

ATTACHMENT 2

**FIFTH AMENDED AND RESTATED
JOINT POWERS AGREEMENT**

RELATING TO THE

SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

Adopted August 1, 1986

Amended February 5, 1988

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Amended and Restated July 1, 2003

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**FIFTH AMENDED AND RESTATED JOINT POWERS AGREEMENT
RELATING TO THE
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY**

THIS FIFTH AMENDED AND RESTATED JOINT POWERS AGREEMENT (the "Agreement") is made and entered into by and among the special districts (the "Members") organized and existing under the laws of the State of California, which are signatories to this Agreement.

RECITALS

WHEREAS, California Government Code Section 6500 *et seq.* (the "Act") 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, 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 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, the parties to this Agreement desire to join together for the purposes set forth in Article 2 hereof, including establishing pools for self-insured losses and purchasing Excess or Re-Insurance and administrative services in connection with joint protection programs (the "Programs") for members of the California Special Districts Association ("CSDA"); and

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

WHEREAS, the Members have previously executed that certain Fourth Amended Joint Powers Agreement (the "Original JPA"), which Original JPA the Members desire to amend and restate by this Agreement; provided that such amendment and restatement shall not affect the existence of the Authority; and

WHEREAS, the Board of Directors of the Special Districts Workers Compensation Authority ("SDWCA"), in order to benefit its members and to carry out the public affairs of members of SDWCA, has voted to assign and transfer all claims, liabilities, assets and functions of SDWCA to the Authority; and

WHEREAS, CSDA exists to assist and promote special districts, and has been responsible for the original creation of the Authority and SDWCA, and the consolidation of SDWCA and the Authority is in the best interests of special districts throughout the State.

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:

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as amended or supplemented.

“Alliance Executive Council” means the council organized pursuant to the MOU.

“Assessment” means an additional amount, in addition to the Member’s or Former Member’s original contribution, which the Board of Directors determines in accordance herewith and/or with the Bylaws that a Member or Former Member owes on account of its participation in a Program for a given Program year

“Authority” shall mean the Special District Risk Management Authority created by the original version of this Agreement.

“Board of Directors” or “Board” shall mean the governing body of the Authority.

“Bylaws” means the Bylaws of the Authority adopted by the Board of Directors, as they may be amended from time to time.

“Chief Executive Officer” shall mean that employee of the Authority who is so appointed by the Board of Directors.

“Claim” shall mean a demand made by or against a Member or Former Member which is or may be covered by one of the Programs approved by the Board of Directors.

“Contribution” means the amount determined by the Board of Directors to be the appropriate sum which a Member should pay at the commencement of or during the Program Year in exchange for the benefits provided by the Program.

“Coverage Documents” shall mean the Declarations, Memorandum of Coverages, Coverage Agreements, Endorsements, Policies of Insurance or any other documents that provide the terms, conditions, limits and exclusions of coverage afforded by a Program.

“CSDA” means the California Special Districts Association.

“District” shall mean a special district, public agency or public entity within the State of California which is both a Member of the CSDA and a signatory to this Agreement.

“Duly Constituted Board Meeting” shall mean any Board of Directors meeting noticed and held in the required manner and at which a Quorum was determined to be present at the beginning of the meeting.

“Estimated Contribution” means the amount which the Board of Directors estimates will be the appropriate contribution for a Member’s participation in a Program for a Program Year.

"Excess or Re-Insurance" shall mean that insurance which may be purchased on behalf of the Authority and/or the Members to protect the funds of the Members or Former Members against catastrophic losses or an unusual frequency of losses during a single year in excess of the self-insurance retention maintained by the Authority.

"Fiscal Year" shall mean that period of twelve months which is established as the fiscal year of the Authority.

"Former Member" shall mean a District which was a signatory to the Agreement but which has withdrawn from, or been involuntarily terminated from participating in, the Authority.

"Joint Protection Program" means a Program offered by the Authority, separate and distinct from other Programs, wherein Members will jointly pool their losses and claims, jointly purchase Excess or Re-Insurance and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services.

"Member" shall mean a signatory to this Agreement, which is qualified as a Member under the provisions of this Agreement and the Bylaws.

"MOU" means the Memorandum of Understanding - Alliance Executive Council, dated as of September 20, 2001, among the Authority, CSDA, the CSDA Finance Corporation and SDWCA.

