

POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE

2021/22 PROGRAM YEAR

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM

COVERAGE DECLARATIONS

MEMORANDUM NO. CSJVRMA 2021-GL

NAMED COVERED PARTY: Member Cities of the Central San Joaquin Valley Risk Management Authority, as per Endorsement No. 1
1750 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

MEMORANDUM PERIOD: From 7-1-2021 to 7-1-2022
12:01 a.m. Pacific Standard Time

LIMITS OF COVERAGE: \$1,000,000 Each **Occurrence** less **Covered Party's Retained Limit** Listed in Endorsement No. 2

FORM AND ENDORSEMENTS: Form No. CSJVRMA 2021-GL;
Endorsements No. 1, 2, 3, 4, 5, 6, and 7, and Exhibit A and B Forming Part of the Memorandum at Inception

It is agreed that this Declarations and the Memorandum of Coverage, together with the terms of any endorsements, the JPA Agreement, Bylaws, Master Plan Document, or other relevant policies, constitute the entire coverage agreement. This Memorandum of Coverage shall be controlling with regards to any inconsistencies.

ON BEHALF OF THE CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY



AUTHORIZED REPRESENTATIVE

**CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY
POOLED LIABILITY PROGRAM**

MEMORANDUM OF COVERAGE

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MEMORANDUM OF COVERAGE FOR THE CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

(Hereinafter referred to as the **Memorandum of Coverage**)

POOLED LIABILITY PROGRAM

This **Memorandum of Coverage** is the coverage document between **Member City** and the **Authority**. The terms of this **Memorandum of Coverage** may not be changed or waived except by amendment made a part of this **Memorandum of Coverage**.

Throughout this **Memorandum of Coverage**, words and phrases that appear in bold have special meaning. They are defined in Section II, Definitions and other Governing Documents of the **Authority**.

In consideration of the payment of the deposit premium, the **Authority** agrees with the **Covered Parties** as follows:

SECTION I – COVERAGE

Except as otherwise excluded, the **Authority** will pay up to the **Limit of Coverage** for the **Ultimate Net Loss**, less the **Retained Limit**, that a **Covered Party** become legally obligated to pay as **Damages** by reason of **Tort Liability** imposed by law, because of **Bodily Injury, Non-Employment Sexual Abuse, Property Damage, Personal Injury, and Public Officials Errors and Omissions**, as those terms are herein defined and to which this **Memorandum of Coverage** applies, caused by an **Occurrence** during the **Coverage Period**.

This **Memorandum of Coverage** does not provide insurance but instead provides for pooled self-insurance. This **Memorandum of Coverage** is a negotiated agreement amongst the members of the **Authority**, and none of the parties to this **Memorandum of Coverage** is entitled to rely on any contract interpretation principles applicable to contracts of adhesion and/or that require interpretation of ambiguous language against the drafter of such agreement. This **Memorandum of Coverage** shall be applied according to the principles of contract law, giving full effect to the intent of the members of the **Authority** in adopting this **Memorandum of Coverage**. As the **Authority** is not an insurer, it has no obligation to issue reservation of rights letters or otherwise provide notice to a **Covered Party** of any coverage dispute, and failure to do so shall not operate to waive any of the provisions of this **Memorandum of Coverage**. Further, regardless of the existence or nature of any coverage dispute, Civil Code § 2860 does not apply to any obligations of the **Authority** under this **Memorandum of Coverage**, nor does any case law preceding or interpreting that statute on the obligations of insurers, including but not limited to *San Diego Federal Credit Union v. Cumis Ins. Society, Inc.* (1984) 162 Cal.App.3d 358.

SECTION II - DEFINITIONS

- A. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
- B. **Authority** means the Central San Joaquin Valley Risk Management Authority.

- C. **Automobile** means a land motor vehicle, trailer, or semi-trailer.
- D. **Bodily Injury** means emotional distress or physical damage sustained by a person's body, including but not limited to, a cut, abrasion, bruise, burn, disfigurement, physical pain, illness or death. **Bodily Injury** also includes **Damages** claimed by any person or organization for care, loss of services or death allegedly resulting from the **Bodily Injury**. However, **Bodily Injury** does not include harm of any kind arising out of connected with, or resulting from **Non-Employment Sexual Abuse**.
- E. **Coverage Period** means that term prescribed for coverage by the **Authority** as set forth in the Declarations page.
- F. **Covered Indemnity Contract** means that part of any contract or agreement pertaining to the **Covered Party's** routine governmental operations under which the **Covered Party** agrees to provide indemnity to another party to pay for **Bodily Injury** or **Property Damage** to a third person or organization. This definition applies only to liability that would be imposed by law in the absence of any contract or agreement. **Covered Indemnity Contract** shall not include that part of any contract or agreement pertaining to the **Covered Party's** routine governmental operations under which the **Covered Party** agrees to provide indemnity to another party to pay for **Bodily Injury** or **Property Damage** to a third person or organization, where the liability of the **Covered Party** is based upon or arises out of actual or alleged breach of such contract or agreement, or actual or alleged breach of or failure to perform any duty arising in connection with such contract or agreement. Nothing in the term or in the definition of **Covered Indemnity Contract**, or in any portion of this **Memorandum of Coverage** which refers to **Covered Indemnity Contract** shall be construed as a grant of coverage. Any defense and/or indemnity coverage afforded by this provision shall not be broader than the **Authority's** duty to defend and indemnify a **Covered Party**. **Covered Indemnity Contract** is to be applied only as an exception to the exclusion for liability assumed under any contract or agreement.
- G. **Covered Party** means:
- (1) The entity named in the Declarations, including any and all commissions, agencies, districts, authorities, boards, including the governing board or similar entities coming under such entity's direction or control or for which such entity's board members sit as the governing body. **Covered Party** includes all departments and constituent agencies of the entity, except a hospital board or commission, regardless of how such body is denominated.
 - (2) Persons who are past or present elected or appointed officials, employees, or volunteers of the **Covered Party**, whether or not compensated, while acting for or on behalf of the **Covered Party**, including while acting on outside boards at the direction of the **Covered Party**, except any hospital board or commission, regardless of how such body is denominated, or any other Joint Powers Authority, or any separate agency or entity, created by a Joint Powers Agreement, subject to the provisions of subparagraph (6). This definition is not intended to expand the definition of "employee" set forth in Government Code § 810.2, nor is it intended to provide any greater or different indemnity obligations than contained in Government Code §§ 815, 815.3, 825-825.6 and 995-996.6 inclusive.

- (3) Any person or entity identified as a **Covered Party**, holding a certificate of coverage duly issued by the **Authority**, for **Occurrences** during the coverage period identified in the certificate of coverage; if a particular activity is identified in the certificate of coverage, the person or entity is a **Covered Party** only for **Occurrences** arising out of the described activity.
- (4) Any officer or director of the **Authority** while in the course and scope of their duties for the **Authority**, with respect to **Public Officials Errors and Omissions** coverage.
- (5) **Covered Party** shall include the Administrator for any liability arising out of the Medicare/Medicaid & State Children's Health Insurance Program (SCHIP) Extension Act 2007 (MMSEA) reporting duties on behalf of the **Authority**.
- (6) **Covered Party** does not include any person, organization, trust or estate or any other entity for any risk, claim, or loss which is incurred or occurs arising out of the activities of any legal entity defined as an entity filed or registered with the California Secretary of State or any other Joint Powers **Authority**, unless legal entity or Joint Powers Authority is added hereto by endorsement, or unless all members of such other legal entity or Joint Powers Authority are entities named in the Declarations.

