

MUNICIPALITIES COLLEGES SCHOOLS INSURANCE GROUP

JOINT POWERS AGREEMENT

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**JPA AGREEMENT
REVISED JOINT POWERS AGREEMENT TO ESTABLISH,
OPERATE, AND MAINTAIN A SELF-FUNDED PROGRAM
FOR HEALTH AND WELFARE BENEFITS**

THIS REVISED AGREEMENT is entered into pursuant to the provisions of the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, Article 1 (commencing with section 6500) of the California Government Code between the public education agencies signatory hereto.

WITNESSETH:

WHEREAS, it is the mutual benefit of the parties hereto and in the best public interest that said parties join together to establish a fund to self-insure the participating public agencies for health and welfare benefits and to pay for the administration of said fund and the costs related thereto; and

WHEREAS, Sections 1274, 17566-17567 and 81602-81603 of the California Education Code authorize the county superintendent of schools and the governing boards of school districts and of community college districts to establish a fund or funds individually or jointly to self-insure for a program of health and welfare benefits; and

WHEREAS, Section 53205.3 of the California Government Code authorizes school districts and community college districts to join with other school districts or community college districts, or any combination of those districts, in providing for the payment of health and welfare benefits by entering into a pooling arrangement under a joint exercise of powers agreement or on a self-insured or self-funded basis or partly by means of self-insurance or self-funding and partly by means of insurance or service agreements

WHEREAS, Section 6500 et seq. of the California Government Code authorizes local public agencies, by agreement, to exercise jointly powers common to the contracting parties; and

WHEREAS, the original joint powers Agreement to establish, operate and maintain a self-insurance program was in effect from November 22, 1982 until September 3, 1991, whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until October 16, 1995; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until January 15, 1997; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said

fund and the costs related thereto which was in effect until March 13, 1999; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until May 24, 2000; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until November 19, 2004; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until October 25, 2005; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto which was in effect until June 19, 2012; whereupon it was superseded by a revised joint powers Agreement for the establishment, operation and maintenance of a self-funded program for health and welfare benefits and for payment of the administration of said fund and the costs related thereto, and

WHEREAS, the public agencies signatory hereto desire to further revise the existing joint powers Agreement as previously revised; and

WHEREAS, this revised joint powers Agreement supersedes the original Agreement, as revised and amended.

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

DEFINITIONS

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

“Agreement” shall mean this JPA Agreement.

“Board” and “Board of Directors” shall mean the governing body of the JPA.

“Contributions” shall mean the estimated amount determined by the Board for each Member necessary to fund the JPA for the coming Fiscal Year.

“Coverage Groups” shall mean groups of employees as defined by each Member.

“Excess Insurance” shall mean that insurance purchased by the JPA to cover Member’s losses in excess of the coverage limits retained by the JPA.

“Fiscal Year” shall mean a period of time as defined in Article 10,

“Government Code” shall mean the California Government Code

“JPA” or “Authority” shall mean Joint Powers Authority.

“MCSIG” shall mean the Municipalities Colleges Schools Insurance Group created by this Agreement.

“Member” and “Membership” and “Member Agency(ies)” shall mean any and each of the public entities which are signatory to this Agreement.

“Participant” shall mean employees of Members or former employees (COBRA and retirees) of Members enrolled in the medical, dental and/or vision programs provided by the JPA.

“Qualifying Economic Interest” shall be as defined by the Conflict of Interest Guide authored by the California Office of the Attorney General.

ARTICLE 1 FORMATION OF ENTITY

1.0 CREATION OF THE JOINT POWERS ENTITY

- 1.1 Pursuant to Sections 6500, et seq., of the Government Code, a joint powers entity, separate and apart from the public agencies signatory hereto, shall be and is hereby created to be known as the Municipalities Colleges Schools Insurance Group (hereinafter referred to as the "JPA").
- 1.2 The recitals set forth above are hereby incorporated by reference and made a part of this Agreement.

ARTICLE 2 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 7. Each party to this Agreement also certifies that the deletion of any party from this Agreement, pursuant to Article 7 shall not terminate this Agreement nor affect the remaining parties' intent to contract as described above with the other parties to the Agreement then remaining.

