

JOINT POWERS AGREEMENT
CREATING THE EARTHQUAKE RECOVERY INDEMNITY AUTHORITY

This Agreement is executed in the State of California by and among those Public Agencies, which are parties signatory to this Agreement. The Earthquake Recovery Indemnity Authority (Authority) was formed by the parties to pool those seismic related property damage risks retained by the counties with respect to court buildings subject to Level V seismic rating in accordance with California Government Code Section 70324 (Program). All such Public Agencies, hereinafter called "Members" shall be listed in Appendix A, which is attached and made a part of this Agreement, and shall be updated as new Members join the Authority.

RECITALS

WHEREAS, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, Article 16, Section 6 of the California Constitution provides that insurance pooling arrangements under joint exercise of power agreements shall not be considered the giving or lending of credit as prohibited therein; 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 lines broker, or any combination of these; and

WHEREAS, pursuant to California Government Code Section 990.6, the cost of insurance provided by a local public entity is a proper charge against the local public entity; 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 such method is not considered insurance nor subject to regulation under the Insurance Code; and

WHEREAS, the Public Agencies executing this Agreement desire to join together so as to enable them to decide on appropriate joint funding of Insurance Programs as explained in greater detail in the Agreement.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

“Administrator” shall mean either a person employed by the Authority or entity contracting with the Authority to administer the day to day activities of the Authority.

"Authority" shall mean the Earthquake Recovery Indemnity Authority created by this Agreement.

"Board of Directors" or **"Board"** shall mean the governing body of the Authority.

"Claim" shall mean a claim made by a Participating Member arising out of an Occurrence which is covered by the Insurance program.

“Coverage Year” shall have the meaning as defined in the Memorandum of Coverage as established by the Board of Directors

"Executive Committee" shall mean the Executive Committee of the Board of Directors of the Authority.

"Fiscal Year" shall mean that period of twelve months which is established by the Board of Directors as the fiscal year of the Authority as stated in the Bylaws.

"Government Code" shall mean the California Government Code.

"Insurance Program" or **"Program"** shall mean a program of the Authority to pool those seismic related property damage risks retained by the counties with respect to court buildings subject to Level V seismic rating in accordance with California Government Code Section 70324 under which Participating Members are protected against designated losses, either

through joint purchase of primary or excess insurance, pooling of self-insured claims or losses, purchased insurance or any other combination as determined by the Board.

"Joint powers law" shall mean Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code.

"Level V Building" shall mean a building used for court facilities with a Level V seismic rating under the Seismic Risk Table using the engineering evaluating criteria in effect on September 1, 2005.

"Loss" shall mean covered damage to a covered building as set forth in the Coverage Agreement.

"Member" shall mean any county, or city and county, organized and existing under the Constitution of the State of California, or the Judicial Council of California, which has executed this Agreement and become a member of the Authority.

"Occurrence" shall mean an event which is more fully defined in the memoranda of coverage and/or Coverage Agreements of the Insurance program.

"Participating Member" shall mean any Member which has entered into the Insurance Program offered by the Authority pursuant to Article 14 of this Agreement and has not withdrawn or been canceled pursuant to Articles 19 or 20.

"Public Agencies" shall mean any county, or city and county, organized and existing under the Constitution of the State of California, or the Judicial Council of California.

"Reinsurance" shall mean insurance purchased by the Authority as part of the Insurance Program to cover that portion of any loss which exceeds the joint funding capacity of the Authority.

ARTICLE 2
PURPOSES

This Agreement is entered into by the Members in order to jointly develop and fund the Insurance Program. Such funding of the Program may include, but is not limited to, the creation of joint insurance funds, including primary and excess insurance funds, the pooling of self-insured claims and losses, purchasing insurance including Reinsurance, and the provision of administrative services necessary for the operation and staffing of the Program. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services.

ARTICLE 3
PARTIES TO AGREEMENT

(a) Each Member, as a party to this Agreement, agrees that it intends to join with all other Members as parties to this Agreement and with such other Members as may later be added as parties to this Agreement pursuant to Article 18 to establish an Insurance Program to pool those seismic related property damage risks retained by the counties with respect to buildings used for court facilities subject to Level V seismic rating in accordance with California Government Code Section 70324. Each Member also agrees that the removal of any party from this Agreement, pursuant to Articles 19 or 20, shall not affect this Agreement or the remaining Member's obligations hereunder.