However, as to any person who is an official, employee, or volunteer of the entity named in the Declarations and is participating in the activities of any other legal entity or Joint Powers Authority on behalf of that named entity, the coverage afforded by this **Memorandum of Coverage** will apply in excess of and shall not contribute with any collectible insurance or other coverage provided to or through the other legal entity or Joint Powers Authority covering a loss also covered hereunder (whether on a primary, excess or contingent basis).

- (7) **Covered Party** does not include any person or entity, including any member, for any risk, claim, or loss arising out of the existence, operations, or conduct of a non-profit organization as defined in § 501(c)(3) of the Internal Revenue Code or equivalent California state statutes, including but not limited to California Corporations Code § 5110 et seq.
- (8) With respect to any **Automobile** owned by the **Covered Party** or leased or hired for use by or on behalf of the **Covered Party**, any person while operating such **Automobile** in the course and scope of employment by the **Covered Party** and any person or organization legally responsible for the operation thereof, provided its actual operation is with the permission of the entity named in the Declaration page, except:
- (a) Any person or organization, or any agent or employee thereof, other than a **Covered Party**, operating an **Automobile** sales agency, repair shop, service station, storage garage, or public parking place, with respect to an **Occurrence** arising out of the operation thereof, including road testing and delivery; or

- (b) The owner or any lessee, other than the **Covered Party**, of a leased or hired **Automobile**, or any agent or employee of such owner or lessee.
 - (c) This **Memorandum of Coverage** does not provide uninsured or underinsured motorist coverage.
- (9) Notwithstanding sections (2) and (6) above, the defense and indemnity coverage afforded by this **Memorandum of Coverage** to a past or present official, employee, or volunteer of a member entity (including a member entity of a member Joint Powers Authority) is not broader than the member entity's duty to defend and indemnify its official, employee or volunteer pursuant to California Government Code §§ 815, 815.3, 825-825.6, 995-996.6, inclusive, and any amendments thereof. If the member entity which employs the official, employee, or volunteer is not obligated under the California Government Code to provide a defense or to provide indemnity for a claim, or if said member entity refuses to provide any such defense or indemnity coverage to said official, employee or volunteer, then this **Memorandum of Coverage** shall not provide such defense or indemnity coverage to said official, employee or volunteer. All immunities, defenses, rights, and privileges afforded to a member entity under California Government Code §§ 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to the **Authority** to bar any defense or indemnity coverage under this **Memorandum of Coverage** to that member entity's official, employee or volunteer.

H. **Cyber Liability** means loss arising from or related to electronic media and storage devices, including, but not limited to, alteration, corruption, destruction, deletion, or damage to data or data storage devices, transmission or failure to prevent transmission of malicious code or virus, cyber extortion, data protection, business interruption loss, privacy notification costs, penalties for regulatory defense or other penalties, or any other damage or loss arising out of or related to the acquisition, storage, use, misuse, disclosure, or transmission of electronic data of any kind.

I. **Dam** means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either (a) is 25 feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream, channel or watercourse, to the maximum possible water storage elevation; or (b) has an impounding capacity of 50 acre-feet or more.

Any such barrier which is not in excess of 6 feet in height, regardless of storage capacity, or which has a storage capacity not in excess of 15 acre-feet, regardless of height, shall not be considered a **Dam**.

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, no road or highway fill or structure, no circular tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, no water or wastewater treatment facility, and no barrier which is not across a stream channel, watercourse, or natural drainage area and which has the principal purpose of impounding water for agricultural use or stormwater detention or water

recharging or use as a sewage sludge drying facility shall be considered a **Dam**. In addition, no obstruction in the channel of a stream or watercourse which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground shall be considered a **Dam**. Nor shall any impoundment constructed and utilized to hold treated water from a sewage treatment plant be considered a **Dam**. Nor shall any wastewater treatment or storage pond exempted from state regulation and supervision by Water Code § 6025.5 be considered a **Dam**.

- J. **Damages** mean compensation in money recovered by a claimant and/or plaintiff for loss or detriment arising out of an **Occurrence**. If such compensation in money is recovered, then **Damages** also includes costs and attorney fees not based on contract awarded against the **Covered Party**, to the extent that the costs or fees are attributed to an **Occurrence**. If a claim does not allege or seek **Damages**, then the **Authority** has no duty to pay **Defense Costs** even if the claim alleges or seeks attorney fees and costs not based on contract.
- K. **Defense Costs** means all fees and expenses incurred by any **Covered Party** caused by and relating to the defense or litigation of a claim including attorney's fees, court costs, and interest on judgments accruing after entry of judgment. **Defense Costs** shall include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the **Covered Party** that are assumed by the **Covered Party** in a **Covered Indemnity Contract** where such attorney fees or costs are attributable to a claim for **Damages** covered by this **Memorandum of Coverage**. **Defense Costs** shall not include the office expenses of the **Authority** or the **Covered Party**; the salaries of employees, contract city attorneys, or officials of the **Authority** or any **Covered Party**; investigation costs or the expenses of a claims administrator engaged by any **Covered Party**; or attorney fees or costs awarded to a prevailing plaintiff against the **Covered Party**.
- L. **Limit of Coverage** means the amount of coverage stated in the declaration page or certificate of coverage or sub-limits as stated therein for each **Covered Party** per **Occurrence**, subject to any lower sublimit stated in this **Memorandum of Coverage**. For each **Occurrence**, there shall be only one **Limit of Coverage** regardless of the number of claimants or **Covered Parties** against whom a claim is made. In the event that a structured settlement, whether purchased from or through a third-party, or paid directly by the **Covered Party** in installments, is utilized in the resolution of a claim or suit, the **Authority** will pay only up to the amount stated in the declarations or certificate of coverage, in present value of the claim as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the declarations or certificate of coverage.
- M. **Medical Malpractice** means the rendering of or failure to render, during the policy period, any of the following services:
- (1) Medical, surgical, dental, psychiatric, psychological counseling, X-ray, or nursing service or treatment or the furnishing of food or beverages in connection therewith, or any services provided by a health care provider as defined in § 6146 (c) (2) and (3) of the California Business and Professions Code.
 - (2) Furnishing or dispensing of drugs or medications; or medical, dental, or surgical supplies or appliances.

Medical Malpractice does not include emergency medical services or first aid administered by employees, nor does it include advice or services rendered by a 911 emergency dispatcher.

- N. **Non-Employment Sexual Abuse** means actual or alleged unwelcome or offensive conduct of a sexual nature directed towards any claimant(s), including any sexual act, contact or touching of a sexual nature, sexual assault, abuse, molestation or harassment of a sexual nature, or verbal, written, recorded, or electronic correspondence, transmission or communication of a sexual nature.
- O. **Nuclear Material** means source material, special nuclear material, or by-product material. "Source material", "special nuclear material", and "by-product material" have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.
- P. **Occurrence** means:
- (1) With respect to **Bodily Injury**, or **Property Damage**: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Covered Party**. **Property Damage** that is loss of use to tangible property that is not physically injured shall be deemed to occur at the time of the **Occurrence** that caused it. Regardless of the number of **Covered Parties**, all claims arising out of the same accident, including continuous or repeated exposure to substantially the same generally harmful conditions, shall be considered as arising out of one **Occurrence**.
 - (2) With respect to **Personal Injury** and **Public Officials Errors and Omissions** respectively: an offense described in the definition of those terms in this coverage **Memorandum of Coverage**. Regardless of the number of **Covered Parties**, all claims arising out of the same offense or series of related offenses shall be considered as arising out of one **Occurrence**.
 - (3) For Non-Employment Sexual Abuse: a Covered Party's acts or omissions that expose the Covered Party to liability for the Covered Party's alleged failure to protect, prevent, control, train, supervise and/or warn of any Non-Employment Sexual Abuse. This provision shall not be interpreted as providing coverage for Non-Employment Sexual Abuse to any Covered Party for his or her act or omission in perpetrating the abuse. In the event of allegations of sexual abuse, regardless of the number of alleged victims, regardless of the number of alleged acts of sexual abuse, and regardless of the number of locations where the alleged acts of sexual abuse took place, all instances of sexual abuse by the same alleged perpetrator or perpetrators shall be deemed to be one occurrence taking place at the time of the first alleged act of sexual abuse. Coverage in effect at the time the occurrence takes place shall be the only coverage that may apply, regardless of whether other instances of sexual abuse by the same alleged perpetrator or perpetrators took place during other MOC periods. In the event subsequent allegations of sexual abuse are made by different alleged victims involving the same alleged perpetrator or perpetrators, they shall be deemed to be part of the same occurrence taking place at