ARTICLE 3 PURPOSE OF THE JPA

3.0 PURPOSE OF THE JPA

- 3.1 The JPA is established for the purposes of:

- 3.1.1 Administering this revised Agreement, pursuant to the joint exercise of powers provisions of the Government Code;
- 3.1.2 Providing the services and other items necessary and appropriate for the establishment, operation and maintenance of pooled fully-insured and self-funded programs for health and welfare benefits for the public agencies who are signatory hereto including joint purchase of Excess Insurance and administrative and other services including, but not limited to, claims adjusting, data processing, health and wellness programs, COBRA administration and legal services in connection with any of the pooled coverage programs for said agencies;
- 3.1.3 Sharing the risk of self-funded losses;
- 3.1.4 Providing a forum for discussion, study, development and implementation of recommendations of mutual interest regarding other programs of self-funded coverage;
- 3.1.5 Providing, to the extent permitted by law, for the inclusion at a subsequent date of such additional public entities organized and existing under the Constitution or laws of the State of California as may desire to become parties to this Agreement and members of the JPA, subject to the terms of Article 7; and
- 3.1.6 Providing for the removal of Member Agencies for cause or upon request.
- 3.2 The functions of the JPA are:
 - 3.2.1 To provide pooled fully-insured and self-funded plans and systems, as stated in the plan document given to each member, for health and welfare benefits for the Members of the JPA and, as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, cost containment and other developments as necessary for the payment and handling of all covered health and welfare claims against Members. Said payment and handling for any Member shall be for health and welfare claims filed and arising out of facts occurring during the period of membership in the JPA. The JPA shall not pay or handle for a Member any health and welfare claims which arise out of services occurring before membership or after termination of membership in this JPA;
 - 3.2.2 To enter into contracts;
 - 3.2.3 To obtain Excess coverage Insurance in the form and amount to be determined by the Executive Committee;
 - 3.2.4 To acquire, hold, and dispose of property, real and personal, all for the purpose of providing the Membership with the necessary education, study, development, and

implementation of a self-funded program for health and welfare benefits, but not limited to, the acquisition of facilities and equipment necessary, the employment of personnel, and the operation and maintenance of a system for the handling of the self-funded plan;

- 3.2.5 To incur debts, liabilities, and obligations necessary to accomplish the purposes of this Agreement;
- 3.2.6 To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity;
- 3.2.7 To invest surplus reserve funds as deemed appropriate by the Executive Committee;
- 3.2.8 To sue and be sued in the name of the JPA; and
- 3.2.9 To perform such other functions as may be necessary or appropriate to carry out provision of law.

These purposes shall be accomplished through the exercise of the powers of the Member Agencies jointly in the creation and operation of the JPA as described in Article 4.

ARTICLE 4 POWERS OF THE JPA

The JPA shall have the power and authority to exercise any power common to the public agencies or public educational agencies which are parties to this Agreement, provided that the same are in furtherance of the functions and objectives set forth herein. Pursuant to Section 6509 of the California Government Code, the exercise of the aforesaid powers of the JPA shall be subject to the restrictions upon the manner of exercising such powers by a public agency or a public educational agency having the same status as a general law public entity or general law public school district of California, except as otherwise provided in this revised Agreement.

ARTICLE 5 TERM OF AGREEMENT

This revised Agreement shall be effective upon the execution hereof by the parties or by their duly authorized representatives and shall supersede and replace any JPA agreements between the parties related to the JPA. This Agreement shall continue in effect until lawfully terminated as provided herein.

ARTICLE 6 MEMBER AGENCY RESPONSIBILITIES

6.0 MEMBER AGENCY RESPONSIBILITIES

Member agencies shall have the following responsibilities:

- 6.1 To appoint a representative(s) to serve on the Board of Directors as provided in Article 8;
- 6.2 To cooperate fully with the JPA, in all matters related to its purpose as described in Article 3 (eligibility, enrollment, designation of benefit representatives, Participant communication etc);
- 6.3 To pay Contributions and any adjustments or assessments thereto promptly in the manner determined by the JPA when due;
- 6.4 To provide the JPA with information as allowed by law and as may be necessary for the JPA to carry out the purposes of this Agreement; and
- 6.5 To cooperate fully with and assist the JPA and any insurer, claims adjuster, financial auditor, or legal counsel retained by the JPA, in all matters relating to this Agreement and to comply with the Bylaws and all policies and procedures adopted by the Board.

