

SUBJECT: Final Approval of MOU Amendment Regarding Committee Participation

ACTION FOR CONSIDERATION:

Approve the amendments to the Memorandum of Understanding (MOU) regarding Committee participation, effective December 8, 2011 and establish a deadline of March 1, 2012 for execution of the MOU by the members.

BACKGROUND:

Last spring, the Committee discussed a request that all public entity members have a seat on the Committee. At that time, the Committee directed staff to prepare a draft amendment to the MOU regarding this matter, with a stipulation that the county members retain at least 60% of the seats on the Committee. This provision is similar to the one outlined in the EIA's Joint Powers Agreement, as respects seats on the Board of Directors. In addition, staff proposed that the public entity representatives serve for a two-year term and that each public entity representative have the ability to appoint an alternate to vote in their absence.

The Committee reviewed the proposed amendments at their June 22, 2011 meeting and directed staff to distribute the document to the members and county counsels for review and comment. No feedback was received through that process. Therefore, enclosed for the Committee's consideration are the final proposed amendments in redline/strikeout text.

FISCAL IMPACT:

There will be an additional administrative cost included in the General Administrative budget for additional representatives to serve on the Committee; however, the additional cost is negligible, estimated at less than \$1k per year.

RECOMMENDATION:

Staff recommends final approval of the amendments to become effective immediately. The Committee should also establish a deadline for members to execute the amended MOU. Staff recommends giving the members at least 60 days and setting the deadline at March 1, 2012. If members don't execute the MOU by the deadline, they will have effectively provided notice of withdrawal at the next renewal (July 1, 2012). That action can be rescinded, however, by submitting the executed MOU to the EIA before July 1, 2012.

TYPE OF VOTE REQUIRED: Majority vote of the Committee (5)



Adopted: December 11, 1990
Effective: February 15, 1991
Amended: March 11, 2004
Amended: October 5, 2006
[Amended: December 8, 2011](#)

MEMORANDUM OF UNDERSTANDING GENERAL LIABILITY PROGRAM II

This Memorandum of Understanding is entered into by and between the CSAC-EIA (hereinafter referred to as the "Authority") and the participating members of the General Liability Program II (hereinafter referred to as "GLII"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

1. **JOINT POWERS AGREEMENT.** Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the Excess Insurance Authority (hereinafter referred to as "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **PROGRAM COMMITTEE.**

A. There is hereby established a GLII Program Committee (hereinafter referred to as "GLII Committee" or "Committee") and, except as otherwise provided herein, said Committee shall have full authority to determine all matters affecting the participating members.

B. The GLII Committee shall consist of all GLII member counties of the Authority, with the committee member being that person designated as the county's Board member for the Authority. In the event a county Committee member is not present at a meeting of the Committee, the County's Alternate Board member may serve as the county's alternate on the Committee. In addition to GLII member counties, ~~one member of the Committee shall be a Public Entity member appointed by the Executive Committee. The Public Entity designated representative shall serve for a one-year term.~~ each GLII public entity member shall be a member of the Committee, subject to the GLII member counties maintaining a minimum of 60% of the eligible voting membership on the Committee. The GLII public entity committee members shall be reduced accordingly to ensure at least 60% of the Committee consists of GLII member counties. For example, based upon the 8 current GLII member counties participating in the program, all 3 current GLII public entity members would have a seat on the Committee and maintain at least 60% representation by the GLII member counties. If the number of GLII member counties is reduced to 4, then the GLII public entity members would lose one seat and have only 2 votes. GLII public entity committee members shall be appointed by the Executive Committee and shall serve for a two year term. Each GLII public entity committee member shall designate an alternate to vote in their absence. The alternate must be an employee or elected or appointed official of the GLII public entity committee member.

C. The GLII Committee shall meet on the call of the Chair of the Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of the Authority (hereinafter referred to as the "Bylaws").

D. A majority of the members of the GLII Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the GLII Committee shall require the affirmative vote of a majority of the members of the Committee. Any meeting of the GLII Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."

3. **PREMIUMS.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium for the purpose of funding the GLII Program. Annual premium contributions, including Program administrative costs plus the Authority's general expense allocated to the Program by the Board for the next policy period, shall be as established by the GLII Committee upon consultation with the underwriters.