the time of the first reported occurrence involving the same alleged perpetrator or perpetrators, and coverage in effect at the time of the first reported occurrence shall be the only coverage that may apply.

- (4) **Non-Employment Sexual Abuse** that exposes a **Covered Party** to vicarious liability under California law. This provision shall not be interpreted as providing coverage for **Non-Employment Sexual Abuse** to any **Covered Party** for his or her act or omission in perpetrating the abuse. Notwithstanding any other provision of this **Memorandum of Coverage**, when there are allegations or claims that involve either the same alleged perpetrator (s), whether acting alone or together or the same claimant or group of claimants and the alleged acts or omissions occur in either one or in multiple coverage periods, the claims shall be considered as just one **Occurrence** and shall be limited to only one **Limit of Coverage**.

Q. **Personal Injury** means injury arising out of one or more of the following offenses:

- (1) False arrest, detention, imprisonment, malicious prosecution, or abuse of legal process;
- (2) Wrongful entry into, or eviction of a person from a room, dwelling, or premises that the person occupies;
- (3) Publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or oral or written publication of material that violates a person's right of privacy;
- (4) Discrimination or violation of civil rights; and
- (5) Injury resulting from the use of reasonable force for the purpose of protecting persons or property.

R. **Pollutants** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including mold, fungal pathogens, electromagnetic fields, smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles, or fibers and waste. Waste includes materials to be discarded or to be recycled, reconditioned, or reclaimed. The term **Pollutants** as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.

S. **Property Damage** means:

- (1) Physical injury to tangible property, including all resulting loss of use of that property; or
- (2) Loss of use of tangible property that is not physically injured or destroyed.

T. **Public Officials Errors and Omissions** means any actual or alleged misstatement or misleading statement or error or omission, by any individual, or a collection of individuals, arising in the course and scope of the individual's duties with a **Covered Party** entity or claimed against the individual solely by reason of the individual being or having been a public official or employee of a **Covered Party** entity and which results in damage neither

expected nor intended from the standpoint of the individual seeking coverage. In the event a claim is made against a **Covered Party** entity arising out of a claim or potential claim against an individual **Covered Party** for an offense which falls within this definition, then the coverage afforded by this definition shall also apply to the **Covered Party** entity, subject to all terms, conditions, and exclusions in this **Memorandum of Coverage**, whether or not any individual **Covered Party** is specifically named in a claim or lawsuit. All claims involving the same misstatement or misleading statement or error or omission or a series of continuous or repeated misstatements or misleading statements or errors or omissions will be considered as arising out of one **Occurrence**.

- U. **Retained Limit** means the amount stated on the applicable declarations or certificate of coverage, which will be paid from the amount deposited by the **Covered Party** to the liability fund before the **Authority** is obligated to make any payment from the pooled funds. **Retained Limit** includes all **Defense Costs** but does not include adjustment and investigative costs incurred by the third-party claims administrator, the office expenses or salaries of employees or officials of the **Covered Party**, or the expenses of the **Authority**. **Retained Limit** shall be subject to the following: if multiple **Covered Parties** or a member only Joint Powers Authority are involved in any one **Occurrence**, each **Covered Party** remains obligated to pay up to the amount of its **Retained Limit**.
- V. **Tort Liability** means a liability that would be imposed by law in the absence of any contract or agreement.
- W. **Ultimate Net Loss** means the sum actually paid or payable as **Damages**, attorney's fees or costs in settlement or satisfaction of a claim, or as **Defense Costs**, for which the **Covered Party** is liable either by adjudication or by compromise with the written consent of the **Authority**, after making proper deduction for all recoveries and salvages and other collectible insurance. In the event two or more **Covered Parties** are involved in the loss, the **Ultimate Net Loss** will be apportioned between the **Covered Parties** by dividing the **Ultimate Net Loss** by the number of entities involved, unless and until liability of the various **Covered Parties** is determined by settlement, arbitration or judgment, at which time the **Ultimate Net Loss** will be apportioned by the relative liabilities of the **Covered Parties**. If the apportionment of the **Ultimate Net Loss** is not determined by settlement, arbitration, or judgment, the **Ultimate Net Loss** will be apportioned between the **Covered Parties** by dividing the **Ultimate Net Loss** by the number of entities involved, until either the **Covered Parties** reach agreement on apportionment of the **Ultimate Net Loss**, or, should the **Covered Parties** fail to reach agreement on apportionment, apportionment of the **Ultimate Net Loss** will be determined by the Executive Committee. **Ultimate Net Loss** also does not include attorneys' fees or costs awarded to the prevailing party in a suit except where such attorneys' fees or costs are attributable to a claim for **Damages** covered by this **Memorandum of Coverage**.
- X. **Unmanned Aircraft System** means a device or machine that is intended to navigate in the air without an onboard pilot, also commonly referred to as a "drone."

SECTION III - DEFENSE AND SETTLEMENT

The **Authority**, through its designated claims adjustors, shall assume charge of the investigation and defense of all claims which are or may be covered by this **Memorandum of Coverage**. The **Authority** shall have the right to control the negotiation, investigation, defense, appeal, or settlement of any claim or proceeding which, in the opinion of the **Authority**, is or may be covered by this **Memorandum of Coverage**. The **Covered Party** shall fully cooperate in all matters pertaining to such claim or proceeding. However, the **Covered Party** may exercise settlement control of those claims only within its **Retained Limit** unless the **Authority's** Litigation Manager notifies the **Covered Party** that the **Authority** is assuming control of the disposition or settlement of such claims.

If the **Covered Party** refuses to settle any claim or suit within the **Retained Limit** for a reasonable amount, defined as the amount the **Authority** is willing to pay and claimant(s) is willing to accept, increasing the **Covered Party** potential liability for **Damages** and continued **Defense Costs**, the **Covered Party** shall pay or shall reimburse the **Authority** for those **Defense Costs** incurred after the claim could have been settled. The **Covered Party** shall also be solely responsible for any **Damages** awarded, or settlement agreed upon, in excess of the amount for which the claim could have been settled had the **Covered Party** not prevented it. This includes, but is not limited to, a refusal by the **Covered Party** to agree to a reasonable non-monetary term of settlement. A covered party may refuse to agree to a non-monetary term of settlement when the refusal is rationally related to a legitimate governmental interest of the **Covered Party** under the circumstances of the particular claim or suit.

No claims shall be settled for an amount in excess of the **Retained Limit** without the prior consent of the **Authority's** Litigation Manager, and the **Authority** shall not be required to contribute to any settlement to which it has not consented.