ARTICLE 7 MEMBERSHIP

7.0 MEMBERSHIP

- 7.1 Membership in the JPA shall consist of public educational agencies and other public entities which have the powers set forth herein and which agree to comply with the terms of this revised Agreement. Each party which becomes a member of the JPA shall be entitled to all rights and privileges of, and shall be subject to the obligations of, membership as provided herein.
- 7.2 Parties originally forming the JPA and agreeing to comply with the terms of this revised Agreement shall become members of the JPA upon the effective date of this revised Agreement.
- 7.3 For all other public educational agencies or public entities which desire to become members of the JPA after the effective date of this Agreement, such membership is contingent upon such conditions as the Board of Directors may establish. Membership shall become effective upon the date established by the Board. Prospective members may apply for participation in the JPA as provided for in the Bylaws.
- 7.4 An agency or entity which has previously been a Member of the JPA may apply for reinstatement in accordance with subsection 7.3 provided that:

- 7.4.1 If the agency or entity has previously withdrawn from the JPA in accordance with subsection 7.5 of this revised Agreement, a period of no less than thirty-six months must have elapsed since the effective date of withdrawal, and the agency or entity may be required to repay all asset disbursements made to it at the time of withdrawal plus any fees, costs, or expenses which may be required by the Board.
- 7.4.2 If the agency or entity has previously been involuntarily terminated from membership in accordance with Article 11.1 of the Bylaws, all asset disbursements made to the agency or entity at the time of withdrawal may be required to be repaid and written assurances satisfactory to the Board must be provided that the circumstances which caused the involuntary termination will not reoccur.
- 7.5 Any Member having completed three (3) consecutive years as a Member of the JPA may voluntarily withdraw from its status as a Member and a party to the joint powers Agreement at the end of any Fiscal Year by notifying the Executive Committee of the JPA in writing prior to June 30th of the Calendar Year of withdrawal. Any Member Agency which has notified the Executive Committee of withdrawal as provided herein may, with the consent of the Executive Committee, rescind such withdrawal by giving written notice to the Executive Committee no later than November 1st of the Calendar Year of withdrawal. Unless rescinded as provided herein, such withdrawal shall be effective at the end of the Calendar Year. Members withdrawing voluntarily are subject to the conditions for withdrawal set forth in the Bylaws.
- 7.6 The voluntary withdrawal or expulsion of any Member Agency shall not terminate its responsibility to cooperate fully with the JPA in determining and processing eligibility and enrollment; pay any Contributions and/or assessments determined by the Board to be due and payable for each program year in which it participated; provide the JPA with information necessary for the JPA to carry out the purposes of this Agreement; and cooperate with and assist the JPA, any insurer, financial auditor, claims adjuster or legal counsel retained by the JPA in all matters relating to this Agreement.
- 7.7 All Members hereby agree to be bound by the terms of this Agreement, the Bylaws and all policies and procedures currently in effect and as may be hereinafter revised or adopted.
- 7.8 Each of the Members hereby agrees to consider the implementation in its agency of the health management and cost containment guidelines developed by the Board of Directors.

ARTICLE 8

BOARD OF DIRECTORS

8.0 BOARD OF DIRECTORS

A Board of Directors is hereby established to direct and control the JPA.

