

JOINT POWERS AGENCY AGREEMENT FOR CITIES ASSOCIATION OF SANTA CLARA COUNTY

This Joint Powers Agreement (“Agreement” or “JPA”) for the Cities Association of Santa Clara County is entered into by and among the cities (“Members”), which are organized and existing under the Constitution and laws of the State of California in which public agencies are located in the County of Santa Clara, and upon approval and full execution of the Agreement, creates the Cities Association of Santa Clara County Joint Powers Agency (“Agency”).

RECITALS

WHEREAS, Articles 1 and 2, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 *et seq.*) permit two or more public agencies by agreement to jointly exercise powers common to the Members; and

WHEREAS, the public agency Members executing this JPA are cities or towns within the jurisdiction of the County of Santa Clara (“County”); and

WHEREAS, the Cities Association of Santa Clara County has existed as an unincorporated association since 1990 and desires to formalize the relationship between its City and Town members and form a Joint Powers Agency in order to carry out activities for the good of all its Members; and

WHEREAS, the Members executing this Agreement, desire to join together to create a separate Joint Powers Agency for the purpose of promoting cooperation among the Members; advocating for positive action; enhancing the quality of life for the residents of the County and their individual cities; and encouraging other joint and cooperative endeavors among the public agencies for their mutual benefit.

NOW, THEREFORE, the Parties agree to the following:

AGREEMENT

ARTICLE 1 - DEFINITIONS

- 1.1 “Associate Member” shall mean any non-city local agency, located within jurisdictional authority of the County of Santa Clara, and shall have duly executed and delivered to the Agency an Associate Membership Agreement in the form of and as further provided in the Bylaws of the Agency, as further provided in Article 32 herein.
- 1.2 “Agency” shall mean the Cities Association of Santa Clara County Joint Powers Agency created by this Agreement.
- 1.3 “Board of Directors” or “Board” shall mean the governing body of the Agency.
- 1.4 “Executive Committee” shall mean the Executive Committee of the Board of Directors of the Agency.

- 1.5 “Fiscal Year” shall mean that period of twelve (12) months which is established by the Board of Directors or the Bylaws as the fiscal year of the Agency, which shall run from July 1 to June 30 of each year.
- 1.6 “Government Code” shall mean the California Government Code, as amended.
- 1.7 “Joint Powers Law” shall mean Articles 1 and 2, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code, known as the Joint Exercise of Powers Act, as amended.
- 1.8 “Legislative Body” shall mean the legislative board of each Public Agency that is a Member of the Agency.
- 1.9 “Member” shall mean any city which has executed this Agreement and has become a member of the Agency. The complete list of Members is set forth in Exhibit “A” attached hereto and incorporated herein by this reference.
- 1.10 “Parties” shall mean Members or Associate Members who are party to this Agreement.
- 1.11 “Public Agency” shall mean public agency as defined in Government Code Section 6500, as amended.
- 1.12 Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neutral gender shall be construed to include each other gender, when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions herein shall be construed to effectuate the purposes set forth and to sustain the validity of those purposes.

ARTICLE 2 - CREATION AND PURPOSES

- 2.1 This Agreement is entered into by the Members in order to:
 - 2.1.1 Review, study, develop consensus positions, and take action on issues of interest to Members;
 - 2.1.2 Focus on local and regional matters that are important to our future;
 - 2.1.3 Develop a common agenda for Santa Clara County cities;
 - 2.1.4 Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
 - 2.1.5 Establish and administer the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
 - 2.1.6 Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;

- 2.1.7 Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
- 2.1.8 Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
- 2.1.9 Strengthen the Members' and Agency's standing at the regional, State and Federal level;
- 2.1.10 Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;
- 2.1.11 Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
- 2.1.12 Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
- 2.1.13 Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

ARTICLE 3 - PARTIES TO AGREEMENT

Each Member, as a Party to this Agreement, intends to and does contract with all other Members as Parties to this Agreement and, with other Public Agencies as may later be added as Parties to this Agreement pursuant to the Joint Powers Law. The withdrawal of any party from this Agreement, pursuant to Article 20, shall not affect this Agreement or the remaining Members' obligations.