4. **MEMBER SELF-INSURED RETENTIONS.** The self-insured retention amounts of the members shall be established upon consultation with the underwriters and subject to approval by the GLII Committee.

5. **COST ALLOCATION.** The method of allocating contributions to the GLII Program shall be determined by the GLII Committee upon consultation with underwriters.

6. **FUNDING FOR CLAIMS.**

A. At the GLII Committee's discretion, based on market conditions, exposures, and/or loss history, self-insured layers or aggregated retentions may be established for the GLII Program for any policy period or combination of policy periods. If self-insured and/or aggregated retention layers are established, such will be funded by contributions from the members participating in the self-insured and/or aggregated retention layers, as determined by the Committee. Funding for these layers shall be used exclusively for the payment of claims made against the participating members, including expenses, in accordance with the terms and conditions of the applicable Memorandum of Coverage.

B. Any self-insured and/or aggregated retention layers shall be fully funded by the participating members, and may, at the discretion of the GLII Committee, be discounted for anticipated and/or earned investment earnings. Should such not be fully funded for any reason, pro-rata assessments may be made to the participating members pursuant to the provisions of Article 14.b.3. of the Agreement to ensure a 100% funding level.

7. **DIVIDENDS.** Notwithstanding Article 22.b. of the Agreement, if self-insured and/or aggregated retention layers are established and it is determined that funds remain after the payment of all claims, a dividend may be declared by the GLII Committee. If a dividend is declared, the dividend shall be payable to the members participating in the layer, during the period in which there are excess funds, based on each member's share of contributions to the applicable layer, regardless of whether the member is a participating member in the GLII Program at the time the dividend is declared.

8. **MEMORANDUM OF COVERAGE.** A Memorandum of Coverage will be issued by the Authority evidencing membership in the GLII Program and setting forth terms and conditions of coverage.

9. **CLAIMS ADMINISTRATION.** Each participating member is required to comply with the Authority's Underwriting and Claims Administration Standards (including Addendum B - Liability Claims Administration Guidelines) as amended from time to time, and which are attached hereto as Exhibit A and incorporated herein.

10. **APPLICATION TO THE PROGRAM.**

A. All applications to join the GLII Program will be evaluated by and subject to approval by the GLII Committee and the underwriter.

B. Any entity which makes application to become a participating member of the GLII Program who is not already a participating member in the Authority must also be approved in accordance with the provisions of Article 19 of the Agreement.

C. New participating members may be added to the GLII Program during the term of the coverage period on a pro-rata basis. Notwithstanding late entry into the Program, the new member may be assessed additional sums pursuant to paragraph 6 herein, based upon all claims against the fund during the entire coverage period.

11. **WITHDRAWAL AND/OR CANCELLATION FROM THE PROGRAM.** Withdrawal and/or cancellation of a member from the GLII Program shall be in accordance with the provisions of Article 20 or 21 of the Agreement, except that any interest or other dividend to which the withdrawing member is otherwise entitled shall be payable to the withdrawing member in accordance with paragraph 7 herein.

12. **LATE PAYMENTS.** Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

13. **RESOLUTION OF DISPUTES.** Any question or dispute with respect to the rights and obligations of the parties to this Memorandum regarding coverage shall be

determined in accordance with the Article 31 of the Agreement, and may also be subject to approval of the underwriter.

14. **AMENDMENT.** This Memorandum may be amended by a majority vote of the GLII Committee and signature on the Memorandum by the member's designated representative who shall have authority to execute this Memorandum. Should a member of the GLII Program fail to execute any amendment to this Memorandum within the time provided by the GLII Committee, the member will be deemed to have withdrawn as of the end of the policy period.

15. **COMPLETE AGREEMENT.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

16. **SEVERABILITY.** Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

17. **EFFECTIVE DATE.** This Memorandum shall become effective on the effective date of coverage for the member and upon approval by the GLII Committee of any amendment, whichever is later.

18. **EXECUTION IN COUNTERPARTS.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

In witness whereof, the undersigned have executed this Memorandum as of the date set forth below.

Dated: _____
CSAC Excess Insurance Authority

Dated: _____

Name, Position: _____

Member Entity: _____