8.1 Composition of the Board of Directors

- 8.1.1 Each Member of the JPA which has less than 500 active covered employees under the JPA's health and welfare plans shall be entitled to appoint to the Board of Directors one management representative and one alternate who shall be designated in writing. Said representative and said alternate must be employees or officers of the Member, shall have the authority to bind the Member on all matters pertaining to this Agreement, and shall serve at the pleasure of the Member by whom appointed. Only the designated representative or designated alternate may represent a Member, and each shall be invited to attend all meetings of the Board of Directors. The designated representative and designated alternate may invite members of their agencies' staffs or consultants to attend meetings of the Board of Directors in an advisory capacity only.
- 8.1.2 Each Member of the JPA which has 500 or more active covered employees under the JPA's health and welfare plans shall be entitled to appoint to the Board of Directors two management representatives and one alternate who shall be designated in writing. Said representatives and said alternate must be employees or officers of the Member, shall have the authority to bind the Member on all matters pertaining to this Agreement, and shall serve at the pleasure of the Member by whom appointed. Only the representatives or designated alternate may represent the Member, and each shall be invited to attend all meetings of the Board of Directors. The designated representatives and designated alternate may invite members of their agencies' staffs or consultants to attend meetings of the Board of Directors in an advisory capacity only.
- 8.1.3 In addition to the representative and alternates identified in 8.1.1 and 8.1.2 above, recognized employee bargaining organizations of Member Agencies are entitled to appoint a number of at-large representatives to the Board of Directors equal to 33%, or the nearest whole number in the event of a fraction (.5% and over rounds up), of the number of board representatives (not including alternates) appointed pursuant to 8.1.1 and 8.1.2 above. The employee bargaining organization representatives must be active covered employees of a JPA Member. Each bargaining organization shall be entitled to a number of representatives which is in direct proportion to the number of active covered employees it represents as of January 1 of the current even numbered year. All fractions will be rounded down to the nearest even number. Such appointment must be in writing and the representative may serve at the pleasure of the appointing organization until replaced, or the number of representative entitlement reduces, or if the representative violates any provisions of the JPA Agreement.
- 8.1.3.1 An employee bargaining organization is defined as a local, state or nationally recognized labor association which has exclusive bargaining rights for an identified group of employees at a Member Agency.
- 8.1.4 In addition to the representatives and alternates identified in 8.1.1, 8.1.2 and 8.1.3 above, covered retiree Participants are entitled to elect an at-large representative to

the Board of Directors. Elections for the retiree representative shall be by mail ballot every two years from a list of self-nominated covered retiree Participants. In the event of a vacancy, the Board of Directors President shall appoint a retiree representative for the balance of the two-year term.

8.1.4.1 A covered retiree Participant is a MCSIG member who has continued their MCSIG coverage since retiring from the Member Agency.

8.1.4.2 The at-large retiree representative shall be neither a Member representative nor an employee bargaining organization representative, eligible for election to the Executive Committee pursuant to the Bylaws.

8.2 Each designated representative shall have one vote, which may be cast only by the designated representative or, in his/her absence by the designated alternate. No proxy or absentee votes shall be permitted.

8.3 No business may be transacted by the Board without a quorum of its members being present. A quorum shall consist of not less than a majority of the designated representatives of the JPA. Except as otherwise provided, a vote of the majority of those designated representatives and designated alternates entitled to vote who are present at a meeting of the Board of Directors shall be sufficient to constitute action provided that a quorum is present. In the event of a tie vote, the motion or action fails.

8.4 The powers of the Board shall be all of the powers of the JPA not specifically reserved to the Member Agencies by this Agreement and shall include, but not be limited to, the powers enumerated in Articles 3.0, 4 and 10 of this Agreement and the following:

- Approval of coverage programs and plan design;
- Approval of Contribution rates and the method of which Contributions will be paid to the JPA;
- Approval of additional assessments during the year if necessary or appropriate, to allow for increased costs and expenses as they may occur;
- Development, implementation and revision of the JPA Bylaws;
- Creation and dissolution of advisory, working and ad-hoc committees; and
- Creation and dissolution of an Executive Committee as provided in the JPA Bylaws and delegation of any of its powers to the Executive Committee

8.5 No one serving on the Board of Directors shall receive any salary or compensation from the JPA for service on the Board of Directors.