ARTICLE 4 – FORMATION; TERM

This Agreement shall become effective when fully executed and returned to the Agency by at least eight (8) Members, but only as to those Members that have executed the Agreement. The Agency shall promptly notify all Members in writing of the effective date. After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar joint powers authority, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

ARTICLE 5 - CREATION OF THE AGENCY

Pursuant to the Joint Powers Law, there is hereby created a public entity, separate and apart from the Parties hereto, to be known as the "Cities Association of Santa Clara County Joint Powers

Agency” with powers as are set forth herein. Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist.

ARTICLE 6 - POWERS OF THE AGENCY

6.1 Subject to the terms of this agreement, the Agency shall have all of the powers of a public agency as defined in the Government Code Section 6500 as amended and all additional powers set forth in the Joint Powers Law and other statutes applicable to the Joint Powers Agency created hereby and is authorized to do all acts necessary for the exercise of these powers on behalf of its Members. Powers include, but are not limited to, the following, in the Agency’s own name:

- 6.1.1 To make and enter into contracts;
- 6.1.2 To incur debts, liabilities, and obligations and to encumber personal property;
- 6.1.3 To acquire, hold, or dispose of personal property, contributions, and donations of personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;
- 6.1.4 To sue and be sued in its own name, and to settle any claim against it;
- 6.1.5 To receive and use contributions and advances from Members as provided in Government Code Section 6504, as amended including contributions or advances of personnel and equipment;
- 6.1.6 To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5, as amended;
- 6.1.7 To acquire, construct, manage, maintain, or operate title to personal property, or rights, or any interest therein;
- 6.1.8 To retain the services of agents, contractors, and consultants;
- 6.1.9 To receive, collect, and disburse monies;
- 6.1.10 To conduct studies, tests, evaluations, and similar activities;
- 6.1.11 To contract for services from Members, including in-kind services;
- 6.1.12 To conduct public outreach and education;
- 6.1.13 To participate in pilot and demonstration projects;
- 6.1.14 To charge for services, programs, and/or systems;
- 6.1.15 To work with elected officials and local, regional, state, and federal agencies, including other joint powers agencies and unincorporated associations to pursue funding, enter agreements and otherwise carry out the purposes of the Agency; and

6.1.16 Subject to this Agreement or the Bylaws of the Agency, and only as authorized by the Joint Powers Law, to exercise other reasonable and necessary powers in furtherance or support of any purpose of the Agency.

ARTICLE 7 - RESTRICTIONS ON POWERS

- 7.1 Pursuant to and to the extent required by Government Code Section 6509, as amended, the Agency shall be restricted in the exercise of its powers and shall exercise its powers in the same manner as the Town of Los Gatos is restricted in its exercise of similar powers; provided that, if the Town of Los Gatos shall cease to be a Member, then the Agency shall be restricted in the exercise of its power in the same manner as another Member agreed to by the majority of the Board of Directors. Unless expressly provided for, the Agency does not, by virtue of this Section or this Agreement, subject itself to the internal policies or ordinances of any Member.
- 7.2 The Agency shall not have the power of eminent domain.
- 7.3 The Agency shall not have the power of taxation. The Agency may not impose taxes but may receive the proceeds of taxes imposed by other entities or public funds from other entities.
- 7.4 The Agency shall not have the power to acquire, purchase, hold or dispose of real property.
- 7.5 The Agency shall not have the power to hire employees.
- 7.6 The Agency shall not have the power to issue debt.

ARTICLE 8 - BOARD OF DIRECTORS

- 8.1 The Agency shall be governed by the Board of Directors, which shall be composed of one Director representing each Member. Each Member's Legislative Body, according to its own procedures, shall appoint a Member of the Legislative Body as a Director to represent the Member on the Board of Directors. The Director shall serve at the pleasure of their respective Legislative Body. The Legislative Body of each Member shall also appoint one alternate Director ("Alternate") who shall participate in and vote at any meeting of the Board when the primary Director is absent. Any vacancy in a Director or Alternate position shall be filled by the appointing Member's Legislative Body, subject to the provisions of this Article. Immediately upon admission of a new Member, the new Member shall be entitled and required to appoint a Director and one alternate Director. Every Director or Alternate shall be a Council Member or Mayor of their individual Member city.
- 8.2 A Director and/or Alternate shall be removed from the Board of Directors upon the occurrence of any one of the following events: (1) the Agency receives written notice from the appointing Member of the removal and/or replacement of the Director or Alternate; (2) the withdrawal of the Member from this Agreement; (3) the death or resignation of the Director or Alternate; (4) the Agency receives written notice from the Member that the Director or Alternate is no longer qualified as provided in the first paragraph of this Article 8; or as set forth in Article 21.