No claim shall be settled for an amount in excess of the **Authority's Limits of Coverage** without the prior consent of the California Affiliated Risk Management Authorities.

If the **Authority** denies liability for a claim, the **Covered Party** may elect to litigate or settle the claim on its own behalf. In either event, however, the **Covered Party** shall be liable for the full amount of any judgment or settlement, including all related costs and fees in connection therewith, unless and until it has been determined by binding arbitration that the **Authority** has liability for the claim under this **Memorandum of Coverage**.

SECTION IV - THE AUTHORITY'S LIMIT OF COVERAGE

Regardless of the number of (1) persons or entities covered under this **Memorandum of Coverage**, (2) persons or organizations making claims or bringing suits, or (3) claims made or suits brought, the **Limit of Coverage** stated on the Declarations page, less the **Retained Limit** or any sublimit contained in this **Memorandum of Coverage** is the most the **Authority** will pay for an **Ultimate Net Loss** arising out of any one **Occurrence**. (For example, if the **Limit of Coverage** is \$1,000,000 and the **Covered Party** has a **Retained Limit** of \$25,000, the most the **Authority** will pay is \$975,000, after exhaustion of the **Retained Limit**.) The Limits of Coverage for an additional **Covered Party** (including its officials, employees, and volunteers) shall be the limit stated in its additional **Covered Party** certificate, regardless of the limit that applies to the member entity.

Where this **Memorandum of Coverage** or an endorsement or declaration lists a “sublimit,” that sublimit operates as the **Limit of Coverage**. (For example, if there is a sublimit of \$500,000 and the **Covered Party** has a **Retained Limit** of \$25,000, the most the **Authority** will pay is \$475,000, after exhaustion of the **Retained Limit**.)

In the event that a structured settlement, whether purchased from or through a third party or paid directly by the **Covered Party** in installments, is utilized in the resolution of a claim or suit, the following provisions shall apply. Only the present value of the agreed-upon payments (the present value "cost" of the structured settlement) shall be considered in satisfaction of the **Covered Party's Retained Limit**. In addition, the **Authority** will pay only up to the amount stated in the declarations or certificate of coverage, in present value of the claim as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the declarations or certificate of coverage.

Any actual or alleged loss of use of tangible property not physically damaged or destroyed shall be deemed to occur at the time of the **Occurrence** that caused such loss of use. Any other injury or damage occurring or alleged to have occurred over more than one **Coverage Period** shall be deemed to have occurred either during the **Coverage Period** when the Occurrence begins, or during such **Coverage Period** as determined by the Executive Committee in its sole discretion, and only the **Limit of Coverage** for that **Coverage Period** shall apply.

SECTION V - COVERAGE PERIOD AND TERRITORY

This **Memorandum of Coverage** applies to an **Occurrence** which occurs anywhere in the world during the **Coverage Period**.

SECTION VI - EXCLUSIONS

A. This **Memorandum of Coverage** does not apply to:

(1) With respect to Pollution:

- (a) Any liability arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **Pollutants** anywhere in the world.
- (b) Any loss, cost, or expense, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize **Pollutants**.

However, this exclusion shall not apply to **Bodily Injury** or **Property Damage** caused by a **Covered Party's** response to contamination caused by a third party unrelated to a **Covered Party**. Response includes clean-up, removal, containment, treatment, detoxification, and neutralization of **Pollutants**. In addition this exclusion does not apply to direct and immediate **Bodily Injury** or **Property Damage** arising out of operations involving the use, application, or spraying of any pesticide at or from any site or location not owned or controlled by the **Covered Party** on which the **Covered Party** or

any contractors or subcontractors working directly or indirectly on behalf of the **Covered Party**, are performing operations if the operation(s) performed meet all standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government which apply to those operations.

- (c) The exclusions set forth in (a), (b), or (c) above do not apply if said discharge, dispersal, release, or escape of **Pollutants** meets all of the following conditions:
- i. It was accidental and neither expected nor intended by the **Covered Party**; and
 - ii. It was demonstrable as having commenced on a specific date during the term of this policy; and
 - iii. Its commencement became known to the **Covered Party** within seven (7) calendar days; and
 - iv. Its commencement was reported in writing to the **Authority** within forty (40) calendar days of becoming known to the **Covered Party**; and
 - v. Reasonable effort was expended by the **Covered Party** to terminate the discharge, dispersal, release, or escape of **Pollutants** as soon as conditions permitted.
- (d) The exclusions set forth in (a), (b), or (c) above do not apply if said discharge, dispersal, release, or escape arises from materials being collected as part of any drop off or curbside recycling program implemented and operated by the **Covered Party** if the materials have not been stored by the **Covered Party** or any **Covered Party** for a continuous period exceeding ninety (90) days.
- (e) Nothing contained in this **Memorandum of Coverage** shall operate to provide any coverage with respect to:
- i. Any site or location principally used by the **Covered Party**, or by others on the **Covered Party's** behalf, for the handling, storage, disposal, dumping, processing, or treatment of waste material, except as provided in Section (f);
 - ii. Any fines or penalties;
 - iii. Any clean-up costs ordered by the Superfund Program or any federal, state, or local governmental authority. However, this specific exclusion (e), iii, shall not serve to deny coverage for third party clean-up costs otherwise covered by this endorsement simply because of the involvement of a governmental authority;

- iv. Acid rain;
 - v. Clean-up, removal, containment, treatment, detoxification, or neutralization of **Pollutants** situated on-premises the **Covered Party** owns, rents, or occupies at the time of the actual discharge, dispersal, seepage, migration, release, or escape of said **Pollutants**; and
 - vi. Any claims for clean-up, removal, containment, treatment, detoxification, or neutralization of **Pollutants** arising out of or connected with the use of a firearm firing range, practice range, or other area used for training or practice in the use of firearms.
- (f) As to any claim for **Damages** to real property no longer owned, maintained, or used by the **Covered Party**, the **Authority** will provide a defense up to the amount of \$100,000 over the **Covered Party's Retained Limit** per **Occurrence**.
- (2) Any loss, cost, or expense arising out of any governmental order, direction, or request that the **Authority**, the **Covered Party**, or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize, or assess **Pollutants** or the effects of **Pollutants**.
- (3) Claims, including attorneys' fees or salary or wage loss claims or claims for lost pension or other benefits, by any potential, present, or former employee or official of the **Covered Party** arising out of a violation of civil rights or employment-related practices, policies, acts or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of the spouse, child (including unborn child or fetus), parent, brother, or sister of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts or omissions described above are directed. This exclusion applies to claims of negligent supervision and/or claims of failure to prevent such employment-related practices, policies, acts, or omissions. However, at the **Covered Party's** expense, the **Authority** will provide a defense, investigation, and adjustment up to the amount of the **Covered Party's Retained Limit** for any such claim.
- (4) **Bodily Injury** to:
- (a) An employee of the **Covered Party** arising out of and in the course of:
 - i. Employment by the **Covered Party**; or
 - ii. Performing duties related to the conduct of the **Covered Party's** business; or
 - (b) The spouse, child (including unborn child or fetus), parent, brother, or sister of the employee as a consequence of paragraph (a) above.

This exclusion applies to any obligation to share **Damages** with or repay someone else who must pay **Damages** because of the injury.

- (5) Any obligation for which the **Covered Party** or any insurance company as its insurer may be held liable under any workers' compensation, unemployment compensation, or disability benefits law, or any similar law.

These exclusions (3), (4), and (5) apply whether the **Covered Party** may be liable as an employer or in any other capacity.