"Program" or "Programs" means the specific type of protection plan as set forth in the terms, conditions and exclusions of the Coverage Documents for self-insured losses, and the purchasing of Excess or Re-Insurance and administrative services.

"Program Year" shall mean a period of time, usually 12 months, determined by the Board of Directors, in which a Program is in effect.

"Retained Earnings," as used herein, shall mean an equity account reflecting the accumulated earnings of a Joint Protection Program.

"SDWCA" means the Special Districts Workers Compensation Authority, and its successors or assigns.

Article 2. Purposes. This Agreement is entered into by the Members pursuant to the provisions of California Government Code section 990, 990.4, 990.8 and 6500 *et seq.* in order to provide, subject to the provisions of the Coverage Documents, economical public liability and workers' compensation coverage, or coverage for other risks which the Board of Directors may determine.

Additional purposes are to reduce the amount and frequency of losses, and to decrease the cost incurred by Members in the handling and litigation of claims. These purposes shall be accomplished through the exercise of the powers of such Members jointly in the creation of a separate entity, the Special District Risk Management Authority (the "Authority"), to establish and administer Programs as set forth herein and in the Bylaws.

It is also the purpose of this Agreement to provide, to the extent permitted by law, for the inclusion, at a subsequent date, and subject to approval by the Board of Directors, of such additional Members organized and existing under the laws of the State of California as may desire to become parties to the Agreement and Members of the Authority.

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 to 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 18. Each party to this Agreement also certifies that the withdrawal from or cancellation of membership by any Member, pursuant to Articles 19 and 20 or otherwise, shall not affect this Agreement nor such party's intent, as described above, to contract with the other remaining parties to the Agreement.

Article 4. Term of Agreement. This Agreement shall become effective as to existing Members of the Authority as set forth in Article 33 hereof. This Agreement shall continue thereafter until terminated as hereinafter provided. This Agreement shall become effective as to each new Member upon: (i) approval of its membership by the Board of Directors, (ii) the execution of this Agreement by the Member, and (iii) upon payment by the Member of its initial Contribution for a Program. Any subsequent amendments to the Agreement shall be in accordance with Article 27 of this Agreement.

Article 5. Creation of Authority. Pursuant to the Act, there is hereby created a public entity separate and apart from the parties hereto, to be known as the Special District Risk Management Authority. Pursuant to Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority, including but not limited to, debts, liabilities and obligations of any of the Programs shall not constitute debts, liabilities or obligations of any party to this Agreement or to any Member or Former Member.

The Authority is not an insurer, and the coverage programs offered by the Authority do not provide insurance, but instead provide for pooled joint protection programs among the members of the Authority. The Joint Protection Programs offered by the Authority constitute negotiated agreements among the Members which are to be interpreted according to the principles of contract law, giving full effect to the intent of the Members, acting through the Board of Directors in establishing the Programs.

Article 6. Powers of Authority. (a) The Authority shall have all of the powers common to 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, including the power to accept the assignment of contracts or other obligations which relate to the purposes of the Authority, or which were entered into by a Member or Former Member prior to joining the Authority, and to make claims, acquire assets and incur liabilities;
- (2) to accept an assignment from SDWCA of all its assets, obligations and liabilities prior to the dissolution of SDWCA (including claims and

contracts in existence prior to such dissolution) in order to benefit the Members or Former Members participating in the SDWCA workers compensation program; provided, that except for the fair and equitable allocation of administrative and overhead expenses, funds from such assignment shall not be co-mingled and shall be separately accounted for as provided for in this Agreement and the Bylaws.

- (3) to incur debts, liabilities, or other obligations, including those which are not debts, liabilities or obligations of the Members or Former Members, or any of them;
- (4) to charge and collect Contributions and Assessments from Members or Former Members for participation in Programs;
- (5) to receive grants and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities;
- (6) to acquire, hold, lease or dispose of property, contributions and donations of property and other forms of assistance from persons, firms, corporations and governmental entities
- (7) to acquire, hold or dispose of funds, services, donations and other forms of assistance from persons, firms, corporations and governmental entities;
- (8) to employ agents and employees, and/or to contract for such services;
- (9) to incur debts, liabilities or other obligations to finance the Programs and any other powers available to the Authority under Article 2 or Article 4 of the Act;
- (10) to enter into agreements for the creation of separate public entities and agencies pursuant to the Act;
- (11) to sue and be sued in its own name;
- (12) to exercise all powers necessary and proper to carry out the terms and provisions of this Agreement (including the provision of all other appropriate ancillary coverages for the benefit of the Members or Former Members), or otherwise authorized by law or the Act; and
- (13) to exercise all powers and perform all acts as otherwise provided for in the Bylaws.