- 8.3 The Board of Directors shall have the following powers and functions:
- 8.3.1 Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Agency, either directly or by delegation to other bodies or persons;
 - 8.3.2 The Board shall elect an Executive Committee, as provided in Article 11;
 - 8.3.3 The Board shall be the policy setting body of the Agency;
 - 8.3.4 The Board shall appoint or retain the services of necessary agents, consultants, or independent contractors in accordance with Article 14;
 - 8.3.5 The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Agency. Adoption of the budget may not be delegated. The Board shall adopt their budget no later than the first April 30th following formation and then subsequently by April 30th of each successive year. The Board shall review, set, and adopt annual dues to be funded by Agency Members;
 - 8.3.6 The Board shall receive, review and act upon periodic reports and audits of the funds of the Agency, as required under Article 16 of this Agreement;
 - 8.3.7 The Board may adopt policies regarding personnel, conflicts of interest and other matters necessary or convenient for the efficient operation of the Agency;
 - 8.3.8 The Board shall adopt a set of priorities and work plan for each fiscal year; and
 - 8.3.9 Subject to the terms of this Agreement, the Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Agency.

ARTICLE 9 – MEETINGS OF THE BOARD OF DIRECTORS

- 9.1 The Board of Directors shall hold at least one regular meeting each year. The Board of Directors shall fix by resolution, or in the Bylaws, the date, time, and location of each regular meeting. The Board or Executive Director, in consultation with the President of the Board as provided in Article 10 below, may call special meetings.
- 9.2 Each meeting of the Board of Directors, including without limitation, regular, adjourned regular and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.
- 9.3 The Agency shall require the Secretary/Treasurer or designee to take and maintain minutes of all regular, adjourned regular and special meetings. As soon as practicable after each meeting, the Secretary/Treasurer or designee shall forward to each Board Member, a copy of the minutes of the meeting.
- 9.4 A majority of the Members of the Board shall constitute a quorum for the transaction of business. Unless otherwise required by law, a vote of the majority of a quorum of the members

present at a meeting is sufficient to take any action, unless otherwise specified in this Agreement. However, less than a quorum may adjourn the meeting to a future date.

9.5 Each Member of the Board shall have one vote.

ARTICLE 10 - OFFICERS

The Board shall elect as Officers of the Agency President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President at its first meeting. Thereafter, except as may be otherwise provided in the Bylaws of the Agency, the Board shall elect the President, First Vice President, Second Vice President, Secretary/Treasurer, and Immediate Past President, at the November Board of Directors meeting, or the first meeting held on or after November 1 of each year. Of the Officers, the President, and at least two other Officers, must also be members of the Board of Directors. The remaining Officers may be the elected or appointed Mayor or Council Member of any Member of the Agency regardless of whether they are on the Board of Directors. Each Officer shall assume the duties of his or her office upon election. If the President ceases to be a Member of the Board, the resulting vacancy shall be filled at the next meeting of the Board held after the vacancy occurs, or at a special meeting of the Board called to fill the vacancy. The President shall preside at and conduct all meetings of the Board. Should the Board President not be available then the highest-level Officer, who is a member of the Board of Directors, shall preside. If that individual is unavailable, then any Director appointed by the President may preside. The Board may appoint other officers as it considers necessary. The duties of the Secretary/Treasurer are set forth in Articles 16 and 17 of this Agreement. The Secretary/Treasurer shall be appointed by the Board of Directors and shall be eligible to serve as Secretary/Treasurer, as provided in the Joint Powers Law.

ARTICLE 11 - EXECUTIVE COMMITTEE

At such time as there are nine Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of three (3) Officers consisting of the President, First Vice President, and Secretary/Treasurer, which shall exist thereafter. At such time as there are 11 Members, the Board shall establish and elect an Executive Committee of the Board which shall consist solely of five (5) Officers, with the addition of the Immediate Past President, which shall exist thereafter. Should the Immediate Past President no longer hold elected office then a Member at Large may be appointed by the Board to serve on the Executive Committee. The qualifications of the Member at Large are that they must be an elected or appointed Mayor or Council Member of a Member of the Agency but need not be on the Board of Directors. The terms of office of the Members of the Executive Committee shall be one year. The Executive Committee shall conduct the business of the Agency between meetings of the Board, exercising all those powers as provided for in this Article, or as otherwise delegated to it by the Board.