- (6) Claims arising out of ownership, maintenance, management, supervision, or the condition or operation of any hospital or marina.
- (7) Claims arising out of ownership, maintenance, management, supervision, or the condition or operation of any airport.
- (8) Claims arising out of any **Medical Malpractice**:
- (a) committed by a doctor, osteopath, chiropractor, dentist, or veterinarian; or
 - (b) committed by any health care provider (as defined in Business & Professions Code § 6146(c)(2)) working for any hospital or hospital operated out-patient, in-patient, or other clinic at the time of the **Occurrence** giving rise to the loss; or
 - (c) committed by an employee, volunteer, contractor, or other individual acting for or on behalf of a **Covered Party** other than emergency medical services or first aid.
- (9) Claims arising out of partial or complete structural failure of a **Dam**.
- (10) Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive **Damages**, or any statutory **Damages** multipliers. This exclusion applies whether the fine, assessment, penalty, restitution, disgorgement, exemplary or punitive damage is awarded by a court or by an administrative or regulatory agency. "Restitution" and "disgorgement" as used herein refer to the order of a court or administrative agency for the return of a specific item of property or a specific sum of money because such item of property or sum of money was not lawfully or rightfully acquired by the **Covered Party**.
- (11) Claims for **Damages** caused by intentional conduct done with willful and conscious disregard of the rights or safety of others; or with malice or conduct that was malicious, oppressive, or in reckless disregard of the plaintiff's rights. The intent of this exclusion is to eliminate coverage for any compensatory damages awarded because of conduct which is also the basis for an award of punitive damages, regardless of jurisdiction or venue. However, this exclusion shall not apply to a **Covered Party** if all of the following conditions are met: (1) such compensatory damages are assessed against an employee, official, or volunteer of that **Covered Party** arising out of an act or omission within the scope of employment or duties

for that **Covered Party**; (2) any liability of that **Covered Party** is based solely on its vicarious or indirect liability arising from its relationship with such employee, official or volunteer; and (3) that **Covered Party** is obligated by law to pay the compensatory damages on behalf of such employee, official, or volunteer.

- (12) Claims arising out of the hazardous properties of **Nuclear Material**.
- (13) (a) Claims arising out of or in connection with condemnation proceedings, eminent domain, or inverse condemnation by whatever name called, resulting from deliberate decision-making conduct by the **Covered Party**, and whether or not liability accrues directly against any **Covered Party** by virtue of any agreement entered into by or on behalf of any **Covered Party**.

Notwithstanding this exclusion, coverage under this Memorandum is provided, in excess of the **Covered Parties' Retained Limit per Occurrence** and up to the **Limit of Coverage** for inverse condemnation claims due to **Property Damage** resulting from any of the following: weather acting upon or with the **Covered Party's** property or equipment, accidental failure of the **Covered Party's** property or equipment, negligent design or maintenance of or inadequate design of a public work or public improvement.

Notwithstanding the above, this Memorandum shall not afford inverse condemnation coverage for any claim arising out of the design, construction, ownership, maintenance, operation, or use of any water treatment plant or wastewater treatment plant, no matter how or under what theory such claim is alleged, except a claim based upon the accidental failure of the equipment utilized or contained within the water treatment plant or wastewater treatment plant.

- (b) Claims arising out of or in connection with land use regulation or land use planning, including zoning, enforcement of building codes and/or regulations, and planning decisions, by whatever name called.
- (14) **Property Damage** to:
- (a) Property owned by the **Covered Party**.
- (b) Property rented to or leased to the **Covered Party** where it has assumed liability for damage to or destruction of such property unless the **Covered Party** would have been liable in the absence of such assumption of liability.
- (c) **Aircraft** or watercraft in the **Covered Party's** care, custody, or control.
- (15) Claims arising out of the ownership, operation, use, maintenance, or entrustment to others of any **Aircraft**. Ownership, operation, or maintenance as used herein does not include static displays of **Aircraft** in a park or museum setting.

- (16) Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, or sewage capacity when such failure is a result of the inadequacy of the **Covered Party's** facilities to supply or produce sufficient gas, water, electricity, or sewage capacity to meet the demand.
- (17) Claims arising out of the ownership, operation, maintenance, or use of any trampoline or other rebound tumbling device. This does not apply to bounce houses or other similar children's recreational devices, owned, operated, maintained, or used by the **Covered Party** for the purpose of providing recreation to children.
- (18) Claims arising out of the ownership, operation, maintenance, or use of any skateboard park foam pit.
- (19) Claims arising out of the ownership, operation, maintenance, or use on any land, other than highways, of any off-highway motor vehicle, including but not limited to any motorcycle or motor-driven cycle or bicycle, snowmobile specifically designed to travel over snow or ice, or any vehicle commonly referred to as a sand buggy, dune buggy, or all-terrain vehicle. This exclusion shall not apply to the operation of any such vehicle if operated by an employee, joint employee, agent, or volunteer of the **Covered Party** while acting for or on behalf of the **Covered Party**.
- (20) Claims arising out of the private use of a firing range owned, operated, or maintained by a **Covered Party**, where such private use is not in the course and scope of the **Covered Party's** business activities. Without any limitation to Exclusions (1) and (2), also specifically excluded are any claims for clean-up, removal, containment, treatment, detoxification, or neutralization of lead or any other by-product of firearm use, whether or not deemed to be **Pollutants**, arising out of or connected with the ownership, control, or use of firearm firing range, practice range, or other area used for training or practice in the use of firearms.
- (21) Refund of or restitution for taxes, fees, or assessments.
- (22) Claims in whole or in part arising out of the **Covered Party's** obtaining remuneration or financial gain to which the **Covered Party** was not legally entitled.
- (23) Claims arising out of the willful violation of any statute, ordinance, law, governmental order or decree, or order of any other judicial or administrative body by, or with the knowledge or consent of the **Covered Party**.
- (24) Claims against a **Covered Party** arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans, including architectural plans, unless prepared by a qualified licensed and/or registered engineer or architect who is the appointed City Engineer or an employee of the **Covered Party**.
- (25) (a) Claims arising out of failure to perform, or breach of, any contractual obligation entered into by any **Covered Party**.
- (b) Claims arising out of liability assumed under any contract or agreement,

except liability that would be imposed by law in the absence of the contract or agreement, or when such assumption is the subject of a duly issued Certificate of Additional **Covered Party**; but such assumption is covered only up to the **Limit of Coverage** stated in the certificate. This exclusion does not apply to liability assumed in a contract or agreement that is a **Covered Indemnity Contract**, provided the **Bodily Injury** or **Property Damage** occurs subsequent to the execution of the contract or agreement. In contracts for the use of police resource officers, any indemnity agreement must contain an indemnity clause as approved by the Executive Committee as set forth in Exhibits A & B attached hereto.

Exclusion 25(b) is not applicable to mutual aid agreements.