(b) Said powers shall be exercised pursuant to the terms hereof, in the manner provided by law and in accordance with Section 6509 of the Act. The foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Member or Former Member designated in the Bylaws.

Article 7. Board of Directors. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by, and its property controlled and its affairs conducted by, the Board of the Authority, which is hereby established and designated as the agency to administer this Agreement pursuant to Section 6506 of the Act. The powers of the Authority shall be exercised through the Board of Directors, who may, from time to time, adopt and modify Bylaws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper. The officers of the Board shall be as set forth in the Bylaws.

Except as set forth in the following paragraph, and so long as the MOU has not been terminated or the Authority has not withdrawn from the MOU, the Board of Directors shall be composed of seven (7) directors elected by the Member entities who have executed the current operative Agreement and are participating in a Joint Protection Program. The terms of directors, procedures for election of directors, procedures for meetings and provisions for reimbursement of Director expenses shall be as set forth in the Bylaws. Each Member of the Board of Directors shall have one vote. Each Member of the Board shall serve as set forth in the Bylaws.

Upon the effective date of this Agreement, the Board shall initially be composed of nine (9) directors who shall serve until the election of directors to be held in 2005. These directors shall consist of the directors of the Authority and SDWCA holding elected positions on such boards on July 1, 2003.

So long as the Authority is a participant in the MOU, the Board shall appoint four members of the Board to serve as members of the Alliance Executive Council. No director of the Authority shall serve as a director on any other board of directors that is a signatory to the MOU during the term of the MOU. In the event a director is elected to such a board, the director shall immediately resign from the Board of Directors of the Authority.

Article 8. 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 9. Powers of the Board of Directors. The Board of Directors shall have such powers and functions as provided for pursuant to this Agreement and the Bylaws and such additional powers as necessary or appropriate to fulfill the purposes of this Agreement and the Bylaws, including, but not limited to, the following:

- (a) to determine details of and select the Program or Programs to be offered, from time to time, by the Authority;
- (b) to determine and select all insurance, including Excess or Re-insurance, necessary to carry out the programs of the Authority;
- (c) to contract for, develop or provide through its own employees various services for the Authority;

- (d) to prepare or cause to be prepared the operating budget of the Authority for each fiscal year;
- (e) to receive and act upon reports of committees and from the Chief Executive Officer;
- (f) to appoint staff, including a Chief Executive Officer, and employ such persons as the Board of Directors deems necessary for the administration of this Authority;
- (g) to direct, subject to the terms and conditions of the Coverage Documents, the payment, adjustment, and defense of all claims involving a Member during their period of membership in and coverage under a Program;
- (h) to fix and collect Contributions and Assessments for participation in the Programs;
- (i) to expend funds of the Authority for the purpose of carrying out the provisions of the Agreement and the Bylaws as they now exist or may be hereafter amended;
- (j) to purchase excess insurance, liability insurance, stop loss insurance, officers and directors liability insurance, and such other insurance as the Authority may deem necessary or proper to protect the Program, employees of the Authority and employees of the Members;
- (k) to defend, pay, compromise, adjust and settle all claims as provided for in the Coverage Documents;
- (l) to 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 for the Authority;
- (m) to establish policies and procedures for the operation of the Authority and the Programs;
- (n) to engage, retain, and discharge agents, representatives, firms, or other organizations as the Board of Directors deems necessary for the administration of the Authority;
- (o) to enter into any and all contracts or agreements necessary or appropriate to carry out the purposes and functions of the Authority;
- (p) to acquire, hold, lease, manage and dispose of, as provided by law, any and all property necessary or appropriate to carry out the purposes and functions of the Authority;

- (q) to transact any other business which is within the powers of the Board of Directors;
- (r) to invest funds on hand in a manner authorized by law, the Agreement and the Bylaws;
- (s) to provide financial administration, claims management services, legal representations, safety engineering, actuarial services, and other services necessary or proper to carry out the purposes of the Authority either through its own employees or contracts with one or more third parties;
- (t) to exercise general supervisory and policy control over the Chief Executive Officer;
- (u) to establish committees and sub-committees as it deems necessary to best serve the interests of the Authority; and
- (v) to have such other powers and functions as are provided for pursuant to the Act, this Agreement or necessary or appropriate to fulfill the purpose of this Agreement and the Bylaws.

