

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: ARBITRATION OF NON-COVERAGE DISPUTES

DATE: June 16, 2022

AMENDED DATE: October 12, 2022

REVIEWED DATE: July 6, 2022

STATEMENT

NON-COVERAGE DISPUTE DETERMINATIONS-

This Policy and Procedure applies to disputes arising out of the interpretation or application of the ACCEL Joint Powers Agreement, Bylaws, and/or Administrative Policies and Procedures, or any other dispute between a Member and ACCEL, except coverage disputes arising from the interpretation or application of the Memorandum of Coverage. When a non-coverage dispute arises between the Authority and a Member, the following procedures are to be followed:

- (a) **Request for Reconsideration.** Any Member with a non-coverage dispute with ACCEL can bring that dispute to either the Program Administrator, the President or to the Executive Committee at its discretion, in writing, citing the nature of the dispute and recommendations for resolution in favor of the Member. If the issue can be addressed by the Program Administrator without amending any ACCEL practices and procedures, and is agreed to by the Member, the Program Administrator can proceed to resolve the issue. If this does not succeed in resolving the issue, the Member is entitled to appeal to the Executive Committee and then the Board of Directors, as set forth below.
- (b) **Executive Committee Appeal.** If the dispute is to be presented to the next Executive Committee agenda, the Member shall notify the Program Administrator or the President or both of the nature of the dispute and any recommendations for resolution at least 30 days prior to the next Executive Committee meeting. Appeal requests received with less than 30 day notice will either be held for the next following meeting, or in the discretion of the Board President, can be placed on the agenda with less than 30 day notice if there is a need for prompt action and there is compliance with the Brown Act. The Member will present its issue in writing with sufficient time for inclusion in the Executive Committee agenda packet, and the Member and Program Administrator may make oral presentations to the Executive Committee, subject to reasonable time constraints, and the Executive Committee shall then make an initial determination as to an acceptable resolution, if possible, and with the agreement of the Member, to so direct staff. If no resolution can be agreed upon by the Executive Committee and the Member, then the dispute can be appealed by the Member to the Board of Directors. (Note: If the Member with the dispute is also represented on the Executive Committee, that Member representative shall be deemed to have a conflict and shall be excluded from any final deliberation and vote of the Executive Committee.)
- (c) **Board of Directors Appeal:** A Member's decision to appeal the Executive Committee determination on a dispute to the Board of Directors shall be submitted in writing, stating the

reasons for the appeal, within thirty (30) calendar days of the date of the Executive Committee's written notice of the dispute determination.

The appeal shall be considered by the Board of Directors at the next regular or special meeting following receipt of the written appeal; if the appeal is received too late for inclusion in the agenda packet, it can be postponed to the next following Board meeting. The Program Administrator in conjunction with the Executive Committee and the Member will have the right to submit written materials and present the dispute to the Board of Directors, subject to reasonable time constraints. (Note: The representative for the Member shall be deemed to have a conflict and shall be excluded from final deliberation and a vote of the Full Board on this matter.)

Any decision by the Board of Directors with respect to the non-coverage dispute shall not be subject to any court action. If the decision involves an exercise of discretion by the Board, the decision of the Board shall be final and not reviewable. If the Member asserts that the decision is in breach of the Joint Powers Agreement, Bylaws, and/or Administrative Policies and Procedures of the Authority, such dispute shall be subject to binding arbitration as set forth below.

(d) **Arbitration.** However, if the Member disagrees with the decision of the Board of Directors regarding the non-coverage dispute, other than an exercise of discretion by the Board, the Member dispute may instead be submitted to binding arbitration in accordance with the procedures set forth below:

Notice of a request for binding arbitration by the Member must be submitted within thirty (30) calendar days from the date of the noticed decision by the Board of Directors.

The matter will be submitted to a mutually agreed arbitrator or panel of arbitrators for a determination. Arbitration shall be conducted pursuant to the California Arbitration Act, Code of Civil Procedure sections 1280, et seq. The arbitrator(s) shall issue a written opinion stating the basis for the award.

The course of the decision of the arbitrator is final. Both sides agree to abide by the decision of the arbitrator(s). No appeals shall be allowed from the arbitration award except those permitted under Code of Civil Procedure section 1286.2, relating to corruption, fraud, misconduct, etc.

The cost of arbitration (arbitrator fees and reporter costs, if any) shall be shared equally by the Member and ACCEL. Each side shall bear its own attorney fees.

Under no circumstances shall ACCEL be liable for consequential damages, "bad faith" damages, or any sums beyond any amounts due under the ACCEL JPA Agreement, Bylaws and any applicable policies and procedures.