- (26) Claims arising out of the "Employee Retirement Income Security Act of 1974" or any law amendatory thereof, or any similar law, or arising out of fiduciary activities with respect to employee benefit plans.
- (27) Claims arising out of the ownership, operation, maintenance, or control of any permanent landfill site or facility, with the exception of claims neither arising out of nor related to **Pollutants**. "Landfill" includes any permanent site for storage, accumulation, burial, compost, sludge, or any other process for reducing or disposing of waste.
- (28) **Ultimate net loss** arising out of relief, or redress, in any form other than **Damages**.
- (29) Claims arising out of bungee jumping sponsored, controlled, or authorized by a **Covered Party**.
- (30) Claims by any **Covered Party** against its own past or present elected or appointed officials, employees, volunteers, or additional **Covered Parties**, where such claim seeks **Damages** payable to the **Covered Party**. This exclusion shall not apply to claims by any **Covered Party** against any officer, director, or the Administrator of the **Authority**, and the staff and employees thereof, while in the course and scope of their duties for the **Authority** with respect to **Public Officials Errors and Omissions** Coverage.
- (31) Claims arising out of oral or written publication of material, if done by or at the direction of the **Covered Party** with knowledge of its falsity.
- (32) Any claim arising out of the ownership, operation, use, maintenance, or entrustment to others of an **Unmanned Aircraft System**. However, this exclusion shall not apply if all of the following conditions are met with respect to any use or operation of an **Unmanned Aircraft System** which gives rise to a claim:
 - (a) The **Unmanned Aircraft System** is operated in compliance with applicable Federal Aviation Administration (FAA) rules and regulations, including as necessary under a proper and valid Certificate of Authorization (COA) obtained from the FAA.

- (b) The operation of the **Unmanned Aircraft System** by an employee of the member was approved, prior to operation, by a member employee or official, which employee or official was acting in a management or supervisory role when approving the operation of the **Unmanned Aircraft System**.
 - (c) The operation of the **Unmanned Aircraft System** is in the course of legitimate activity, which was approved by a member employee or official, which employee or official was acting in a management or supervisory role when approving the operation of the **Unmanned Aircraft System**.
 - (d) If necessary, the appropriate agency of the member has properly secured a search warrant prior to the operation of the **Unmanned Aircraft System**.
 - (e) The governing body of the **Covered Party** approved use of **Unmanned Aircraft Systems**.
- (33) Any claim arising out of **Cyber Liability** by whatever name called, including but not limited to defamation, discrimination, invasion of privacy, or infringement of copyright, trademark, trade name, title, or slogan.
- B. This **Memorandum of Coverage** does not apply under **Public Officials Errors and Omissions**, to:
- (1) **Bodily Injury, Non-Employment Sexual Abuse, or Personal Injury;**
 - (2) Physical injury to tangible property, including all resulting loss of use of that property;
 - (3) Benefits payable under any employee benefit plan (whether the plan is voluntarily established by the **Covered Party** or mandated by statute) because of unlawful discrimination.

SECTION VII - CONDITIONS

- A. The **Covered Party's** duties in the event of **Occurrence**, claim or suit reasonably likely to involve the **Authority** are as follows. These provisions are conditions precedent to coverage afforded under this **Memorandum of Coverage**. The **Covered Party's** failure to comply with any of these provisions shall void the coverage provided herein.
- (1) The **Covered Party** shall notify the **Authority's** designated third-party claims administrator within 30 days upon receiving notice of an incident reasonably likely to exceed fifty percent of the **Retained Limit**, or any claim involving:
 - (a) One or more fatalities;
 - (b) Loss of limb or amputations;
 - (c) Loss of use of any sensory organ;
 - (d) Spinal cord injuries (quadriplegia or paraplegia);
 - (e) Third-degree burns involving ten percent or more of the body;

- (f) Serious facial disfigurement;
- (g) Paralysis;
- (h) Closed head injuries (brain injuries);
- (i) Serious loss of use of any body function;
- (j) Long-term hospitalization for at least 30-days;
- (k) Title 42 U.S.C. § 1983 claims or other claims involving civil rights violations; or

(2) **Non-Employment Sexual Abuse.**

Written notice shall be given to the **Authority's** designated third-party claims administrator, if such information was not available prior to giving notice to the **Authority**. Written notice shall include particulars sufficient to identify the **Covered Party**; reasonably obtainable information with respect to the time, place, and circumstances of the **Occurrence**; and the names and addresses of the **Covered Party** and of available witnesses.

- (3) If a claim is made or suit is brought against the **Covered Party**, the **Covered Party** shall be obligated to notify the **Authority's** designated third-party claims administrator immediately and not to exceed 10 working days upon receiving notice of a claim or suit. The **Covered Party** shall include in the notice every demand, notice, summons, or other process it received.
- (4) The **Covered Party** shall 1) cooperate with the **Authority** and upon its request assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Party** because of **Bodily Injury, Personal Injury, Property Damage, Public Officials Errors and Omissions**, or with respect to which coverage is afforded under this **Memorandum of Coverage**; 2) **Covered Party** attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses; and shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense toward the settlement of any claim for which the **Authority** has accepted responsibility and has so notified the **Covered Party**.
- (5) Any payments made or expenses incurred by the **Covered Party** in relation to the claim, prior to giving notice of the claim to the **Authority**, shall be the sole responsibility of the **Covered Party**, and the **Authority** shall have no obligation to pay said costs or to reimburse the **Covered Party** therefore.
- (6) As to any claim for which the **Authority** has accepted responsibility and has so notified the **Covered Party**, if the **Covered Party's** refusal to change its position prevents settlement of the claim for a reasonable amount, defined as the amount the **Authority** is willing to pay and the claimant is willing to accept and increases the **Covered Party's** potential liability for **Damages** and continued **Defense Costs**, the **Covered Party** shall pay or shall reimburse the **Authority** for those **Defense Costs** incurred after the claim could have been settled, and for any **Damages** awarded or settlement agreed upon in excess of the amount for which the claim could have been settled.

B. Subrogation

The **Authority** shall be subrogated to the extent of any payment hereunder to all the **Covered Parties'** right of recovery thereof, and the **Covered Parties** shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amounts so recovered shall be apportioned as follows:

- (1) The highest layer of coverage shall be reimbursed first, and if there are sufficient recoveries then the next highest layer until all recoveries are used up.
- (2) The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by the **Authority**, it shall bear the expense thereof.

C. Bankruptcy or Insolvency

Bankruptcy or insolvency of the **Covered Party** shall not relieve the **Authority** of any of its obligations hereunder.

D. Other Coverage

- (1) In order for coverage herein to apply, the **Covered Party** must pay the full amount of its **Retained Limit**. Payment of the **Retained Limit** by the **Covered Party** is required in addition to, and regardless of, any payment or payments from any other source for or on behalf of that **Covered Party**.
- (2) If insurance or any other coverage with any insurer, Joint Powers Authority, or other source is available to the **Covered Party** covering a loss also covered hereunder (whether on a primary, excess, or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance or coverage.
- (3) Commercial coverage purchased directly by a **Covered Party** for the sole purpose of insuring all or a portion of its **Retained Limit** may be utilized to pay all or a portion of a **Covered Party's Retained Limit**.

E. Severability of Interests

The term **Covered Party** and its sub-terms including entity, covered individual, and additional **Covered Party** are used severally and not collectively, but the inclusion herein of more than one **Covered Party** shall not operate to increase the limits of the **Authority's** liability or the **Retained Limit** applicable per **Occurrence**.

F. Accumulation of Limits/Anti-Stacking

Subject to the provisions contained in Section I – Coverages, **Property Damage** or **Bodily Injury** occurring over more than one coverage period shall be deemed to occur during only one coverage period, and that coverage period shall be when any **Property Damage** or **Bodily Injury** was first discovered. Coverage for such **Property Damage** or **Bodily Injury** shall be provided by at most one **Memorandum of Coverage** issued by the **Authority**.

With respect to **Personal Injury** and **Public Officials Errors and Omissions**, an **Occurrence** with duration of more than one coverage period shall be treated as a single **Occurrence** arising during the coverage period when the **Occurrence** began.