The Executive Committee, subject to approval by the Board of Directors, shall exercise all powers or duties of the Board relating to the entering, approval and execution of agreements, leases, and other instruments of or relating to the finances of the Joint Powers Agency within the previously

approved annual budget or amended budget. The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency's annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall obtain approval from the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee. Each meeting of the Executive Committee shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 12 - COMMITTEES

The Board may establish committees, as it deems appropriate to conduct the business of the Agency or it may, in the Bylaws or by resolution, delegate this power to the Executive Committee by Resolution. Members of committees, except as otherwise stated in this Agreement, shall be appointed by the President. Each committee shall have those duties as determined by whichever Agency body created it or as otherwise set forth in the Bylaws. Each committee shall meet on the call of its chairperson and shall report to and be directed by whichever entity created it. No more than one representative from each jurisdiction shall serve on each committee. Membership of any committee may consist in whole or in part of persons who are not members of the Board; provided that the Board may delegate decision-making powers and duties only to a committee, a majority of the members of which are Board Members. Any committee, except the City Selection Committee, in which a majority of the members are not Board Members may function only in an advisory capacity. The Legislative Action Committee shall be a permanent Committee of the Agency chaired by the Second Vice President and whose members shall be appointed by the Agency Members. Should there be no Second Vice President, the Legislative Action Committee shall be chaired by the First Vice President. All standing committees shall abide by the Ralph M. Brown Act, Government Code Section 54950 *et seq.*, as amended.

ARTICLE 13 – CITY SELECTION COMMITTEE

The City Selection Committee is established pursuant to State law and the Agency shall administer the City Selection Committee as follows: The City Selection Committee shall be a permanent committee of the Agency, consisting of the Mayor of each City or Town, consistent with Government Code 50270, as amended. The Agency shall allow all cities in the County to participate in the City Selection Committee, whether or not they are members of the Agency.

ARTICLE 14 – PROFESSIONAL SERVICES

14.1 The Board of Directors may contract with individuals or companies to provide the following services at the pleasure of the Board of Directors:

- 14.1.1 Executive Director. The Board shall contract with a consultant or independent contractor to fulfill the following duties of an Executive Director: manage the affairs of the Agency, subject to the general supervision and policy direction of the Board and the Executive Committee; oversee the day-to-day activities of the Agency; select and manage the activities of all consultants and independent contractors to the Agency; be responsible for required filings by the Agency with the State of California; prepare or delegate the preparation of all meeting notices, minutes, and required documentation of the Agency; prepare and propose an annual budget; prepare reports and recommendations for consideration by the Executive Committee or Board; be responsible for billing and collection of annual dues; maintain the records of the Agency; assist Local Agencies in the preparation and filing of applications for participation in the financing programs of the Agency; expedite the processing of these applications; pay all invoices, taxes and amounts due; and perform other duties as are assigned by the Board and Executive Committee. The Executive Director may have the authority to sign agreements, applications, and other documents on behalf the Agency, if authorized by the Board or Executive Committee. The Executive Director shall have the Authority to enter into individual Agreements with a single vendor over the course of a fiscal year, on behalf of the Agency, up to the amount set by the Bylaws.
- 14.1.2 General Counsel. The Board shall contract with a consultant, independent contractor, or law firm to fulfill the duties of General Legal Counsel. The General Counsel shall take direction from the majority of the Board of Directors. The General Counsel shall be a member in good standing of the California State Bar. The General Counsel shall be responsible for the legal affairs of the Agency;
- 14.1.3 Auditor. The Auditor shall be a Certified Public Accountant licensed to practice in the State of California. The Auditor will conduct annual financial audits of the Agency;
- 14.1.4 Other services. The Executive Director may hire additional consultants and independent contractors, as appropriate, based upon a previously approved budget;
- 14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any agent, consultant or independent contractor of the Agency become a member of PERS or be entitled to a pension or retirement from PERS as a result of service to the Agency; and
- 14.1.6 The consultants and independent contractors fulfilling the duties of Executive Director, the Auditor, the General Counsel and any other consultants or independent contractors who provide services to the Agency shall be compensated in such manner as shall be approved by the Board and as permitted by applicable law.

