Trindel Insurance Fund

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REVISED AND RESTATED
JOINT POWERS AGREEMENT

Approved by the Board of Directors

May 18, 2018

TABLE OF CONTENTS

ARTICLE **PAGE**

I. DEFINITIONS …….…..5

II. PARTIES TO AGREEMENT……....6

III. CREATION OF THE TRINDEL INSURANCE FUND…….…..6

IV. PURPOSES……7

V. TERM OF AGREEMENT…….....8

VI. POWERS OF TRINDEL ……..8

VII. BOARD OF DIRECTORS ……...9

VIII. POWERS OF THE BOARD OF DIRECTORS ……...9

IX. OFFICERS ……. ……11

X. EXECUTIVE COMMITTEE …….…....….11

XI. RESPONSIBILITIES OF MEMBER ENTITIES …….…..12

XII. EXECUTIVE DIRECTOR ……..13

XIII. BUDGET AND FISCAL YEAR ……14

XIV. ANNUAL FINANCIAL AUDITS ……..14

XV. ESTABLISHMENT AND ADMINISTRATION OF FUNDS……14

XVI. NEW MEMBERS…….15

XVII. WITHDRAWAL ……..15

XVIII. REMOVAL ……..16

XIX. EFFECT OF WITHDRAWAL OR REMOVAL …….17

ARTICLE **PAGE**

XX. TERMINATION OF AGREEMENT …….17

XXI. DISPUTE RESOLUTION ……..18

XXII. LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS AND LEGAL ADVISORS …….19

XXIII. NOTICES ……20

XXIV. PROHIBITION AGAINST ASSIGNMENT ……..20

XXV. AMENDMENTS …….20

XXVI. SEVERABILITY ……20

XXVII. AGREEMENT COMPLETE ……21

XXVIII. FILING WITH SECRETARY OF STATE ……..21

TRINDEL INSURANCE FUND (TRINDEL)
JOINT POWERS AGREEMENT

THIS AGREEMENT is made in the State of California by and among those public entities organized and existing under the laws of the State of California, hereinafter referred to as "Member Entity(ies)", which are parties signatory to this Agreement. All such Member Entities are listed in Exhibit A, which is attached herto and made a part hereof.

RECITALS

A. California Government Code Section 6500 et seq, permits two or more public agencies, by agreement, to jointly exercise any power common to the contracting parties.

B. The Public agencies executing this Agreement desire to join together for the purpose of jointly funding, purchasing and/or establishing insurance and risk management programs as determined.

C. California Government Code Section 990.4 permits a local public entity to self-insure, purchase insurance through an authorized carrier, or purchase insurance through a surplus line broker, or any combination of these.

D. California Government Code Section 900.6 provides that the cost of insurance is a proper charge against that local entity.

E. California Government Code Section 990.8 provides that two or more local entities, by a joint powers agreement, may provide insurance by any one or more of the methods specified in Government Code Section 990.4, and further provides that such pooling of self-insured claims or losses shall not be considered insurance nor be subject to regulation under the California Insurance Code.

F. California Government Code Section 990.8 also provides that a joint powers agreement may provide that if any peril insured or covered under a contract has existed, and the joint powers authority or other parties participation in the pool have been liable for any period, the agreement may provide that the insured or covered party is not entitled to the return of premiums, contributions, payments or advances so far as the particular risk is insured or covered is concerned.

G. Labor Code Section 3700[c] permits all political subdivisions of this State, including each member of a pooling arrangement, under a joint exercise of powers agreement, to request a certificate of consent from the Division of Industrial Relations to self-insure against workers compensation claims.

H. The governing body of each Member Entity has determined that it is in its own interest and in the public interest that this Agreement be executed and that it participate as a member of the Trindel Insurance Fund (Trindel) created by this Agreement.

Now, therefore, in consideration of the above facts and the mutual benefits, promises and agreements set forth below, the Member Entities hereby agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the following definitions:

"Agreement" shall mean this Joint Powers Agreement Creating Trindel Insurance Fund (Trindel) and any amendment thereto.