G. Termination

This **Memorandum of Coverage** shall be terminated when the Pooled Liability Program is terminated in accordance with the Bylaws of the **Authority**.

H. Changes

Notice to or knowledge possessed by any agent of the **Authority** or by any other person shall not affect a waiver or a change in any part of this **Memorandum of Coverage**, nor shall the terms of this **Memorandum of Coverage** be waived or changed, except by endorsement issued to form a part of this **Memorandum of Coverage**.

I. Arbitration

Decisions by the **Authority** whether to assume control of the negotiation, investigation, defense, appeal, or settlement of a claim, or whether or not coverage exists for a particular claim (or part of a claim) shall be made by the Executive Committee of the **Authority**. If the **Covered Party** disagrees with a written denial of coverage from the **Authority's** General Counsel, it may appeal that denial to the Executive Committee within sixty (60) calendar days of receipt of the denial. The matter shall be placed on the agenda of the next regularly scheduled Executive Committee meeting following receipt of the appeal. If the **Covered Party** disagrees with the decision of the Executive Committee, it may appeal that decision to the Board of Directors within sixty (60) calendar days of written notice of that decision. The matter shall be placed on the agenda of the next regularly scheduled Board meeting following receipt of the appeal. The **Covered Party** must exhaust its rights to appeal to the Executive Committee and to the Board of Directors before requesting arbitration of a dispute. Any dispute concerning a decision by the Board of Directors of the **Authority** to deny coverage for all or part of a claim shall not be subject to any court action but shall instead be submitted to binding arbitration. If the **Covered Party** disagrees with the decision of the Board of Directors concerning the appeal, the **Covered Party** may request binding arbitration of the dispute within sixty (60) calendar days of written notice of that decision.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure by a single neutral arbitrator who is a lawyer experienced in contract interpretation or a retired federal or California State judge. The arbitrator shall not be employed by or affiliated with the **Authority** or the **Covered Party** or parties.

The selection of the arbitrator shall take place within thirty (30) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within sixty (60) calendar days from the date of the selection of the arbitrator, unless the parties agree otherwise or unless otherwise ordered by the arbitrator.

Each party shall pay one-half of the cost of the selected arbitrator. Each party shall also be responsible for its own costs and expenses of arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the "parties" and the arbitrator relating to the subject of the arbitration other than at oral hearings.

The decision of the arbitrator shall be final and binding and shall not be subject to appeal.

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 1**

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

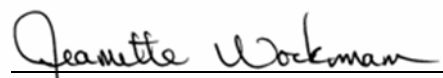
It is understood that the named **Covered Parties** of the Declaration is completed as follows:

Central San Joaquin Valley Risk Management Authority,

City of Angels Camp	City of Huron	City of Porterville
City of Arvin	City of Kerman	City of Reedley
City of Atwater	City of Kingsburg	City of Ripon
City of Avenal	City of Lathrop	City of Riverbank
City of Ceres	City of Lemoore	City of San Joaquin
City of Chowchilla	City of Lindsay	City of Sanger
City of Clovis	City of Livingston	City of Selma
City of Corcoran	City of Los Banos	City of Shafter
City of Delano	City of Madera	City of Shafter
City of Dinuba	City of Maricopa	City of Sonora
City of Dos Palos	City of McFarland	City of Taft
City of Escalon	City of Mendota	City of Tehachapi
City of Exeter	City of Merced	City of Tracy
City of Farmersville	City of Newman	City of Tulare
City of Firebaugh	City of Oakdale	City of Turlock
City of Fowler	City of Orange Cove	City of Wasco
City of Gustine	City of Parlier	City of Waterford
City of Hughson	City of Patterson	City of Woodlake

Effective Date: July 1, 2021

Endorsement No.: 1



AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 2**

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

It is understood that the **Retained Limits** for the named **Covered Parties** listed in Endorsement No. 1 are as follows:

\$10,000 Retained Limit

City of Angels Camp	City of Hughson	City of Orange Cove
City of Escalon	City of Huron	City of Sutter Creek
City of Fowler	City of Maricopa	City of San Joaquin
City of Firebaugh	City of Mendota	City of Waterford
City of Gustine	City of Newman	

\$25,000 Retained Limit

City of Arvin	City of Kerman	City of Patterson
City of Avenal	City of Kingsburg	City of Riverbank
City of Chowchilla	City of Lathrop	City of Sonora
City of Corcoran	City of Lindsay	City of Taft
City of Dos Palos	City of Livingston	City of Tehachapi
City of Exeter	City of McFarland	City of Wasco
City of Farmersville	City of Parlier	City of Woodlake

\$50,000 Retained Limit

City of Atwater	City of Lemoore	City of Ripon
City of Ceres	City of Los Banos	City of Sanger
City of Delano	City of Oakdale	City of Selma
City of Dinuba	City of Reedley	City of Shafter

\$100,000 Retained Limit


City of Clovis	City of Merced	City of Tracy
City of Madera	City of Porterville	City of Turlock

\$200,000 Retained Limit

City of Tulare

Effective Date: July 1, 2021

Endorsement No.: 2


AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 3**

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

It is understood that the Council Members of the City of Ceres are **Covered Parties** while acting in their capacity as Tuolumne River Regional Park JPA Committee members.

Effective Date: July 1, 2021

Endorsement No.: 3



AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM

ENDORSEMENT NO. 4

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

The **Memorandum of Coverage** is amended as set forth below as to the following Members:

City of Kingsburg
City of Tulare
City of Turlock

Exclusion 8(c) is hereby amended to provide coverage, subject to the remaining terms, definitions and exclusions within the **Memorandum of Coverage**, for the administration of medications in the regular course of the Member's custodial care programs, provided that the Member has adopted and adhered to all of the provisions contained in the "Best Practices Policy" which the Executive Committee adopted on May 27, 2010, to assist Members in the administration of such Medically Necessary Prescribed Medications to Participants in their Custodial Care Programs. This endorsement of coverage shall apply only to the Members named herein for the duration of the specified program year and must be renewed annually to remain effective during subsequent program years.

Effective Date: July 1, 2021

Endorsement No.: 4



AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM

ENDORSEMENT NO. 5

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

Coverage under this **Memorandum of Coverage** is hereby extended to any agency named below created and operated by a **Covered Party** as a “successor agency,” pursuant to Health & Safety Code §34169 et seq., to that **Covered Party’s** redevelopment agency, but only for those activities previously performed by that redevelopment agency and not otherwise excluded herein.

There shall be no coverage under this **Memorandum of Coverage** for any “oversight board” created, by the **Covered Party** or otherwise, pursuant to Health & Safety Code §34179 et seq. Notwithstanding the foregoing, coverage under this **Memorandum of Coverage** shall be extended to an elected or appointed official, employee or volunteer of the **Covered Party** who is appointed to such “oversight board,” while acting for or on behalf of the **Covered Party** at the time of an **Occurrence**, as defined in this **Memorandum of Coverage**, and not otherwise excluded herein.

All other terms, conditions, provisions, and limitation of the **Memorandum of Coverage** shall remain in effect.