ARTICLE 15 - SIGNIFICANT PROGRAMS

If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. If the Board deems it necessary, it may

appoint a working committee to study the significant program or activity and provide input to the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$10,000 or more in annual expenditures; this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into a specific program or project Agreement that includes relevant terms regarding the particular affected Members, and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These limited scope Agreements shall be subject to approval by the Board by a two-thirds vote of the Members.

ARTICLE 16 - ACCOUNTS AND RECORDS

- 16.1 The Agency shall adopt an operating budget pursuant to Section 8.3.5 of Article 8 of this Agreement.
- 16.2 The Secretary/Treasurer of the Agency or the Executive Director shall establish and maintain funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Agency shall be open to and made available for inspection at all reasonable times upon request by authorized representatives of the Members.
- 16.3 The Agency shall adhere to the standard of strict accountability for funds and report all receipts and disbursements as set forth in the Joint Powers Law.
- 16.4 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 the prior Fiscal Year to the Board.
- 16.5 The Agency shall either make or contract with a Certified Public Accountant to make an annual Fiscal Year audit of all accounts and records of the Agency, conforming in all respects with the requirements of the Joint Powers Law. A report of the audit shall be filed as a public record and be provided to each of the Members, and with the County Auditor of the County of Santa Clara. Costs of the audit shall be considered a general expense of the Agency. Any costs of the audit shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for this purpose.

ARTICLE 17 - RESPONSIBILITIES FOR FUNDS AND PROPERTY

- 17.1 The Secretary/Treasurer, or his or her designee, shall have the custody of and disburse the Agency's funds. Proceeds of similar obligations of the Agency may be deposited with a trustee, agent or other depository and shall not be considered the Agency's funds for purposes of this Article. The Secretary/Treasurer may delegate disbursements to persons as may be authorized by the Board or the Executive Committee to perform that function, subject to the requirements of Section 17.2 below.

- 17.2 The Secretary/Treasurer or designee shall perform all functions then required to be performed by the Treasurer under the Joint Powers Law. The Secretary/Treasurer shall review the financial statements and the annual audit of the Agency.
- 17.3 Pursuant to Government Code Section 6505.1, as amended, the Executive Director, the Secretary/Treasurer, and other persons as the Board may designate, shall have charge of, handle, and have access to the property of the Agency. The Agency shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in a form specified by the Board of Directors, covering any officers or agents of the Agency who are authorized to hold or disburse funds of the Agency and any officers or agents who are authorized to have charge of, handle and have access to property of the Agency.

ARTICLE 18 - MEMBER RESPONSIBILITIES

- 18.1 Each Member shall have the following responsibilities:
- 18.1.1 To appoint its Director and Alternate to, or remove its Director and Alternate, from the Board, as set forth in Article 8;
- 18.1.2 To consider proposed amendments to this Agreement as set forth in Article 29;
- 18.1.3 To make contributions in the form of annual membership assessments and fees, if any, determined by the Board for the purpose of defraying the costs of providing the annual benefits accruing directly to each party from this Agreement; and
- 18.1.4 If a Member provides written notice to the Agency of its election to relinquish its status as a Member, or if a Member fails to be represented at four (4) or more consecutive regular meetings of the Board of Directors, then that Member may be deemed to be a suspended Member, with all the rights and duties of an Associate Member, upon action of the Board of Directors duly adopted. Prior to the suspension, the President shall contact the Mayor and request that another Council Member be appointed or that reinstatement for the current Member be requested. The suspension shall be approved by the Board of Directors. Promptly following that action by the Board of Directors, the Member may be reinstated by informing the Board of its intent to be reinstated within thirty (30) days and to attend all future meetings either via the Director or Alternate. Removal of a Member for failure of the Director to attend meetings shall not relieve the Member from its obligations under any outstanding agreements relating to the Agency's financial obligations, except in accordance with this Agreement.

