from membership, and said Member shall have the same responsibilities. Cancellation, as specified above, shall be within the sole discretion of the Board of Directors and may occur with or without cause, and the Board's discretion shall not be subject to any further review or appeal.

#### **ARTICLE 28 - CANCELLATION FOR NON-PAYMENT**

In the absence of a payment plan as authorized in Article 17(e), any Member's participation in a joint protection program may be cancelled automatically in the event of a failure of the Member to pay any contribution as required in this Agreement. Should any contribution remain unpaid more than thirty (30) days after receipt of notice by the Member, the Authority will send a notice advising the Member that it is in default under the terms of this Agreement, and that the Member's participation will be cancelled within thirty (30) additional

days unless full payment is received. Failure to make full payment as required in the notice of default shall be considered a withdrawal by the Member from the program effective on the date of cancellation specified in the notice of default; and no coverage shall apply to any claims submitted subsequent to the effective date of cancellation that arise from occurrences taking place during the current protection period. A Member cancelled for non-payment shall remain liable for a prorated share of the current year's contribution and for all retrospective adjustment contributions through the date of cancellation and attributable to prior years of coverage in which it participated.

#### **ARTICLE 29 - ATTORNEY FEES AND COSTS OF COLLECTION**

Should any Member or former Member fail to pay any contribution or retrospective adjustment contribution when due, the Member shall also be liable to the Authority for attorney fees and costs incurred by the Authority in pursuing collection of such sums.

#### **ARTICLE 30 - TERMINATION AND DISTRIBUTION**

(a) This Agreement may be terminated by the written consent of three-fourths of the Members; 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.

(b) Upon termination of this Agreement, all assets of the Authority shall be distributed only among the parties that have been Members of a joint protection program, including any of those parties that previously withdrew pursuant to Article 24 of this Agreement, in accordance with and proportionate to their cash (including contributions) payments and property (at market value when received) contributions made reduced by their share of losses and expenses paid during the term of this Agreement. The Executive Committee shall determine such distribution within six months after the last pending claim or loss covered by this Agreement has been finally disposed of.

(c) The Executive Committee is vested with all powers of the Authority for the purpose of winding up and dissolving the business affairs of the Authority. These powers shall include the power to require Members, including those that were Members at the time a claim arose or at the time a loss was incurred, to pay their share of any additional amount of

contribution deemed necessary by the Executive Committee for final disposition of all claims and losses covered by this Agreement. A Member's share of such additional contributions shall be determined on the same basis as that provided for annual contributions in Article 17 of this Agreement, and shall be treated as if it were the next year's annual contribution for that Member.

(d) In the absence of an Executive Committee, the Secretary shall exercise all powers and authority under this Article. The decision of the Executive Committee or Secretary under this Article shall be final.

(e) A provisional Member that does not complete five years of membership pursuant to Article 22 shall not be entitled to any distribution of assets upon termination of this Agreement.

### **ARTICLE 31 - PROVISION FOR BYLAWS**

The Board shall cause to be developed Authority Bylaws. Each Member shall receive a copy of any Bylaws developed under this Article.

### **ARTICLE 32 - NOTICES**

Notices to Members hereunder shall be sufficient if delivered to the administrative office of the respective Member. Delivery may be by U.S. Mail, email, or other form of notice acceptable under the Ralph M. Brown Act.

### **ARTICLE 33 – PROVISION FOR MAILED BALLOTS**

Unless specifically prohibited elsewhere within this Agreement or the Bylaws, all actions contemplated by the Board of Directors may be voted on by the Members by mailed ballot as defined in the Bylaws. This shall not include the election of officers or members of the Executive Committee. Actions taken by mailed ballot shall require the same percentage of votes cast by the entire Membership as the percentage that would be required of a quorum voting on an item at a Board of Directors meeting.

#### **ARTICLE 34 - AMENDMENT**

With the exception of Article 27, this agreement may be amended by two-thirds vote of the Directors present at a duly held Board of Directors meeting, or by a two-thirds vote of the Membership for an amendment placed before the Membership by mailed ballot. Amendment to Article 27 shall require a three-fourths vote of the entire Board of Directors at a duly held Board of Directors meeting, or by a three-fourths vote of the Membership for an amendment placed before the Membership by mailed ballot.

#### **ARTICLE 35 - PROHIBITION AGAINST ASSIGNMENT**

With the exception of Article 21 (g), no Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member shall have any right, claim or title to any part, share, interest, fund, contribution, or asset of the Authority.

#### **ARTICLE 36 - 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.

IN WITNESS WHEREOF, the parties hereto have first executed this Agreement by authorized officials thereof on the date indicated below.

Date: \_\_\_\_\_

MEMBER: \_\_\_\_\_

By: \_\_\_\_\_