8.6 The Board of Directors may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least four regular Board of Directors meetings each Fiscal Year. The date, time, and place for each such regular meeting shall be fixed by action of the Executive Committee. Advance notice will be filed with each Member of the JPA for all Board of Directors Meetings. Additional special meetings may be called by the President or Executive Director or upon the petition

of not less than five members of the Board. Such petition is to be addressed to the President of the Board

- 8.7 All meetings of the Board of Directors shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (sections 54950, et seq., of the California Government Code), as said Act may be modified by subsequent legislation, and as the same may be augmented by rules of the Board of Directors not inconsistent therewith. The Board shall conduct its business in accordance with Roberts Rules of Order.
- 8.8 Except as otherwise provided or permitted by law, all meetings of the Board of Directors shall cause minutes of its meetings to be kept, and shall promptly transmit to the Members of the JPA true and correct copies of the minutes of such meetings.
- 8.9 The Board of Directors of the JPA shall develop suggested guidelines for health management and cost containment practices.

ARTICLE 9 BYLAWS AND ADMINISTRATIVE POLICY AND PROCEDURES

The Board shall, through resolution, adopt, rescind or amend Bylaws and shall adopt Administrative Policies and Procedures consistent with applicable law and this Agreement to govern the day to day operation of the JPA. Each Board Member shall receive a copy of the Bylaws and administrative policies and procedures developed under this Article. Amendment of the Bylaws requires a resolution approved by two-thirds of the members of the Board of Directors.

ARTICLE 10 FINANCIAL

10. FINANCIAL

The Board of Directors shall insure that a complete and accurate system of accounting of the JPA shall be maintained at all times consistent with established auditing standards and accounting procedures.

- 10.1 The JPA shall operate on a Fiscal Year from July 1st to June 30th.
- 10.2 The Board of Directors shall annually, on or before June 30th, adopt a budget showing each of the purposes for which the JPA will need money and the estimated amount of money that will be needed for each such purpose for the ensuing Fiscal Year. A copy of the budget shall be transmitted to each of the participating members.
- 10.3 Each Member of the JPA who is a public educational agency in Monterey County hereby agrees to authorize the Monterey County Superintendent of Schools to transfer from its general fund any required Contributions and assessments as calculated and specified in the Bylaws. Other agencies shall be billed on an itemized invoice for required Contributions.

- 10.4 Annual assessments, as approved by the Board of Directors for each Member of the JPA, shall be determined in accordance with procedures established by the Board of Directors and filed with each Member.
- 10.5 If the total obligations against all the Members of the JPA exceed in any year the total amount of operating and reserve funds established by the Board of Directors, the Members may be assessed a pro rata share of the additional Contributions as determined by the Board of Directors.
- 10.6 At least once annually all expenditures of funds of the JPA shall be reviewed and ratified by the Board of Directors.
- 10.7 A general fund shall be established and maintained to receive monies of the JPA. The JPA shall accept and deposit in the JPA general fund all monies received by it including monies from any of the following sources:
- 10.7.1 Members Contributions, including assessments and any other charges.
 - 10.7.2 Interest and other investment income.
 - 10.7.3 Refund of insurance premiums and excess loss claims.
 - 10.7.4 Subrogation recoveries.
 - 10.7.5 Grants from any public agency or private company.
- 10.8 The general fund shall expend monies for the purpose of the operation of the JPA and the health and benefit program. Such expenses shall be necessary and appropriate as determined by local or state regulations.
- 10.9 Imprest accounts shall be established and maintained out of monies received by and deposited in the general fund. Monies shall be transferred from the general fund to the imprest account solely for the purposes of paying claims of the members. This account shall be established at a national, state, or local bank whose deposits are insured in the Federal Deposit Insurance Corporation.
- 10.10 The Treasurer of Monterey County is the designated depository of the JPA.
- 10.11 The JPA is strictly accountable for all funds received and dispersed by it and, to that end, the JPA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provisions of applicable law or any resolution of the JPA. Books and records of the JPA in the hands of the Treasurer of the JPA shall be open to inspection at all reasonable times by representatives of the Members. The JPA, as soon as practical after the close of each Fiscal Year, shall give, or cause to be given, a complete written report of all financial activities for such Fiscal Year to each member of

the Board of Directors and to the chief administrative officer of each Member of the JPA.