(b) Should any conflict arise between the provisions of this Article and the applicable Coverage Agreement or other document evidencing coverage, such Coverage Agreement or other document evidencing coverage shall prevail.

ARTICLE 4
TERM

This Agreement shall become effective when it is executed by two Member counties and shall continue in effect until terminated as provided in this Agreement.

ARTICLE 5
CREATION OF THE AUTHORITY

Pursuant to the joint powers law (Gov. Code Section 6500 et. seq.), there is created a public entity separate and apart from the parties to be known as the Earthquake Recovery Indemnity Authority, with such powers as are set forth in this Agreement.

ARTICLE 6
POWERS OF THE AUTHORITY

The Authority shall have powers common to General Law counties in California and all additional powers set forth in the joint powers law that are reasonable and necessary for the establishment and operation of the Insurance Program, and is authorized to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following:

- (a) To make and enter into contracts.
- (b) To incur debts, liabilities, and obligations.
- (c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.
- (d) To sue and be sued in its own name, and to settle any claim against it.
- (e) To receive and use contributions and advances from Members as provided in Government Code Section 6504, including contributions or advances of personnel, equipment, or property.
- (f) To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5.
- (g) To carry out all provisions of this Agreement.

These powers shall be exercised pursuant to the terms of this Agreement and in the manner provided by law. In accordance with Government Code Section 6509, these powers are subject to the restrictions upon the manner of exercising the powers of one of the contracting parties which in this case shall be deemed to be the County of Solano.

ARTICLE 7
BOARD OF DIRECTORS

The Authority shall be governed by the Board of Directors, which shall be composed as follows:

a) One director from each Member, appointed by the Member's governing body (for the counties its board of supervisors and for the Judicial Council of California the Administrative Director of the Courts) and serving at the pleasure of that governing body. Each Member's governing body shall also appoint an alternate director who shall have the authority to attend, participate in and vote at any meeting of the Board when the director is absent. A director or alternate director may be a county supervisor, other county officer, or staff person of the Member, and upon that director or alternate director's termination of office or employment with the Member, his or her appointment to the Board shall automatically terminate.

b) Any vacancy in a director or alternate director position shall be filled by the appointing Member's governing body, subject to the Provisions of this Article.

A majority of directors of the membership of the Board shall constitute a quorum for the transaction of business. Each director of the Board shall have one vote. Except as otherwise provided in this Agreement, all actions of the Board shall require the affirmative vote of a majority of the Board.

ARTICLE 8
POWERS OF THE BOARD OF DIRECTORS

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

(a) The Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons unless otherwise prohibited by this Agreement; any other duly executed agreement of the Members; or by applicable law.

(b) The Board of Directors may adopt such resolutions or orders as deemed necessary in the exercise of those powers and duties set forth herein.

(c) The Board may form an Executive Committee, as provided in Article 11. The Board may delegate to the Executive Committee and the Executive Committee may discharge any powers or duties of the Board except adoption of the Authority's annual budget.

(d) The Board may form, as provided in Article 12, such other committees as it deems appropriate to conduct the business of the Authority. The membership of any such other committee may consist in whole or in part of persons who are not directors of the Board; provided that the Board may delegate its powers and duties only to a committee of the Board composed of a majority of Board directors and/or alternate director. Any committee which is not composed of a majority of Board directors and/or alternate directors may function only in an advisory capacity.

(e) The Board shall elect the officers of the Authority and shall appoint or employ necessary staff in accordance with Article 13.

(f) The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated.

(g) The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt the Program to pool those seismic related property damage risks retained by the Members with respect to court buildings subject to Level V seismic rating in accordance with California Government Code Section 70324, including all provisions for Reinsurance and administrative services necessary to carry out such program.

(h) The Board, directly or through the Executive Committee, shall provide for necessary services to the Authority and to Members, by contract or otherwise, which may

include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal services.

(i) The Board shall provide general supervision and policy direction to the Administrator.

(j) The Board shall receive and where necessary, act upon reports of the committees and the Administrator.