"Board" or "Board of Directors" shall mean the governing body of Trindel.

"Bylaws" shall mean the Bylaws attached hereto as Exhibit B and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement Bylaws are referred to, said Bylaws shall be those set forth in Exhibit B, as may be amended. Each party to this Agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that Trindel shall be operated pursuant to this Agreement and said Bylaws.

The procedure for amending the Bylaws shall be as provided in the Bylaws so long as the procedure is not inconsistent with this Agreement.

"Deposit Premium" shall mean the estimated amount determined for each Member Entity necessary to fund its share of expected costs for each Program in which it is a participant.

"Executive Committee" shall mean the Executive Committee of the Board of Directors, constituted and exercising the authority set forth in this Agreement and in the Bylaws.

"Executive Director" shall be the person appointed by the Board to administer and supervise Trindel's activities subject to the direction and control of the Board of Directors and Executive Committee.

"Member Entity" or "Member" shall mean any California County which is a signatory to this Agreement, including any other agency for which the Board of Supervisors sits as the governing board.

"Memorandum of Coverage" shall mean the document or documents issued by Trindel specifying the type and amount of coverage's provided under any Program to the Member Entities by Trindel.

"Program" shall mean an area of coverage, such as, but not limited to, liability, workers' compensation, and property or other insurance programs or coverage which Trindel provides to its Member Entities.

"Special Assessment" shall mean any amounts in addition to Deposit Premiums already collected which are determined by the Board as necessary to pay the Program costs for a given Program year.

"Trindel" shall mean the Trindel Insurance Fund created by this Agreement.

ARTICLE II

PARTIES TO AGREEMENT

Each Member Entity, as a party to this Agreement, certifies that it intends to and does contract with all other parties who are signatories of this Agreement and, with such other parties as may later be added to this Agreement pursuant to Article XVI. Each Member Entity also certifies that the removal or withdrawal of any Member Entity from this Agreement, pursuant to Articles XVII and XVIII, shall not affect this Agreement or the remaining parties obligations under this Agreement. Should a conflict arise between the provisions of this Article and any applicable memorandum of Coverage or other document evidencing coverage, such memorandum of Coverage or other document evidencing coverage shall prevail.

ARTICLE III

CREATION OF THE TRINDEL INSURANCE FUND

Pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code, the Member Entities hereby create a public entity, separate and apart from the parties to this Agreement, to be known as the Trindel Insurance Fund with such powers as are hereinafter set forth. Pursuant to Government Code Section 6508.1, the debt, liabilities or obligations of Trindel shall not constitute the debts, liabilities or obligations for any party to this Agreement. However, a Member Entity may separately contract for or assume responsibility for specific debts, liabilities or obligations of Trindel.

ARTICLE IV

PURPOSES

This Agreement is entered into by the Member Entities in order to:

A. Create the Trindel Insurance Fund to carry out the purposes listed below and to jointly exercise the powers contained in this Agreement;
B. Develop effective risk management and other related programs to reduce the amount and frequency of their losses;
C. Create a loss funding method whereby overtime each member pays for its own losses <u>within the first self-insured retention;</u>
D. <u>Create a risk sharing pool in order to garner assets and reduce risk to members;</u>
E. Jointly purchase commercial insurance, associate and /or participate with other insurance pools, or self-insure against risks;
F. Jointly purchase administrative and other services including but not limited to underwriting, risk management consulting, loss prevention and control, claims adjusting, actuarial consulting, data processing, brokerage, accounting and legal services when related to any of the other purposes;
G. Do all things necessary to carry out the foregoing purposes, as well as all things to implement the terms of the Agreement as permitted by law.

ARTICLE V

TERM OF AGREEMENT

This Agreement shall continue in full force and effect until terminated as provided herein.