- 10.12 The Executive Committee shall make, or contract with a certified public accountant to make, an annual audit of the accounts, records, and financial affairs of the JPA. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for Special Districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards and accounting principles. When such an audit of accounts and reports is made by a certified public accountant, a report thereof shall be filed as a public record with each of the Members of the JPA, and also with the Auditor-Controller of Monterey County. Such reports shall be filed within twelve (12) months of the end of the Fiscal Year under examination. Any costs of the audit, including contracts with, or employment of, certified public accountants in making the audit(s) provided for herein, shall be appropriate administrative charges against the funds of the JPA.
- 10.13 The Monterey County Superintendent of Schools shall draw warrants to pay demands against the JPA when such demands have been duly approved by the Executive Director and Treasurer of the JPA.
- 10.14 No part of the revenues or assets of the JPA shall inure to the benefit of, or be distributed to its Members, officers, employees, Participants or other persons except as provided in Article 11. Upon two-thirds vote of the entire MCSIG Board, the Board may declare excess assets-undesignated available for the exclusive use of granting any number of monthly rate holidays or adjustments. The Board shall adopt a policy outlining the details and process for calculating, declaring and utilizing excess assets for monthly rate holidays or adjustments.
- 10.15 The JPA shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

ARTICLE 11

DISSOLUTION OF JPA AND DISPOSITION OF PROPERTY AND FUNDS

11. TERMINATION OF AGREEMENT

- 11.1 This Agreement may be terminated effective at the end of any Fiscal Year by affirmative action of two-thirds (2/3) of the then participating Member Agencies; provided, however, that the JPA and this Agreement shall continue to exist for the purpose of disposing of liabilities, distribution of assets, and all other functions necessary to conclude the affairs of the JPA.
- 11.2 Upon termination of this Agreement, all assets of the JPA shall be distributed only among the parties to the Agreement on the effective date of termination. The Board shall

determine such distribution within six months after the last pending claim covered by this Agreement has been adjudicated.

- 11.3 The Board is vested with all powers of the JPA for the purpose of concluding and dissolving the business affairs of the JPA. These powers shall include the power to require Member Agencies to pay their share of any calculated Contributions and/or assessments deemed necessary by the Board for final disposition of all claims covered by this Agreement.
- 11.4 In the event of the dissolution of the JPA, the complete rescission or other final termination of the Joint Powers Agreement by the Members then a party to the Agreement, the following shall occur:
- 11.4.1 The Board of Directors shall establish each Member's pro-rata share of any remaining cash balance (reserves) based on Members percentage of assessments paid into JPA during the Member's previous twelve months participation in the JPA.
- 11.4.2 Any real and/or personal property interests and other assets remaining in the JPA following a discharge of all liabilities and obligations shall be disposed of by the Executive Committee. Proceeds from disposition shall be disposed of by the Executive Committee. Proceeds from disposition shall be distributed to Members based on each Member's pro-rata share of assessments paid into JPA during the Member's previous twelve months' participation in the JPA, providing that assets are of sufficient value to defray the cost of disposition.
- 11.4.3 The dissolution of the JPA shall be filed in writing with the State of California by the JPA.

ARTICLE 12 AMENDMENTS

This revised Agreement may be amended at any time with a subsequent written Agreement signed by two-thirds (2/3) of Member Agencies of the JPA. Any such amendment shall be effective upon the date that two-thirds (2/3) of Member Agencies have signed the amendment, unless otherwise provided in the amendment.

ARTICLE 13 CONSTRUCTION & SEVERABILITY

In the event of any litigation over the meaning of this Agreement or the authority of any Member Agency of the JPA, this Agreement shall be liberally construed to effectuate its purposes. 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 14
HOLD HARMLESS AND INDEMNIFICATION