(k) The Board shall act upon each Claim involving liability of the Authority, directly or by delegation of authority to the Executive Committee or other committee, body or person, provided, that the Board shall establish monetary limits upon any delegation of Claims settlement authority, beyond which a proposed settlement must be referred to the Board for approval.

(l) The Board shall receive, review and act upon periodic reports and audits of the funds of the Authority, as required under Articles 15 and 16 of this Agreement.

(m) The Board may, upon consultation with a casualty actuary or engineer consultant, declare that any funds established for the Insurance program has a surplus of funds and determine a formula to return such surplus to the Participating Members which have contributed to such fund.

(n) The Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

ARTICLE 9

MEETINGS OF THE BOARD OF DIRECTORS

(a) The Board shall hold at least one regular meeting each year and shall provide for such other regular meetings and for such special meetings as it deems necessary.

(b) The Administrator of the Authority shall provide for the keeping of minutes of regular and special meetings of the Board, and shall provide a copy of the minutes to each member of the Board at the next scheduled meeting.

(c) All meetings of the Board, the Executive Committee and such committees as established by the Board pursuant to Article 12, shall be called, noticed, held and conducted in accordance with the provisions of Government Code Section 54950 et seq.

ARTICLE 10 OFFICERS

The Board of Directors may elect from its membership a President and Vice President of the Board, to serve for one-year terms. The President, or in his or her absence, the Vice President, shall preside at and conduct all meetings of the Board.

ARTICLE 11 EXECUTIVE COMMITTEE

The Board of Directors may establish an Executive Committee of the Board which would consist of seven directors: the President and Vice President of the Board, and a number of directors specified in the Bylaws and elected by the Board from its membership to serve on the Executive Committee in accordance with the Bylaws.

If established, the Executive Committee shall conduct the business of the Authority between meetings of the Board, exercising all those powers as provided for in Article 8, or as otherwise delegated to it by the Board.

ARTICLE 12 COMMITTEES

The Board of Directors may establish committees, as it deems appropriate to conduct the business of the Authority. Members of the committees shall be appointed by the Board, to serve

two year terms, subject to reappointment by the Board. The members of each committee shall annually select one of their members to chair the Committee.

Each committee shall be composed of at least three members and shall have those duties as determined by the Board.

Each committee shall meet on the call of its chair, and shall report to the Executive Committee and the Board as directed by the Board.

The Board of Directors may also establish ad hoc committees as needed.

ARTICLE 13

STAFF

(a) **Principal Staff.** The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

(1) **Administrator.** The Administrator shall administer the business and activities of the Authority, subject to the general supervision and policy direction of the Board of Directors and Executive Committee; shall be responsible for all minutes, notices and records of the Authority and shall perform such other duties as are assigned by the Board and Executive Committee.

(2) **Treasurer.** The duties of the Treasurer are set forth in Article 16 of this Agreement. Pursuant to Government Code Section 6505.5, the Treasurer shall be the county treasurer of a Participating Member county of the Authority, or, pursuant to Government Code Section 6505.6, the Board may appoint one of its officers or an employee of the Administrator, or one of its employees to the position of Treasurer, who shall comply with the provisions of Government Code Section 6505.5 (a-d).

(3) **Auditor.** The Auditor shall draw warrants to pay demands against the Authority when approved by the Treasurer. Pursuant to Government Code Section 6505.5, the Auditor shall be the Auditor of the county from which the Treasurer is appointed by the Board under (2) above, or, pursuant to Government Code Section 6505.6, the Board may appoint one of

Comment [A1]: Should this be a Treasurer function? See Art 16.

its officers or an employee of the Administrator, or one of its employees to the position of Auditor, who shall comply with the provisions of Government Code Section 6505.5 (a-d).

(b) **Charges for Treasurer and Auditor Services.** Pursuant to Government Code Section 6505, the charges to the Authority for the services of Treasurer and Auditor shall be determined by the board of supervisors of the Member county from which such staff members are appointed.

(c) **Other Staff.** The Board, Executive Committee or Administrator shall provide for the appointment or employment of such other staff, legal counsel, actuaries, auditors, engineers, private consultants and advisors as may be necessary for the administration of the Authority.

Comment [A2]: Conflict with Art 8(h)? Need to clarify who has the authority to appoint.