ARTICLE 19 - NEW MEMBERS

With the approval of the Board, any city located within the County of Santa Clara may become a party as a Member to this Agreement. A city requesting membership shall apply by presenting to the Agency, a resolution of the Legislative Body of the City, evidencing its approval of this Agreement. The date that the applying city will become a Member will be determined by the Board. The Agency shall

accept new Members upon a majority affirmative vote of the entire Board and upon payment of any Board determined assessments and fees.

ARTICLE 20 - WITHDRAWAL

A Member may terminate its membership in the Agency at any time upon giving one hundred and eighty (180) days written notice of withdrawal to the Agency. The notice shall be given to the Board of Directors. The effective date shall be the conclusion of the first Board Meeting which occurs after the one hundred and eighty (180) day notice period has passed. Any Member who withdraws shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued through the end of the current fiscal year of the Agency. The withdrawal does not in any way impair any contracts, resolutions, indentures, or other obligations of the Agency then in effect. In the event of a disagreement between the Agency and the withdrawing Member as to whether the withdrawal shall cause the impairment of any contracts, resolutions, indentures, or other obligations of the Agency, the determination shall be made by a majority vote of the Board of Directors. Any Member that withdraws and later seeks reinstatement to the Agency shall provide funds to the Agency, proportionate to their responsibility for the current fiscal year, as if the Member had never left the Agency. A withdrawing Member shall, in all events, remain liable for its proportionate share of: (i) its full amount of its proportionate share of the adopted fiscal year budget; (ii) any call for funds or assessment levied by the Agency prior to the date it provides its notice of withdrawal; (iii) any contribution in existence at the time of the notice of withdrawal.

ARTICLE 21 - REMOVAL

If the Board of Directors determines that reasonable cause exists to remove a Director from the Board, it can remove the Director and request that the Member who appointed the Director appoint a new Director. The Board may, by two-thirds majority vote of the entire Board, remove a Member based on a Member's breach of any material term of this Agreement, and the failure to cure that breach within sixty (60) days written notice. A terminated Member shall remain liable for any obligation under this Agreement as described above. Failure to pay dues within 60 days following notice shall result in a Member becoming suspended with all the rights of an Associate Member. A suspended Member shall immediately have its voting rights restored upon full payment of dues.

ARTICLE 22 - OBLIGATIONS OF AGENCY

The debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Members. Any Member may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Agency. Nothing in this Agreement shall be interpreted to limit the applicability of the provisions of Government Code Section 895.6.

ARTICLE 23 - TERMINATION AND DISTRIBUTION OF ASSETS

This Agreement may be terminated at any time that no financial obligations of the Agency are outstanding, with the approval of two-thirds of the Members. Upon termination of this Agreement, all assets of the Agency shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the parties to this Agreement, in accordance with the respective contributions of each of the Parties.

ARTICLE 24 - LIABILITY OF BOARD OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

- 24.1 The Members of the Board of Directors, Officers, and Committee Members of the Agency 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 individually liable for any mistake of judgment, or any other action made, taken, or omitted by them in good faith, nor for any act or omission by any agent, consultant or independent contractor selected with reasonable care, nor for loss incurred, resulting from any action made, taken, or omitted by them in good faith and with reasonable care through investment of Agency funds, or failure to invest.
- 24.2 No Director, Officer, or Committee Member shall be responsible for any act or omission of any other Director, Officer, or Committee Member. Unless otherwise required by law, no Director, Officer, or Committee Member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.
- 24.3 The funds of the Agency shall be used to defend, indemnify, and hold harmless the Agency for any Director, Officer, or Committee Member, for their actions taken within the scope of the Agency. Nothing herein shall limit the right of the Agency to purchase insurance to provide coverage for these types of losses.
- 24.4 These indemnification and defense obligations shall survive the termination of the Agreement as to any acts or omissions occurring before such termination.

ARTICLE 25 - INDEMNIFICATION

To the fullest extent allowed by law, the Agency shall defend, indemnify, and save harmless the Members and their governing bodies, officers, agents and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Agency or the activities undertaken pursuant to this Agreement.

ARTICLE 26 - BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Agency. The provisions of the Bylaws, as modified from time to time, shall establish the operating procedures and standards for the Agency.