Article 10. Officers of the Authority. The officers of the Authority shall be as set forth in the Bylaws. The Board may elect or authorize the appointment of such other officers than those described in the Bylaws as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Board, from time to time, may authorize or determine.

Any officer may be removed, either with or without cause, by a majority of the directors of the Board at any regular or special meeting of the Board. Should a vacancy occur in any office as a result of death, resignation, removal, disqualification or any other cause, the Board may delegate the powers and duties of such office to any officers or to any Members of the Board until such time as a successor for said office has been appointed.

Article 11. Provision for Bylaws. The Board shall promulgate Bylaws to govern the day-to-day operations of the Authority. The Board may amend the Bylaws from time to time as it deems necessary, and as provided in the Bylaws. Each Member shall receive a copy of any Bylaws and agrees to be bound by and to comply with all of the terms and conditions of the Bylaws as they exist or as they may be modified. The Bylaws shall be consistent with the terms of this Agreement. In the event any provision of the bylaws conflicts with a provision of this Agreement, the provision contained in this Agreement shall control.

Article 12. [Reserved].

Article 13. Coverage Programs.

- (a) The Authority shall maintain such types and levels of coverage for Programs as determined by the Board of Directors. Such coverage may provide for binding arbitration before

an independent arbitration panel of any disputes concerning coverage between the Authority and a Member.

(b) The coverage afforded under one or more Programs may include protection for general liability, auto liability, property, boiler and machinery, public officials errors and omissions, employment practices, employee benefits liability coverage, employee dishonesty coverage, public officials personal liability coverage and workers' compensation, as well as coverage for other risks which the Board of Directors may determine to be advisable. More than one type of coverage may be afforded under a single Program.

(c) The Board of Directors may arrange for group policies to be issued for Members, their board members and employees interested in obtaining additional coverage, at an appropriate additional cost to those participating Members.

(d) The Board of Directors may arrange for the purchase of Excess or Re-Insurance. The Authority shall not be liable to any Member or to any other person or organization if such excess or reinsurance policies are terminated, canceled or non-renewed without prior notice to one or more Members, or if there is a reduction in the type of coverage afforded under a program by reason of any change in coverage in a succeeding excess or reinsurance policy, even if such reduction occurs without prior notice to one or more Members.

Article 14. Implementation of the Programs. The Board of Directors shall establish the coverage afforded by each Program, the amount of Contributions and Assessments, the precise cost allocation plans and formulas, provide for the handling of claims, and specify the amounts and types of Excess or Re-Insurance to be procured. The Contributions and Assessments for each Program shall be determined by the Board of Directors as set forth herein, in the Bylaws or in the operating policies established for a Program.

Article 15. Accounts And Records.

(a) **Annual Budget.** The Authority shall, pursuant to the Bylaws, annually adopt an operating budget, including budgets for each Joint Protection Program.

(b) **Funds and Accounts.** The Authority shall establish and maintain such funds and accounts as required by the Board of Directors and as required by generally accepted accounting principles, including separate funds and accounts for each Program, including Joint Protection Programs. Books and records of the Authority shall be open to any inspection at all reasonable times by authorized representatives of Members, or as otherwise required by law.

(c) **Investments.** Subject to the applicable provisions of any indenture or resolution providing for the investment of moneys held thereunder, the Authority shall have the power to invest any money in the treasury that is not required for the immediate necessities of the Authority, as the Board determines is advisable, in the same manner as local agencies pursuant to California Government Code Sections 53601 *et seq.* (as such provisions may be amended or supplemented).

(d) **No Commingling.** The funds, reserves and accounts of each Program shall not be commingled and shall be accounted for separately; provided, however, that administration and

overhead expenses of the Authority not related to a specific Program or Programs may be fairly and equitably allocated among Programs as determined by the Board of Directors. Investments and cash accounts may be combined for administrative convenience, but a separate accounting shall be made for balances of individual funds and Program revenues and expenses.

(e) **Annual Audit.** The Board shall provide for a certified, annual audit of the accounts and records of the Authority, in the manner set forth in the Bylaws.