ARTICLE 14
DEVELOPMENT, FUNDING AND IMPLEMENTATION
OF INSURANCE PROGRAMS

(a) **Insurance Program Coverage.** The Insurance Program shall provide insurance coverage, which may include, but is not limited to, the creation of joint insurance funds, including primary and excess insurance funds, the pooling of self-insured claims and losses, and purchasing insurance including Reinsurance for seismic risk of physical damage to Level V Buildings, responsibility for which is retained by the Member pursuant to Government Code §70324 and the terms of the applicable agreements concerning the transfer of responsibility for court facilities from the counties to the Judicial Council of California. The Board shall determine, for the Insurance program, a minimum number of participants required for program implementation and may develop specific program coverages requiring detailed agreements for implementation of the program.

(b) **Program and Authority Funding.** The Participating Members shall fund all costs of the Insurance Program, including costs for Article 13 staff and administration. Costs of staff and administration shall be equitably allocated among the Participating Members as part of their Program Contributions.

(1) **Program Contribution.** Except as provided in (2) below, all costs of the Insurance Program shall be funded by a Program Contribution. The Program Contribution shall be calculated for each building covered by the Authority in an amount equal to the thirty five (35) year probable seismic related damage to the building, plus an equitable allocation for program staffing and administration costs as determined by the Board of Directors as part of annual operating budget. The Program Contribution shall be paid annually in contributions charged to the Participating Members (Annual Contribution). Such Annual Contributions shall be determined by the Board of Directors upon the basis of a cost allocation plan and rating formula developed by the Authority with the assistance of a casualty actuary, consulting engineer, risk management consultant, or other qualified person. The Annual Contribution for each Participating Member shall include that participant's share of expected program losses including a margin for contingencies as determined by the Board, and program Reinsurance costs.

(2) **Contribution Surcharge**

(i) If the Authority experiences an unusually large number of losses, or a single loss of sufficient severity, or any combination of both, so as to render the then current Annual Contribution insufficient to adequately fund the Program as determined by the Board of Directors after consultation with a casualty actuary, consulting engineer or other qualified person, impose Contribution Surcharges on all Participating Members. A Contribution Surcharge under this paragraph 14 (b) (2) (i) shall be effected by accelerating up to five years of the Annual Contributions described in paragraph 14 (b) (1).

Comment [A3]: It's a little vague who an other qualified person might be.

(ii) If it is determined by the Board of Directors, upon consultation with a casualty actuary, consulting engineer or other qualified person that the joint insurance funds for a program are insufficient to pay losses, fund known estimated losses, and fund estimated losses which have been incurred but not reported, the Board of Directors may impose a surcharge on all Participating Members, not to exceed 10% of an Annual Contribution in any one year, or 10% of the total of the Maximum Contribution over the life of the Authority.

Comment [A4]: Don't understand when this provision would come into play versus (i). Need to clarify the different purposes and justifications for each of these if they are intended to operate independently.

Comment [A5]: Is this meant to refer to a specific kind of insurance program within the Authority, or should this be generalized to refer to the Program?

(iii) Notwithstanding (i) and (ii) above, no Contribution Surcharge of more than five times the Participating Member's Annual Contribution for may be assessed during

the 35 year life of the Program. Further, if any such surcharge is assessed, the Board of Directors taking the action to determine the amount of the surcharge, shall notify, at least ninety days prior to the effective date of the assessment, the governing body of each Participating Member in writing of its recommendations regarding its intent to assess a Contribution Surcharge and the amount recommended to be assessed each Participating Member. The Authority shall, concurrently with the written notification, provide each Participating Member with a copy of the actuarial or engineering study upon which the recommended Contribution Surcharge is based.

(iv) A Member that is no longer a Participating Member at the time of the effective date of the Contribution Surcharge, but which was a Participating Member during the coverage year(s) in which an Occurrence occurred that resulted in the need for the Contribution Surcharge, shall pay such Contribution Surcharges as it would have otherwise been assessed in accordance with the provisions of (i), (ii), and (iii) above.

(c) **Program Implementation and Effective Date.** The Board of Directors of the Authority shall determine the manner and timing of the implementation of the Insurance Program, and shall give written notice to all Members regarding the implementation, which notice shall include, but not be limited to: the effective date for implementation of the Program, Program participation levels, coverages and terms of coverage of the Program, estimates of Program contribution charges, and such other program provisions as deemed appropriate.