ARTICLE VI

POWERS OF TRINDEL

Trindel shall have the powers common to its Member Entities in California and all additional powers as set forth in the joint powers law, Government Code Section 6500 et seq. The parties herby authorize Trindel to do all acts necessary in the exercise of such powers to fulfill the purposes of this Agreement, referred to in Article IV, including, but not limited to, the following:

A. Make and enter into contracts;

B. Incur debts, liabilities and obligations;

C. Acquire, hold, lease, or dispose of real and personal property, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and public agencies;

D. Sue and be sued in its own name and settle any claim against it;

E. Employ agents and employees;

F. Acquire, construct, manage, maintain or operate any building, works or improvements;

G. Receive, collect and disburse monies; and invest its money not required for its immediate necessities, pursuant to Government Code Section 6509.5; and

H. Exercise all powers necessary and proper to carry out the terms and provisions of this Agreement.

These powers shall be exercised in the manner provided by applicable law and as set forth in this Agreement. <u>Such power is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, Del Norte County shall be designated by the agreement.</u>

ARTICLE VII

BOARD OF DIRECTORS

Trindel shall be governed by a Board of Directors composed of one member from each Member Entity. Each Member Entity shall appoint one member and one alternate to the Board of Directors who shall be either a member of the Board of Supervisors, a department head, or a staff member responsible for risk management.

If a director or alternate ceases to be an employee or elected official of a Member Entity, for any reason, his or her position on the Board and any of its committees shall immediately terminate.

ARTICLE VIII

POWERS OF THE BOARD OF DIRECTORS

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

A. The Board shall exercise all powers and conduct business of Trindel, either directly or by delegation of authority to other bodies or persons, pursuant to this Agreement and applicable law.

B. The Board may adopt such resolutions and other policy statements as deemed necessary in the exercise of those powers and duties set forth herein.

C. The board shall form an Executive Committee from its membership.

   The board shall delegate to that Committee, as provided in the Bylaws, such powers and duties as it sees fit.

D. The Board may form such other committees as it deems appropriate in conducting Trindel business.

E. The Board shall elect Trindel officers and appoint or employ necessary staff.

F. The Board shall cause to be prepared, and shall review, modify as necessary and adopt Trindel's annual operating budget.

G. The Board shall develop, or cause to be developed, and shall review, modify as necessary, and adopt each of Trindel's programs, including all provisions for reinsurance and administrative services necessary to carry out such program.

H. The Board shall contract or otherwise provide for necessary services to Trindel and to Member Entities. These necessary services may include, but shall not be limited to, administrative, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services.

I. The Board, either directly or through the Executive committee, shall provide general supervision and policy direction to the Executive Director.

J. The Board shall receive and act upon reports of its committees and the Executive Director either directly or through the Executive Committee.

K. The Board shall establish monetary limits upon any delegation of the claims payment and settlement authority, beyond which a proposed settlement must be referred to the Board for approval.

L. The Board shall require that Trindel review, audit, report upon, and make recommendations with regard to the safety or claims administration functions of any Member Entity insofar as those functions affect Trindel's liability or potential liability. The Board shall forward any or all such recommendation(s) to the Member Entity and the Board of Supervisors with a request for compliance and a statement of potential consequences for noncompliance.

M. The Board shall receive, review and act upon periodic reports and audits of Trindel's funds.

N. The Board shall appoint the Executive Director to serve at the Board's pleasure.

O. The Board may amend, repeal or adopt new Bylaws.

P. The Board may increase, decrease, or otherwise amend coverages, limits and other terms of any Memorandum of Coverage.

Q. No Special Assessment proposed by the Executive Committee shall be billed unless first approved by the Board.

R. The Board shall review and act upon applications for membership and shall determine which programs such applicants may participate in and when such participation begins.

S. The Board may remove a Member Entity from any Program or from membership in Trindel pursuant to Article XVIII of this Agreement.

T. The Board may ratify actions of the Executive Committee, where such ratification is required before the action becomes final.

U. The Board may enter into a joint venture or contractual agreement with any similar entity and may also enter into a merger or acquisition agreement with a similar entity, provided that if Trindel is not the surviving entity in any such merger or acquisition, such action shall require approval by the vote of three-fourths of the Member Entities.