Article 16. Services Provided by the Authority. The Authority may provide, at the sole discretion of the Board of Directors, the following services in connection with this Agreement:

(a) to provide or procure coverage, including but not limited to self-insurance funds and commercial insurance, as well as excess coverage, re-insurance and umbrella insurance, by negotiation or bid, and purchase;

(b) to assist Members in obtaining insurance coverage for risks not included within the coverage of the Authority;

(c) to assist risk managers with the implementation of risk management functions as it relates to risks covered by the Programs in which the Member participates;

(d) to provide loss prevention and safety consulting services to Members;

(e) to provide claims adjusting and subrogation services for Claims covered by the Programs;

(f) to provide loss analysis and control 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) to review Member contracts to determine sufficiency of indemnity and insurance provisions when requested;

(h) to conduct risk management audits relating to the participation of Members in the Programs; and

(i) to provide such other services as deemed appropriate by the Board of Directors.

Article 17. Responsibilities of Members. Members or Former Members shall have the following responsibilities, which shall survive the withdrawal from, or involuntary termination of participation in, this Agreement:

(a) Each Member shall designate a person to be responsible for the risk management function within that Member and to serve as a liaison between the Member and the Authority as to risk management.

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

(c) Each Member shall maintain its own set of records, including a loss log, in all categories of risk covered by each Program in which it participates to insure accuracy of the Authority's loss reporting system, unless it is no longer deemed necessary by the Board of Directors.

(d) Each Member shall pay its Contribution, and any adjustments thereto, and any Assessments within the specified period set forth in the invoice, or as otherwise may be set forth herein or in the Bylaws. After withdrawal or termination, each Former Member or its successor shall pay promptly to the Authority its share of any additional Contribution, adjustments or Assessments, if any, as required of it by the Board of Directors under Article 21 or 22 of this Agreement or the Bylaws.

(e) Each Member or Former Member shall provide the Authority with such other information or assistance as may be necessary for the Authority to carry out the Programs under this Agreement in which the Member or Former Member participates or has participated.

(f) Each Member or Former Member shall in any and all ways cooperate with and assist the Authority and any insurer of the Authority, in all matters relating to this Agreement and covered claims.

(g) Each Member or Former Member will comply with all Bylaws, rules and regulations adopted by the Board of Directors.

(h) Each Member shall remain a member in good standing of CSDA.

Article 18. New Members. The Authority shall allow entry into its Programs of new Members only upon approval of the Board, with any conditions or limitations as the Board deems appropriate. In order to become a Member and remain a Member, any District must be a member in good standing of CSDA, shall participate in at least one (1) Joint Protection Program and shall be authorized to exercise the common powers set forth in this Agreement.

Article 19. Withdrawal.

(A) Any Member may voluntarily withdraw from any particular Joint Protection Program without withdrawing from the Agreement if:

- (i) It has participated in such Joint Protection Program for at least three (3) full Program Years;
- (ii) it is a participant in another Joint Protection Program; and
- (iii) the Member submits a written withdrawal notification in accordance with the Bylaws.

(B) Any participating Member may voluntarily withdraw from this Agreement only at the end of any applicable Program Year and only if:

- (i) The Member has been a signatory to this Agreement for not less than three (3) full Program Years as of the date of the proposed withdrawal; and
- (ii) submits a written withdrawal notification in accordance with the Bylaws.

In the event that the three year participation requirement as required by (A)(i) or (B)(i) above has not been met, for each Program the withdrawing Member participated in at the time of its withdrawal, such withdrawing member shall be obligated to pay all Contributions and Assessments as if that Member had remained in the Program for the full three years from the inception of its membership in the Authority. In the event that the notice is not provided as required by (A)(iii) or (B)(ii) above, any such withdrawing Member shall, with respect to each Program the Member participated in, be obligated to pay any and all Contributions and Assessments for the next full Program Year.

(C) A Member may withdraw from any Program (other than a Joint Protection Program) as provided by the Coverage Documents relating to such Program.

(D) Withdrawal of one or more Members shall not serve to terminate this Agreement.

(E) A Member may not withdraw as a party to this Agreement until it has withdrawn from all of the Programs of the Authority, as provided in the Bylaws.

(F) In connection with calculating the participation time pursuant to subsections (A)(i) and (B)(i) above, continuous participation in a Joint Protection Program of the Authority (or the equivalent programs of SDWCA prior to its dissolution) shall count towards the three year requirements.