(d) **Late Entry Into Program.** A Member that does not elect to become a Participating Member of the Insurance Program within one year of the effective date, pursuant to (c) above, may be required to pay any administrative costs incurred by the Authority in analyzing that Member's underwriting data and determining its Maximum Contribution and Annual Contribution as of the date of that Members actual entry into the Program at the Board's sole discretion.

(e) **Reentry Into A Program.** Any Participating Member that withdraws or is cancelled from the Insurance Program under Articles 19 or 20, may later reenter the Insurance Program, but may be required to pay any administrative costs incurred by the Authority in

analyzing that reentering Participating Member's underwriting data and determining its Annual Contribution as of the time of reentry at the Board's sole discretion.

ARTICLE 15
ACCOUNTS AND RECORDS

(a) **Annual Budget.** The Authority shall annually adopt an operating budget pursuant to Article 8 of this Agreement for the Insurance program.

(b) **Funds and Accounts.** The Auditor of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board of Directors. Books and records of the Authority in the hands of the Auditor shall be open to inspection at all reasonable times by authorized representatives of Members.

The Authority shall adhere to the standard of strict accountability for funds set forth in Government Code Section 6505.

(c) **Auditor's Report.** The Auditor, within one hundred and twenty (120) 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.** Pursuant to Government Code Section 6505, the Authority shall either make or contract with a certified public accountant to make an annual fiscal year audit of all accounts and records of the Authority, conforming in all respects with the requirements of that section. A report of the audit shall be filed as a public record with each of the Members and also with the county auditor of the county where the home office of the Authority is located and shall be sent to any public agency or person in California that submits a written request to the Authority. The report shall be filed within six months of the end of the fiscal year or years under examination. Costs of the audit shall be considered a general expense of the Authority.

ARTICLE 16
RESPONSIBILITIES FOR FUNDS AND PROPERTY

(a) The Treasurer shall have the custody of, and the right to disburse the Authority's funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to perform that function, subject to the requirements of (b) below.

(b) Pursuant to Government Code Section 6505.5, the Treasurer shall:

(1) Receive and acknowledge receipt for all funds of the Authority and place them in the treasury of the Treasurer to the credit of the Authority.

(2) Be responsible upon his or her official bond for the safekeeping and disbursements of all Authority funds so held by him or her.

(3) Pay any sums due from the Authority, as approved for payment by the Board of Directors or by any body or person to whom the Board has delegated approval authority, making such payments from Authority funds upon warrants drawn by the Auditor.

(4) Verify and report in writing to the Authority and to Members, as of the first day of each quarter of the fiscal year, the amount of money then held for the Authority, the amount of receipts since the last report, and the amount paid out since the last report.

(c) Pursuant to Government Code Section 6505.1, the Administrator, the Treasurer, and such other persons as the Board of Directors may designate shall have charge of, handle, and have access to the property of the Authority.

(d) The Authority shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in the form specified by the Board of Directors, covering all officers and staff of the Authority, and all officers and staff who are authorized to have charge of, handle, and have access to property of the Authority.

ARTICLE 17
RESPONSIBILITIES OF MEMBERS

Members shall have the following responsibilities under this Agreement.

(a) The governing body of each Member shall appoint a director and one alternate director to the Board of Directors, pursuant to Article 7.

(b) Each Participating Member shall pay Annual Contributions, and Contribution Surcharges due to the Authority as required under Article 14. The allowable penalties for late payment of such Annual Contributions and/or Contribution Surcharges shall be as determined as part of the annual budget process, and assessed by the Board of Directors only after written notice to the Participating Member. After withdrawal or cancellation, action under Articles 19, 20, or 21, each Participating Member shall pay promptly to the Authority any additional contributions due, as determined and assessed by the Board of Directors under Articles 20 or 21. Any administrative or legal costs incurred by the Authority associated with the collection of such contributions or other charges, shall be recoverable by the Authority.

(c) Each Member shall provide the Authority such other information as may be reasonably necessary for the Authority to develop and implement the Insurance Program under this Agreement.

(d) Each Member shall reasonably cooperate with and assist the Authority, and any organization providing excess insurance or reinsurance for the Insurance Program, and shall comply with all other rules promulgated by the Board of Directors.