14. HOLD HARMLESS AND INDEMNIFICATION

- 14.1 Member Agencies agree and covenant to defend, hold harmless and indemnify the JPA, its Member Agencies, elected officers, employees and volunteers from any claim, damage or liability in connection with Contributions, assessments, deposits, or coverage; acts, errors, omissions or breach or default of any member or any person or entity acting on behalf of any Member in the performance of any of its obligations under this Agreement; and/or decisions to expel a Member Agency, with or without cause, pursuant to this Agreement and any applicable provisions of the Bylaws.
- 14.2 The JPA shall indemnify, defend and hold harmless, jointly and severally, each of its Members and the Members' officers, officials, employees, agents and representatives with respect to any loss, damage, injury, claim, litigation or liability, including attorney's fees and costs, arising out of or in any way related to the creation of operation, functioning, decisions or actions of the JPA or the JPA's officers, officials, employees, agents or representatives.
- 14.3 The provision of indemnity set forth in this Section shall not be construed to obligate the JPA to pay any liability, including but not limited to punitive damages, which by law would be contrary to public policy or otherwise unlawful.
- 14.4 Government Code Section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the Member Agencies, as among themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6 each assume the full liability imposed upon it or any of its officers, agents, employees or representatives by law for injury caused by a negligent or wrongful action or inaction, or omission, occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve this purpose, each Member Agency indemnifies and holds harmless each other Member and the JPA, for any loss, cost or expense, including reasonable attorney's and consultant fees, that may be imposed upon or incurred by such other Member Agency or the JPA solely by virtue of Government Code Section 895.2.
- 14.5 Notwithstanding the provisions of 14.1 through 14.4 above, by a two-thirds vote of the Board, the Board may approve the expenditure of JPA funds to defend, indemnify and hold the JPA, members of the Board and any employee or agent of the JPA free and harmless from claims and liabilities arising in connection with their actions taken in good faith, and while within the scope of their duties being performed on behalf of the JPA.

14.6 The JPA may self-fund or purchase insurance, and/or require the Member Agencies to self-fund or purchase insurance, in order to comply with any of the defense and indemnity requirements herein.

14.7 Per Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall not be the debts, liabilities and obligations of the parties to this Agreement. In addition, it is expressly agreed by all parties to this revised Agreement and by the Board of Directors that, in contemplation of Sections 895.6 and 6508.1 of the California Government Code respecting the right of contribution of public entities that are parties to a joint powers agreement, no public entity a party hereto shall be jointly or severally liable upon any judgement for damages caused by a negligent or wrongful act or omission to act occurring in the performance of this revised Agreement, which judgment is rendered or imposed upon any one of the Member Agencies or upon the entity created by this revised Agreement, unless the party shall have authorized or consented to the same by an appropriately adopted resolution.

14.8 The JPA may insure itself, to the extent required by law and deemed appropriate by the Board of Directors, against loss, liability, and claims arising out of or connected with this revised Agreement.

ARTICLE 15 COMPLETE AGREEMENT

The foregoing constitutes the full and complete agreement of the parties regarding the JPA Agreement. There are no oral understandings or agreements between the parties regarding the JPA Agreement that are not set forth in writing herein. This Agreement supersedes prior versions noted on the Cover Page. Some Member Agencies may have a Participation Agreement currently in effect with the JPA. Any and all Participation Agreements currently in effect between the JPA and a Member Agency remain in full force and effect.

ARTICLE 16 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.

ARTICLE 17 ENFORCEMENT

The JPA is hereby given authority to enforce this Agreement. In the event suit is brought upon this revised Agreement by the JPA and judgment is rendered against a Member, the Member shall pay all costs incurred by the JPA, including reasonable attorney's fees as fixed by the court.

ARTICLE 18 DISPUTE RESOLUTION

18. DISPUTE RESOLUTION

When a dispute arises between the JPA and a Member, the following procedures are to be followed:

- 18.1 Request for Reconsideration. The Member will make a written request to the JPA for the Governance Committee to review their position, citing the arguments in favor of the Member and any applicable case law that applies. The Member can also request a personal presentation to the Governance Committee if it so desires.
- 18.2 The Governance Committee will review the matter and consider the JPA's position. The Governance Committee may seek the assistance of other JPA Committees, JPA staff or outside experts. This appeal process is intended to be an opportunity for both sides to discuss and substantiate their positions based upon legal arguments and the most complete information available. If the Member requesting reconsideration is represented on any of the Committees involved in the review, that Member shall be deemed to have a conflict and shall be excluded from any vote.
- 18.3 If the Member is not satisfied with the outcome of the Governance Committee appeal, the Member may request that the matter be set as an agenda item of the Executive Committee for further reconsideration. If the Member requesting reconsideration is represented on the Executive Committee, that Member shall be deemed to have a conflict and shall be excluded from any vote.
- 18.4 If the Member is not satisfied with the outcome of the Executive Committee appeal, the next step in the appeal process is arbitration. The arbitration will be non-binding unless the parties mutually agree, in advance of the arbitration process, to binding arbitration. The matter will be submitted to a mutually agreed arbitrator or panel of arbitrators for a determination. If binding arbitration is selected, then the decision of the arbitrator is final and both sides agree to abide by the decision of the arbitrator. The cost of arbitration will be shared equally by the involved Member and the JPA.
- 18.5 If, after following the dispute resolution procedure paragraphs 18.1-18.4, either party is not satisfied with the outcome of the non-binding arbitration process, either party may consider litigation as a possible remedy to the dispute.