V. The Board shall have such other powers and functions as are provided for in the Agreement, the Bylaws, applicable law and which are otherwise reasonably necessary to carry out the purposes of this Agreement.

W. The Board shall hold at least one regular meeting each year and shall provide for such other regular and special meeting as it deems necessary as provided in the Bylaws.

ARTICLE IX
OFFICERS

The officers of Trindel shall be the President, Vice-President, and Secretary. Their qualifications and duties shall be those set forth in the Bylaws.

ARTICLE X

EXECUTIVE COMMITTEE

The Board shall create an Executive Committee, all of whose members shall be directors. The Executive Committee shall be composed of four (4) members: the President, Vice-President, and two members from the Board. The Executive Director of Trindel shall attend meetings of the Executive Committee and shall serve as its Secretary but shall have no vote.

The authority of the Executive Committee and provisions for its meetings shall be as provided in the Bylaws.

ARTICLE XI

RESPONSIBILITIES OF MEMBER ENTITIES

Each Member Entity shall comply with and have the following responsibilities:

A. Execute this Agreement and participate in Trindel's liability, Property and Workers' Compensation Programs and any other programs as determined by the Board;

B. To pay Deposit Premiums, and any Special Assessments to Trindel on or before the due date;

C. To appoint, elect or remove representatives to serve as director and alternate on the Board as set forth in Article VII and the Bylaws, whose representatives shall act on behalf of the Member Entity on all matters coming before the Board;

D. To assure that its Board Member or alternate attends regular and special Board meetings held during each fiscal year;

E. To assure that its Board Member and alternate keep informed about Trindel's activities and to assist them in doing so;

F. To approve amendments to this Agreement as set forth herein;

G. To comply with all other Member Entity responsibilities as set forth in the Bylaws;

H. Submit to and cooperate with Trindel during any risk management and loss control audits required by the Executive Committee;

I. Respond within the timelines as specified in the Bylaws or as required by the Board to any recommendations for corrective action resulting from risk management and loss control audits.

J. Appoint an officer or employee of the Member Entity to be responsible for the risk management function for that Member Entity and to serve as a liaison between the Member Entity and Trindel for all matters relating to risk management;

K. Shall consider and respond to all recommendations of Trindel concerning the reduction of risk;

L. Provide Trindel such other information or assistance as may be necessary for Trindel to develop and implement insurance and other programs under this Agreement;

M. Cooperate with and assist Trindel, and any insurer of Trindel or the Member Entity, in all matters relating to this Agreement, and shall comply with all Bylaws and other rules adopted by the Board;

N. Other responsibilities as are provided elsewhere in this Agreement, MOU(s) and Bylaws and as are established by the Board in order to carry out the purposes of this Agreement.

ARTICLE XII

EXECUTIVE DIRECTOR

The Executive Director shall serve as Treasurer and attend meetings of the Board, the Executive Committee and other committees of the Board, but shall have no vote. He or she shall be responsible for the preparation and maintenance of all minutes of meetings of the Board and its Committees, notices of meetings and records of Trindel. The Executive Director shall also administer and supervise Trindel's business and activities, subject to the direction and supervision by the Board and the Executive Committee, and shall be responsible for carrying out the duties set forth in the Agreement, Bylaws contract or otherwise.

ARTICLE XIII

BUDGET AND FISCAL YEAR

The Board shall adopt an annual budget prior to the beginning of each Fiscal Year. Trindel's fiscal year shall be the twelve months commencing July 1 of each year.

ARTICLE XIV

ANNUAL FINANCIAL AUDITS

The Treasurer shall cause an annual financial audit of the accounts and records to be prepared by a Certified Public Accountant in compliance with California Government Code Sections 6505 and 6505.6 with respect to all receipts, disbursements, other transactions and entries into the books of Trindel. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to general accepted accounting standards. A report of each such audit shall be filed as a public record with the Board of each of the Member Entities, and each county auditor or the county in which each of the Member Entities is located. The report shall be filed within twelve (12) months of the end of the fiscal year under examination. Trindel shall pay all costs for such financial audits.