Article 20. Involuntary Termination.

(a) Notwithstanding the provisions of Article 19, the Authority shall have the right to involuntarily terminate any Member's participation in any Program, or terminate membership in the Authority, as provided in the Bylaws.

(b) Notwithstanding any other provisions of this Agreement, the participation of any Member of the Authority, including participation in any of the Authority's Programs, may be involuntarily terminated at the discretion of the Board of Directors whenever such Member is dissolved, consolidated, merged or annexed. A reasonable time shall be afforded, in the discretion of the Board of Directors, to place coverage elsewhere. Any such involuntary termination shall not relieve the Member or Former Member of its responsibilities as provided for in Articles 17 or 21.

Article 21. Effect of Withdrawal or Involuntary Termination. The withdrawal from or involuntary termination of any Member from this Agreement shall not terminate this Agreement, and such Member, by withdrawing or being involuntarily terminated, shall not be entitled to payment, return or refund of any Contribution, Assessment, consideration, or other

property paid, or donated by the Member to the Authority, or to any return of any loss reserve contribution, or to any distribution of assets (except payment of any Retained Earnings, as set forth in the following paragraph).

The withdrawal from or involuntary termination of any Member after the effective date of any Program shall not terminate its responsibility to pay its unpaid Contribution adjustments, or Assessments to such Program. The Board of Directors shall determine the final amount due from the Member or Former Member or credits to the Member or Former Member for the period of its participation has been made by the Board of Directors. Such determination shall not be made until all Claims, or other unpaid liabilities, have been finally resolved. In connection with this determination, the Board of Directors may exercise similar powers to those provided for in Article 22(b) of this Agreement, or as otherwise set forth in the Bylaws. Upon such withdrawal from or cancellation of participation in any Program by any Member, said Member shall be entitled to receive its pro rata share of any Retained Earnings declared by the Board of Directors after the date of said Member withdraws or is involuntarily terminated.

Article 22. Termination and Distribution; Assignment.

(a) This Agreement may be terminated any time with the written consent of two-thirds of the voting Members; provided, however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of net assets and all other functions necessary to wind up the affairs of the Authority.

(b) The Board of Directors 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 or Former Members, including those which were signatory hereto at the time the subject Claims arose or was/were incurred, to pay any Assessment in accordance with loss allocation formulas for final disposition of all Claims and losses covered by this Agreement or the Bylaws. A Member or Former Member's Assessment shall be determined as set forth in the Bylaws or the applicable Coverage Documents.

(c) Upon termination of a Program, all net assets of such Program shall be distributed only among the Members that are participating in such Program at the time of termination, in accordance with and proportionate to their cash payments (including Contributions, adjustments, Assessments and other property at market value when received) made during the term of this Agreement for such Program. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by such Program, or as otherwise set forth in the Bylaws.

(d) Upon termination of this Agreement all net assets of the Authority shall be distributed only among the Members in good standing at the time of such termination in accordance with and proportionate to their cash contributions and property at market value when received. The Board of Directors shall determine such distribution within six (6) months after disposal of the last pending Claim or loss covered by this Agreement, or as otherwise set forth in the Bylaws.

(e) In the event the Board of Directors is no longer able to assemble a quorum, the Chief Executive Officer shall exercise all powers and authority under this Article. The decision of the Board of Directors or Chief Executive Officer under this Article shall be final.

(f) In lieu of terminating this Agreement, the Board, with the written consent of two-thirds of the voting Members, may elect to assign and transfer all of the Authority's rights, assets, liabilities and obligations to a successor joint powers authority created under the Act.

Article 23. Enforcement. The Authority is hereby granted authority to enforce this Agreement. In the event action is instituted to enforce the terms of this Agreement, the Bylaws and/or any policies and/or procedures of the Board of Directors and the nondefaulting party(s) should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party(s) herein contained, the defaulting party agrees that it will on demand therefore pay to the nondefaulting party(s) the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party(s).