Successor Agency to the former Arvin Community Redevelopment Agency
Successor Agency to the Atwater Redevelopment Agency
The City of Avenal as Successor Agency to the Avenal Redevelopment Agency
Successor Agency to the former City of Ceres Redevelopment Agency
Successor Agency to the former Stanislaus-Ceres Redevelopment Agency
Chowchilla Redevelopment Successor Agency
Successor Agency to the former Clovis Community Development Agency (“Successor Agency”)
City of Corcoran Acting as the Successor Agency
Successor Agency to the Corcoran Redevelopment Agency
Successor Agency to the Dinuba Redevelopment Agency
City of Exeter Successor Agency
City of Farmersville Successor Agency
City of Firebaugh, acting as the Successor Agency to the former Firebaugh Redevelopment Agency
The City of Fowler as the Successor Agency to the City of Fowler Redevelopment Agency

The Successor Agency to the City of Hughson Redevelopment Agency
The Successor Agency of the Huron Redevelopment Agency
Successor Agency to the Former Kerman Redevelopment Agency
Successor Agency of the Redevelopment Agency of the City of Kingsburg
Kingsburg Redevelopment Agency Successor Housing Agency
Successor Agency to the Former Lemoore Redevelopment Agency
City of Lindsay as the Successor Agent for the Lindsay Redevelopment Agency
Successor Agency to the Livingston Redevelopment Agency
City of Madera Successor Agency to the former Madera Redevelopment Agency
City of Madera Successor Housing Agency to the former Madera Redevelopment Agency
The McFarland City Council acting as Governing Body of the Successor Agency to the McFarland Redevelopment Agency
The City of Newman is the Successor Agency for the Newman Redevelopment Agency
City of Oakdale as Successor to the Oakdale Central City Redevelopment Agency
Successor Agency to the City of Orange Cove Redevelopment Agency

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 5 – CONTINUED**

Successor Agency to the Patterson Redevelopment Agency
Successor Agency to the Porterville Redevelopment Agency
Successor Agency to the City of Reedley Redevelopment Agency
Successor Agency to the Ripon Redevelopment Agency
Successor Agency to the City of San Joaquin Redevelopment Agency
City of Sanger as Successor Agency to the Sanger Redevelopment Agency
Successor Agency to the dissolved Selma Redevelopment Agency
Successor Agency to the Shafter Community Development Agency
Successor Agency to the Redevelopment Agency of the City of Sonora

Oversight Board for Successor Agency to the City of Parlier Redevelopment Agency
City of Taft/Taft Successor Agency
Successor Agency to the Tehachapi Redevelopment Agency
Successor Agency of the Tracy Community Development Agency
Tulare Redevelopment Successor Agency
Successor Agency to the Turlock Redevelopment Agency
The City of Wasco Successor Agency to the Former Redevelopment Agency
The Waterford City Council is the Successor Agency to the Former Waterford Redevelopment Agency
City of Woodlake Successor Agency to the Redevelopment Agency

Effective Date: July 1, 2021

Endorsement No.: 5



AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 6**

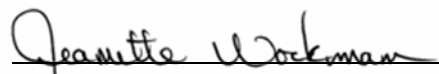
This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

The Parking Authority of the City of McFarland is added as a named **Covered Party** in the Declarations of the **Memorandum of Coverage** based on confirmation from the City of McFarland that the Parking Authority falls within the following definition:

- 1) The entity named in the Declarations, including any and all commissions, agencies, districts, authorities, boards, including the governing board or similar entities coming under such entity's direction or control or for which such entity's board members sit as the governing body. **Covered Party** includes all departments and constituent agencies of the entity, except a hospital board or commission, regardless of how such body is denominated.

Effective Date: July 1, 2021

Endorsement No.: 6


AUTHORIZED REPRESENTATIVE

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

**POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 7**

This endorsement, effective 12:01 a.m. 7/1/21, forms a part of Memorandum No. CSJVRMA 2021-GL.

The **Memorandum of Coverage** is amended as set forth below:

Exclusions 8(a) and 8(b) are hereby amended to provide coverage, subject to the remaining terms, conditions, definitions and exclusions within the **Memorandum of Coverage**, for City of Sanger's part-time Medical Director to provide emergency medical program oversight for the Fire Department's Emergency Medical Transport (EMT) services. This endorsement is limited to coverage for administrative functions only, related to narcotics security, inventory, and management, management of quality assurance programs and policies, and oversight of training and education for Department Paramedics and EMTs. This endorsement does not provide coverage for medical malpractice based upon direct patient care by the Medical Director.

Effective Date: July 1, 2021

Endorsement No.: 7



AUTHORIZED REPRESENTATIVE

EXHIBIT A

EDUCATIONAL INSTITUTION RESOURCE OFFICER CONTRACT INDEMNITY LANGUAGE APPROVED BY THE EXECUTIVE COMMITTEE ON JUNE 22, 2017

Indemnity. The District shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the assigned officer's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the City, or the gross or willful misconduct of the assigned officer.

[If required to be mutual:]

The City shall indemnify, defend, and hold harmless the District, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of the active negligence by the City or the gross or willful misconduct of the assigned officer during the performance of work hereunder.

In the event of concurrent negligence on the part of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law equity for such losses, fines, penalties, forfeiture, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

EXHIBIT A

Resource Officer Contract Indemnity Language
Approved by the Executive Committee on June 22, 2017
Page 2 of 3

If the District rejects a tender of defense by the City and/or the assigned officer under this Agreement, and it is later determined that the City and/or the officer breached no duty of care and/or was immune from liability, the District shall reimburse the City and/or officer for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or officer settles a liability claim, with or without participation by the District.

The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or its assigned officer that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or the assigned officer and the absence of the assigned officer and/or the patrol vehicle is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor its assigned officer intends to waive any immunities to which they would be entitled in the absence of the Agreement.

In addition to the above indemnity language, the Executive Committee approved the following language, which SHALL be included in all city resource officer contracts/agreements:

INTEGRATION OF PRIOR TERMS AND CONDITIONS

This Agreement, including all recitals, constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized agent of each Party. An authorized agent of the City shall be a person

EXHIBIT A

Resource Officer Contract Indemnity Language

Approved by the Executive Committee on June 22, 2017

Page 3 of 3

specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager or City Attorney or equivalent.

The indemnity sections shall survive termination or expiration of this Agreement.

EXHIBIT B

GENERAL SERVICES RESOURCE OFFICER CONTRACT INDEMNITY LANGUAGE APPROVED BY THE EXECUTIVE COMMITTEE ON JUNE 22, 2017

Indemnity. The [*outside entity putting on the event*] shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers (hereafter collectively City Personnel) from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the any services provided by the City or any City Personnel or their performance of work or any failure to comply with any of the City's duties contained in the Agreement, except such loss or damage which was caused by the active negligence by City Personnel, or the gross or willful misconduct of City Personnel.

[If required to be mutual:]

The City shall indemnify, defend, and hold harmless the [*outside entity putting on the event*], its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of the active negligence by City Personnel or the gross or willful misconduct of City Personnel during the providing of services or performance of work hereunder.

If the [*outside entity putting on the event*] rejects a tender of defense by the City or City Personnel under this Agreement, and it is later determined that the City and City Personnel breached no duty of care and/or were immune from liability, the [*outside entity putting on the*

EXHIBIT B

General Services Resource Officer Contract Indemnity
Language Approved by the Executive Committee on
June 22, 2017
Page 2 of 2

event] shall reimburse the City and/or City Personnel for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or City Personnel settles a liability claim, with or without participation by the [*outside entity putting on the event*].

The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or City Personnel that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or City Personnel and the absence of City Personnel is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor City Personnel intend to waive any immunities to which they would be entitled in the absence of the Agreement.

In addition to the above indemnity language, the Executive Committee approved the following language, which SHALL be included in all city service contracts/agreements:

INTEGRATION OF PRIOR TERMS AND CONDITIONS

This Agreement, including all recitals, constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized agent of each Party. An authorized agent of the City shall be a person specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager or City Attorney or equivalent.