ARTICLE XV

ESTABLISHMENT AND ADMINISTRATION OF FUNDS

Trindel shall be responsible for the strict accountability of all funds and the reporting of all receipts and disbursements in accordance with generally accepted accounting principles. It will comply with all provisions of law relating to this subject, including California Government Code Section 6505, 6505.1, 6505.5, or 6505.6.

The Treasurer of Trindel shall establish and maintain such funds and accounts as may be required by good accounting practices. Separate accounts shall be established and maintained for each Program of Trindel. Books and records of Trindel in the hands of the Treasurer or other designated person shall be open to inspection at all reasonable times by members of the Board or authorized representatives of the Member Entities.

The Treasurer shall have the custody of and disburse Trindel funds and shall do those acts as are required pursuant to Government Code Section 6505.5 He or she may delegate disbursing authority to such persons as may be authorized by the Board to perform that function. Pursuant to Government Code Section 6505.1, the Treasurer and such other persons as the Board may designate shall have charge of, handle, and have access to Trindel's property.

Trindel shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in the form specified by the Board covering all officers and employees of Trindel who are authorized to hold or disburse Trindel's funds, and all officers and employees who are authorized to have charge of, handle, and have access to Trindel's property.

ARTICLE XVI

NEW MEMBERS

Any California County may apply for membership in Trindel. Approval requires the unanimous consent of the existing Member Entities, expressed by vote at a formal meeting or by written consent filed with Trindel. A new membership will become effective upon the execution of this Agreement.

ARTICLE XVII

WITHDRAWAL

Any Member Entity may withdraw from this agreement at the end of any fiscal year by giving notice in writing to the Board of Directors on or before March 1 preceding the fiscal year end.

A. Any member which withdrawal shall remain responsible to pay to Trindel any premium charge or Special Assessment which Trindel may lawfully make under its policies and practices pursuant to this agreement and any other agreement with the withdrawing member, and the account between such member and Trindel shall remain open until losses and claims attributable to the withdrawing member have been settled or until appropriate reserves have been made to provide for such losses. Any refunds due to the withdrawing Member shall only be paid by Trindel upon determination and approval by the Board of Directors.

B. A member exercising the unilateral right of withdrawal under this paragraph shall not be entitled to a division or distribution of any property acquired by Trindel as a result of its operations under this agreement, but Trindel in its discretion may enter into an agreement to pay upon a present or deferred basis any sum of money agreed upon between the withdrawing member and the Board of Directors of Trindel as consideration for the waiver of and release of any claim which with withdrawing member might make in the nature of a right to a share in the future in the property and assets of Trindel.

C. Trindel shall maintain in its books of account a record of the contributions made by the withdrawing member to the acquisition of funds or assets in proportion to the contributions made by the other members, for the purpose of determining the division or distribution to which the withdrawing member may be entitled in the event of the termination of the Fund in its entirety and the distribution of its assets upon dissolution.

ARTICLE XVIII

REMOVAL

A Member Entity may be removed from Trindel or a Program either with or without cause. The Executive Director shall review any lack of satisfactory performance or other problem with the Member Entity and shall attempt to resolve the matter. If the Executive Director determines that the Member Entity is unwilling or unable to correct the problem, the Executive Director shall present the matter to the Executive Committee. The Executive Committee may recommend to the Board that the Member Entity be removed, either for the cause or without cause. Action by the Board shall require a vote of three-fourths of the total number of directors.

Removal of a Member Entity shall be in accordance with provisions in the Bylaws.

ARTICLE XIX

EFFECT OF WITHDRAWAL OR REMOVAL

ON MEMBER ENTITY'S RESPONSIBILITIES

The withdrawal or removal of any Member Entity shall not terminate its responsibility with respect to the following:

A. Provide Trindel with such statistical and loss experience data and other information as may be necessary for Trindel to carry out the purposes of this Agreement;
B. Pay to Trindel when due any Deposit Premiums or Special Assessments for each Program in which it participated;
C. Cooperate fully with Trindel in determining the cause of losses in the settlement of claims;

D. Cooperate with and assist Trindel and any insurer, claims adjuster, legal counsel or other service provider engaged or retained by Trindel in all matters relating to this Agreement; and

E. Comply with the Bylaws, and all policies and procedures of Trindel not inconsistent with the provisions of this Agreement and not inconsistent with its withdrawal or removal from Trindel.