(e) Each Member shall have such other responsibilities as are provided elsewhere in this Agreement, and as are established by the Board of Directors in order to carry out the purposes of this Agreement.

ARTICLE 18
NEW MEMBERS

Any California county and the Judicial Council of California may become a party to this Agreement and may participate in the program to pool those seismic related property damage risks retained by the counties with respect to court buildings subject to Level V seismic rating in accordance with California Government Code Section 70324.

ARTICLE 19
WITHDRAWAL

(a) A Member may withdraw as a party to this Agreement upon thirty (30) days advance written notice to the Authority if it has never become a Participating Member in the Insurance program pursuant to Article 14.

(b) Pursuant to Government Code section 70324, a Participating Member may withdraw any individual building used for court facilities from coverage by the Authority when it is determined that that building is no longer rated as a seismically-rated Level V Building, or is no longer used as a court facility.

(c) After becoming a participant in the Insurance program, a Participating Member may withdraw from that program only at the end of a Coverage Year for the program, and only if it gives the Authority at least sixty (60) days advance written notice of such action.

(d) Upon withdrawal of an individual building from coverage by the Authority, the Participating Member will no longer be billed an Annual Contribution for that building, but the Participating Member will not receive any refund of the Annual Contributions previously paid into the Authority allocable to that building, or any distribution allocable to that building except as provided in Article 22 of this Agreement.

ARTICLE 20
CANCELLATION

(a) Notwithstanding the provisions of Article 19, the Board of Directors may:

(1) For extended nonpayment of Annual Contributions or Contribution Surcharges, cancel any Member's interest in this Agreement and in the Authority, on a two thirds vote of the total membership of the Board of Directors. Such action shall have the effect of canceling the Member's participation in the Insurance Program as of the date that the membership is canceled.

(2) The Board shall give sixty (60) days advance written notice of the effective date of any cancellation under the foregoing provisions. Upon such effective date, the Member shall be treated the same as if it had voluntarily withdrawn from this Agreement and the Insurance Program pursuant to Article 19.

(b) A Member that does not become a Participating Member of the Insurance Program within the Member's first year as a Member of the Authority shall be considered to have withdrawn as a party to this Agreement at the end of the one year period following the implementation of the Insurance Program, and its membership in the Authority shall be automatically canceled as of that time, without action of the Board of Directors.

Comment [A6]: Section (c) conflicts with Art 14 (e) and appears unnecessary.

ARTICLE 21
EFFECT OF WITHDRAWAL OR CANCELLATION

(a) If a Member's participation in the Insurance program of the Authority is canceled under Article 20, and such cancellation is effective before the end of the coverage year for the Insurance Program, the Authority shall promptly determine and return to that Member the amount of any unused Annual Contribution payment from the Member for the remainder of that coverage year, such amount to be computed on a pro-rata basis from the effective date of cancellation.

Comment [A7]: We don't see that art 20 makes any distinction between cancellation of membership or participation so we eliminated the following language.

(b) Except as provided in (a) above, a Member which withdraws or is canceled from this Agreement and membership in the Authority, shall not be entitled to the return of any contribution or other payment made by that Member to the Authority.

(c) Participating Members that have withdrawn or been canceled pursuant to Articles 19 and 20 from the Insurance Program during a coverage year shall pay any contribution charges which the Board of Directors determines are due from the Participating Members for Losses and costs which were incurred by the Program during the Participating Member's participation in the program for that coverage year.

ARTICLE 22

TERMINATION AND DISTRIBUTION OF ASSETS

(a) A three-fourths vote of the total voting membership of the Authority, acting through their governing bodies, is required to terminate this Agreement; provided, however, that this Agreement and the Authority shall continue to exist after such election for the purpose of disposing of all Claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Authority.

(b) Upon termination of this Agreement, all assets of the Authority associated with the Insurance Program shall be distributed among those Participating Members in pro rata proportion to their cash contributions, including contributions paid and any property contributed (at market value when contributed). The Board of Directors shall determine such distribution within one (1) year after resolution of the last pending Claim or other liability covered by the Program.