ARTICLE 19 APPLICABLE LAW AND FORUM

The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles. Legal actions must be initiated and maintained in the Superior Court of the County of Monterey, State of California, in any other

appropriate court in that county or in the Federal District Court in the Northern District of California.

ARTICLE 20

ACCEPTANCE OF SERVICE OF PROCESS

The Board of Directors, by resolution, shall designate a specific location at which it will receive notices, correspondence, and other communications, and shall designate one of its members as an officer for the purpose of receiving service on behalf of the Board of Directors.

In the event that any legal action is commenced against the JPA, service of process on the JPA shall be made by personal service upon the Executive Director or President of the JPA, or in such other manner as may be provided by law.

ARTICLE 21

WAIVERS & MODIFICATIONS

Subject to the following exception, no provision of this Agreement may be waived or modified. Notwithstanding the foregoing, the Board of Directors may, upon a two-thirds vote of the Board of Directors at a properly noticed public meeting, waive or modify any provision of Sections 7.4 and/or 7.5 of this Agreement. No waiver or modification of any provision of Sections 7.4 or 7.5 of this Agreement will apply toward the same provision at a different time.

ARTICLE 22

CONFLICT OF INTEREST

No officers, official or employee of the JPA shall have any Qualifying Economic Interest, direct or indirect, in the JPA nor shall any such person participate in any decision relating to the JPA which affects his or her personal or private economic interests in violation of any State law or regulation.

ARTICLE 23

BOOKS & RECORDS

All books, records, accounts and documents of the JPA shall be available at any reasonable time to the Board members and, to the extent provided by the California Public Records Act (Government Code Section 6250 et. Seq.) shall be public records. This Section does not authorize the release of any confidential documents which are exempt from disclosure under the California Public Records Act or other applicable law or regulations.

ARTICLE 24

PRINCIPAL OFFICE

The principal office of the JPA shall be that of the office of the Executive Director or as from time to time designated by the Board.

ARTICLE 25
SUCCESSORS & ASSIGNMENT

In the event of a reorganization or consolidation of one or more of the public agencies participating in this Agreement, the successor in interest or successors in interest to the obligations of any such reorganized or consolidated public agency may be substituted as a party or as parties to this Agreement. This Agreement shall be binding upon all Members and shall inure to the benefit of the successors of each of the Members provided, however, that no Member may assign any right or obligation under this Agreement without the written consent of the Board.

ARTICLE 26
NOTICES

Notices permitted or required to be sent to the Member Agencies pursuant to this Agreement shall be sent by U.S. Postal Service or other reputable delivery service addressed to the Member Agency at each Member Agency's official business address and directed to the attention of that agency's Board member.

ARTICLE 27
FILING WITH SECRETARY OF STATE

The Board of Directors shall comply with the provisions of Sections 6503.5 and 53051 of the Government Code requiring the filing of a statement with the Secretary of State and with the County Clerk. The Executive Director of the JPA is directed to file with the office of the California Secretary of State a notice of adoption or amendment of this Agreement within thirty (30) days after the effective date of such adoption or amendment, as required by California Government Code Section 6503.5; and shall file with the County Clerk a statement as required by California Government Code Section 53051; and shall file all other official notices as may be required by law.

IN WITNESS WHEREOF, the parties have caused this revised Agreement to be executed by their respective duly-authorized representative effective _____.

NAME OF MEMBER:

NAME OF MEMBER REPRESENTATIVE:

SIGNATURE OF MEMBER REPRESENTATIVE