Article 24. Nonliability of Directors, Officers and Employees. The Board of Directors, and the officers and employees of the Authority, including former directors, officers and employees, shall not be liable to the Authority, to any Member or Former Member, or to any other person, for 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 omitted by any employee or independent contractor; for loss incurred through the investment or failure to invest funds; or for 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 or employee. No director, officer or employee, including former directors, officers and employees, shall be liable for any action taken or omitted by any other director, officer or employee. The Authority shall defend and shall indemnify and hold harmless its directors, officers and employees, including former directors, officers and employees, from any and all claims, demands, causes of action, and damages arising out of their performance of their duties as such directors, officers or employees of the Authority except in the event of fraud, gross negligence, corruption, malice or intentional misconduct, and the funds of the Authority shall be used for such purpose. The Authority may purchase conventional insurance to protect the Authority, and its participating Members or Former Members, against any such acts or omissions by its directors, officers and employees, including former directors, officers and employees.

Article 25. Annual Service Fee; Provisions Relating to CSDA. The Authority shall annually pay to CSDA a minimum fee of one percent (1%) of the amount of net Contributions (gross Contributions less refunds) actually billed to Members in such year. The date of such payment to CSDA, the scope of the services to be provided by CSDA, and any additional compensation to CSDA in excess of the 1% fee will be established and agreed upon from time to time by the Board of Directors and CSDA, and such dates, amounts and services shall be set forth in a separate agreement. CSDA and the Authority may from time to time exchange other services pursuant to Section 6505 of the Act, including, but not limited to, services relating to educational programs, marketing, web-site graphics and conferences.

In the event the MOU has been terminated or the Authority has withdrawn from the MOU, the composition of the Board of Directors shall be increased by two (2) additional directors to be appointed by CSDA. So long as the Authority is a participant in the MOU, the Board shall appoint four members of the Board to serve as members of the Alliance Executive Council. No director of the Authority shall serve as a director on any other Board of Directors that is a signatory to the MOU during the term of the MOU.

CSDA shall be a third party beneficiary to Sections 18, 25, 27 of this Agreement.

Article 26. Notices. Notices to Members or Former Members hereunder shall be sufficient if delivered to the principal office of the respective Member or Former Member.

Article 27. Amendment. This Agreement may be amended at any time by a two-thirds vote of the Members; provided, that any amendment to Article 18, Article 25, or Article 27 shall require the prior written consent of CSDA. The Bylaws may be amended as provided therein. Upon the effective date of any validly approved amendment to this Agreement, such amendment shall be binding on all Members.

Article 28. Prohibition Against Assignment. No person or organization shall be entitled to assert the rights, either direct or derivative, of any Member or Former Member under any coverage agreement or memorandum. No Member or Former 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 or Former Member shall have any right, claim or title or any part, share, interest, fund, contribution or asset of the Authority.

Article 29. 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. This Agreement supersedes and replaces the Fourth Amended Joint Powers Amendment.

Article 30. Counterparts. This Agreement may be executed in one or more counterparts and shall be as fully effective as though executed in one document.

Article 31. California Law. This Agreement shall be governed by the laws of the State of California.

Article 32. Severability. Should any part, term or provisions of this Agreement be determined by any court of component jurisdiction to be illegal or in conflict with any law of the State of California or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Article 33. Effective Date. This Agreement shall become effective as to existing Members of the Authority on the date on which (i) the last of two-thirds of such Members have executed this Agreement, and (ii) the Board of Directors of SDWCA, following approval of two-thirds of its members, have voted to dissolve SDWCA; provided that in no event shall this Agreement be effective prior to July 1, 2003.

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

Acknowledgement:

David Aranda, President - Board of Directors
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

Date

I hereby certify this Amended and Restated Joint Powers Agreement has also received the required approval of not less than two-thirds of the Member entities then parties to the Fourth Amended Joint Powers Agreement.

James W. Towns, Chief Executive Officer
SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

Date

EXECUTION BY MEMBER

The Amended and Restated Joint Powers Agreement of the Special District Risk Management Authority, has been approved by the Board of Directors of the Member listed below, on the date shown, and said Member agrees to be subject to all of the terms and conditions set forth in said Agreement.

Entity Name: _____

By: _____ ~~President~~ Board Chair

By: _____ ~~Clerk~~ Secretary to the Board

Date: _____

EXECUTION BY AUTHORITY

The Special District Risk Management Authority (the "Authority"), operating and functioning pursuant to this Amended and Restated Joint Powers Agreement, hereby accepts the entity named above as a participating member in the Authority, subject to all of the terms and conditions set forth in the Amended and Restated Joint Powers Agreement and in the Bylaws, effective as of _____.

SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY

By: _____
President, Board of Directors

Date: _____