ARTICLE 27 - NOTICES

The Agency shall address notices, billings, and other communications to a Member as directed by that Member. Each Member shall provide the Agency with the email and physical address to which communications are to be sent. Members shall address notices and other communications to the Agency, at the office address of the Agency, or the email address of the Agency as directed by the Member and as set forth in the Bylaws.

ARTICLE 28 - CODES

The Agency shall adopt and observe a Code of Conduct and Conflict of Interest Policy. The Agency shall comply with all requirements of the Fair Political Practices Commission as required by law or regulation.

ARTICLE 29 - AMENDMENT

This Agreement may be amended at any time by vote of the Members, acting through their Legislative Bodies. Any amendment of this Agreement shall become effective upon receipt by the Agency of notice of the approval of the amendment by two thirds of the Legislative Bodies of the Members.

ARTICLE 30 - SEVERABILITY

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.

ARTICLE 31 - 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, or asset of the Agency. This Agreement shall be binding upon and shall inure to the benefit of successors of the Members. This Agreement is intended solely for the benefit of the

Agency and its Members. No third party shall be deemed a beneficiary of this Agreement or have any rights against the Agency or its Members.

ARTICLE 32 - ASSOCIATE MEMBERS

Any Public Agency located within the jurisdictional authority of the County of Santa Clara may, with the approval of the Board of Directors, become an Associate Member of the Agency by executing and delivering to the Agency an Associate Membership Agreement and providing an Associate Membership fee and as further provided in the Bylaws. An Associate Member shall not be entitled to representation on the Board of Directors, or to vote on any matter coming before the Board of Directors or the Agency, unless a separate written agreement is entered into between the Associate Member and the Agency.

ARTICLE 33 - LIBERAL CONSTRUCTION

The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Agency.

ARTICLE 34 - NON-WAIVER

No waiver of the breach of default of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Member shall be construed to be a waiver of any succeeding breach of the same or other covenants, restrictions, or conditions of this Agreement. No delay or omission of exercising any right, power, or remedy in the event of a breach or default shall be construed as a waiver or a variation of any of the terms of this Agreement or any applicable agreement.

ARTICLE 35 - REMEDIES FOR BREACH

If any Member shall default on any obligation contained in this Agreement, the default shall not excuse any other Member from fulfilling its respective obligations under this Agreement. Any Member shall be entitled to pursue all legal and equitable remedies against another Member in response to any alleged default under this Agreement. Any and all of the remedies provided to the Members, hereunder or by law now or hereafter enacted, are cumulative and the exercise of one right or remedy shall not impair the Members to any other remedy.

ARTICLE 36 - ARTICLE HEADINGS

All article headings are for reference only and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 37 - DISPUTE RESOLUTION

- 37.1 The Members agree that any dispute regarding the enforcement or interpretation of any term, covenant, or condition of this Agreement ("Dispute") may first, for a period of not less than thirty (30) days, be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation, or any other binding arbitration or adjudicative dispute resolution process. The Members shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in the Dispute; (iii) exchange written position papers stating their position on the Dispute and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the Dispute; and (iv) engage and cooperate in such further discovery as the Members agree or mediator suggests may be necessary to facilitate effective mediation.
- 37.2 Each Member shall bear its own costs, attorney's fees, and expenses of the mediation. Venue of the mediation shall be a mutually agreeable city within Santa Clara County, California.

ARTICLE 38 – INSURANCE

If available, the Agency shall obtain insurance for all Members, appointed Members, and Committee Members, including, but not limited to, Directors and Officers liability insurance and general liability insurance containing policy limits in such amounts as the Board of Directors shall deem will be necessary to adequately insure against the risks of liability that may be incurred by the Agency. Insurance under this provision may include an insurance pool program.

ARTICLE 39 - FILING WITH SECRETARY OF STATE

The Executive Director of the Agency shall file a notice of this Agreement with the office of the California Secretary of State within thirty (30) days of its effective date, as required by Government Code Section 6503.5, as amended and within seventy (70) days of its effective date as required by Government Code Section 53051, as amended.

ARTICLE 40 - COUNTERPARTS

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto. Facsimile and electronic signatures shall be binding.

ARTICLE 41 - AGREEMENT COMPLETE

This Agreement constitutes the full and complete Agreement of the parties and supersedes any prior written Agreement between the Members on the same topic.