(c) Following termination of this Agreement, any Participating Member shall pay any additional amount of contribution, subject to the limitations Article 14 (b) (1) of this Agreement, as determined by the Board of Directors in accordance with a loss allocation formula, which may be necessary to enable final disposition of all Claims arising from losses incurred under the Insurance Program for the coverage year during which the Participating Member was a participant in the Program regardless of the date of the Member's entry into the program.

ARTICLE 23
LIABILITY OF BOARD OF DIRECTORS, OFFICERS,
COMMITTEE MEMBERS AND LEGAL ADVISORS

The members of the Board of Directors, Officers, committee members and legal advisors to any Board or committees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest.

No Director, Officer, committee member, or legal advisor to any Board or committee shall be responsible for any action taken or omitted by any other Director, Officer, committee member, or legal advisor to any committee. No Director, Officer, committee member or legal advisor to any committee shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.

The funds of the Authority shall be used to defend, indemnify and hold harmless the Authority and any Director, Officer, committee member or legal advisor for their actions taken within the scope of the authority of the Authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide such coverage as is hereinabove set forth.

ARTICLE 24
BYLAWS

The Board may adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Authority.

ARTICLE 25
NOTICES

The Authority shall address notices, billings and other communications to a Member as directed by the Member. Each Member shall provide the Authority with the address to which

communications are to be sent. Members shall address notices and other communications to the Authority to the Administrator of the Authority, at the office address of the Authority as set forth in the Bylaws.

**ARTICLE 26
AMENDMENT**

A two-thirds vote of the total voting membership of the Authority, consisting of all Members, acting through their governing bodies, is required to amend this Agreement.

**ARTICLE 27
PROHIBITION AGAINST ASSIGNMENT**

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 28
AGREEMENT COMPLETE**

This Agreement constitutes the full and complete Agreement of the parties.

**ARTICLE 29
EFFECTIVE DATE OF AMENDMENTS**

Any amendment of this Agreement shall become effective upon the date specified by the Board and upon approval of any Amended Agreement as required in Article 26. Approval of any amendment by the voting boards of supervisors must take place no later than 30 days from the effective date specified by the Board.

ARTICLE 30
DISPUTE RESOLUTION

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

(a) Request for Reconsideration. The Member will make a written request to the Authority for the appropriate Committee to reconsider its position, if there is an appropriate committee to whom to submit the dispute, citing the arguments in favor of the Member and any applicable law or regulation that applies to the dispute. The Member can also, request a personal presentation to that Committee, if it so desires.

(b) Committee Appeal. If applicable, the committee responsible for the program or having jurisdiction over the decision in question will review the matter and reconsider the Authority's position. This committee appeal process is 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 the committee having jurisdiction, that committee member shall be deemed to have a conflict and shall be excluded from any vote.

(c) Executive Committee Appeal. If the Member is not satisfied with the outcome of the committee appeal, the matter will be brought to the Executive Committee for reconsideration upon request of the Member. If there is no appropriate committee to whom the dispute can be submitted, the dispute may be submitted to the Executive Committee in the first instance. If the Member requesting reconsideration is represented on the Executive Committee, that Executive Committee member shall be deemed to have a conflict and shall be excluded from any vote.

(d) Arbitration. 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, whether binding or non-binding, is to be mutually agreed upon by the parties. The matter will be submitted to a mutually agreed arbitrator or panel of arbitrators for a determination. If Binding Arbitration is selected, the decision of the arbitrator is final. The cost of arbitration will be shared equally by the involved Member and the Authority.

(e) Litigation. If, after following the dispute resolution procedure paragraphs a-d, either party is not satisfied with the outcome of a non-binding arbitration process, either party may pursue litigation as a possible remedy to the dispute.

ARTICLE 31
FILING WITH SECRETARY OF STATE

The Administrator of the Authority shall file a notice of this Agreement with the office of California Secretary of State within 30 days of its effective date, as required by Government Code Section 6503.5 and within 70 days of its effective date as required by Government Code Section 53051.

IN WITNESS WHEREOF, the undersigned party has executed this Agreement on the date indicated below.

Date: _____

COUNTY OF SANTA BARBARA

By: _____
Salud Carbajal, Chair, Board of Supervisors

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
County Counsel

APPENDIX A
JOINT POWERS AGREEMENT
CREATING THE EARTHQUAKE RECOVERY INDEMNITY AUTHORITY (ERIA)

MEMBERS AS OF _____, 2008