ARTICLE XX
TERMINATION OF AGREEMENT AND DISTRIBUTION OF ASSETS

This Agreement shall continue in full force and effect until terminated. Termination of this Agreement shall also constitute the termination of all Programs.

A. This Agreement may be terminated at any time by the vote of three-fourths of the Member Entities acting through their governing bodies; provided, however, that this Agreement and Trindel shall continue to exist for the purpose of disposing of all claims, the distribution of assets, and performing any other functions necessary to conclude the affairs of Trindel.

B. Upon termination of this Agreement, all net assets of each Program of Trindel shall be distributed among the existing Member Entities. Distributions shall be determined within six (6) months after the disposal of the last pending claim or other liability covered by each Program.

C. Following the termination of this Agreement, any Member Entity which was a participant in any Program of Trindel shall pay any additional amount of premium, determined by the Board of its designee in accordance with a Special Assessment formula, which may be necessary to enable final disposition of all claims arising from losses under that Program during the Member Entity's period of participation.

D. The Board is vested with all powers of Trindel for the purpose of concluding and dissolving the business affairs of Trindel. The Board may designate legal counsel and any committee or person to carry out a plan of dissolution adopted by the Board.

ARTICLE XXI

DISPUTE RESOLUTION

When a dispute arises between Trindel and a Member Entity, the following procedure is to be followed.

A. Request for Reconsideration. The Member Entity will make a written request to Trindel or any appropriate Committee to reconsider its positions, citing the arguments in favor of the Member Entity and any applicable case law that applies. The Member Entity can also, request a personal presentation to that Committee, if it so desires.
B. If after reconsideration the dispute remains unresolved, the Member Entity may pursue any other legal remedies available to it, including but not limited to, mediation, arbitration or by filing an action in Superior Court.

ARTICLE XXII

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

ARTICLE XXIII
NOTICES

Notices to Member Entities under this Agreement, or the Bylaws shall be sufficient if mailed to their respective addresses on file with Trindel. Notices to Trindel shall be sufficient if mailed to the address of the principal office of Trindel, addressed to the Executive Director.

ARTICLE XXIV
PROHIBITION AGAINST ASSIGNMENT

No Member Entity may assign any right, claim, or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member Entity shall have any right, claim or title to any part, share, interest, fund, premium or asset of Trindel, without unanimous approval of the Board.

ARTICLE XXV
AMENDMENTS AND EFFECTIVE DATE

This Agreement may be amended by a two-thirds vote of the Member Entities acting through their Board of Supervisors. Upon receipt of the vote of two-thirds of the Member Entities amending this Agreement, such amendment shall become effective immediately, unless otherwise stated therein. As of the effective date of any amendment, such amended Agreement shall replace and supersede the Joint Powers Agreement Creating Trindel Insurance Fund, executed April 28, 1980, and as subsequently amended.

ARTICLE XXVI
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 thereby.

ARTICLE XXVII
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, except as noted with respect to the Bylaws and Memorandum of Coverage. If any provision of this Agreement conflicts with a provision of the Bylaws, a Memorandum of Coverage or other document, such conflicting provisions shall be interpreted to avoid any such conflict, but this Agreement shall govern.

ARTICLE XXVIII
FILING WITH SECRETARY OF STATE

A notice of this Agreement and any amendments thereto shall be prepared and filed with the California Secretary of State within thirty (30) days of the effective date of this Agreement or any amendment. The notice shall contain the name of each public agency which is a party to the Agreement, the date upon which the Agreement became effective, a statement of purpose of the Agreement or the power to be exercised, and a description of the amendment or amendments made to the Agreement, if any.