



AGENDA

LEGEND: A - Action may be taken
I - Information
1 - Included
2 - Handout
3 - Separate
4 - Verbal

JPA: ACCEL UNDERWRITING COMMITTEE MEETING

DATE/TIME: Monday, September 25, 2023 at 2:00 PM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/92980373526?pwd=bjNCK2NLTDdrR1FjRUljeEczdjZqdz09>

Dial: 1 (669) 444 9171

Meeting ID: 929 8037 3526

Passcode: 193607

In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.

Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.

- MEMBER** • **City of Mountain View**, 500 Castro Street 2nd Floor, Mountain View, CA 94041
- LOCATIONS** • **City of Bakersfield**, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
- VIA TELE -** • **City of Salinas**, 200 Lincoln Avenue, Salinas, CA 93901
- CONFERENCE** • **City of Santa Barbara**, 735 Anacapa St., Santa Barbara, CA 93101
- **City of Santa Cruz**, 1200 Pacific Ave, Suite 290, Santa Cruz, CA 95060

PAGE

A. CALL TO ORDER

B. CONSENT CALENDAR

- 3-5 I 1. Approval of Minutes for the February 28, 2023 Underwriting Committee Meeting (A)
The Committee will review these minutes and will take action to approve or give direction.

C. REPORTS

1. UNDERWRITING COMMITTEE'S REPORT

- 6-9 I a) New ACCEL Exposure Questionnaire: City of Ontario - Ontario Access Center (A)
Members will review and discuss the new exposure questionnaire and may take action or provide direction.
- 10-11 I b) City of Salinas Housing for the Unhoused (A)
The Committee will review and discuss this topic brought by the City of Salinas for an exposure that is likely to affect most other members. Action may be taken or direction given.
- 12-13 I c) Veterinarian Services - Member Survey (A)
The Committee will review the results of the veterinarian survey of Members and may take action or give direction.



- 14-34 1 d) Proposed Changes to ACCEL’s Memorandum of Coverage (MOC) Claims Reporting (A)
The Committee will review the proposed changes to the ACCEL MOC regarding claims reporting. Action may be taken to make a recommendation to the Board or direction given.
- 35-51 1 e) ACCEL’s Underwriting Guidelines Review: (A)
The Committee will conduct its annual review and may take action to provide a recommendation to the Board or give direction.
- i. Underwriting Standards Policy and Procedure
 - ii. New Exposure Questionnaire
 - iii. Bylaws
- D. PUBLIC COMMENTS** (I)
4 *The public is invited at this point to address the Committee on issues of interest to them.*

ADJOURNMENT

**MINUTES OF THE
ACCEL UNDERWRITING COMMITTEE
MEETING**

**Item No. B1
Underwriting Committee
September 25, 2023**

Tuesday, February 28, 2023 at 9:00 AM

**LOCATION:
Teleconference**

Link: <https://alliantinsurance.zoom.us/j/94652512106?pwd=NXhoWWVRR0ltVIBLOGhTc2UxUmNRUT09>

Dial: (669) 900-6833

Meeting ID: 946 5251 2106

Passcode: 053979

MEMBERS PRESENT:

Jena Covey, City of Bakersfield (*left at 9:55 AM*)
Rhonda Combs, City of Salinas (*joined at 9:01 AM*)
Mark Howard, City of Santa Barbara
Ross Brandon, City of Santa Cruz

MEMBERS ABSENT:

Tracey Matthews, City of Anaheim

GUESTS AND CONSULTANTS:

Rick Anthony, City of Bakersfield Recreation and Parks Director (*left at 9:25 AM*)
Darin Budak, City of Bakersfield Recreation and Parks Assistant Director (*left at 9:25 AM*)
Michael Dobbs, City of Bakersfield Park Ranger Supervisor (*left at 9:25 AM*)
Conor Boughey, Alliant Insurance Services
Thomas Joyce, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Mark Howard called the meeting to order at 9:00 AM.

B. Consent Calendar

B1. Approval of Minutes for the November 29, 2022 Underwriting Committee Meeting

A motion was made to approve the consent calendar.



MOTION: Jena Covey

SECOND: Ross Brandon **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Rhonda Combs	Mark Howard	Ross Brandon
Aye		X	X		X
Nay					
Abstain					

C. REPORTS

C1. Underwriting Committee’s Report

C1a. City of Bakersfield Park Ranger Electronic Control Device - New Exposure Questionnaire

Mark Howard reported that the of City of Bakersfield has requested the Underwriting Committee review the New Exposure Questionnaire regarding the City Park Rangers carrying tasers while patrolling.

Members asked questions, which were addressed by Rick Anthony, Darin Budak, and Michael Dobbs from the City of Bakersfield Recreation and Parks Department.

No formal action was taken by the Committee.

Direction was given to Byrne Conley, ACCEL’s Legal Counsel to compose a white paper for the Members’ Risk Management Departments that provides guidance on how to approach the issue of providing law-enforcement tools to non-sworn employees.

C1b. Proposed Changes to ACCEL’s Memorandum of Coverage (MOC): Unmanned Aerial Vehicles (UAVs)

Conor Boughey reminded the Committee that at the January 2023 Board Meeting, the Board gave it direction to further review the UAV definition in the ACCEL MOC. Also, at that meeting Dan Howell suggested to consider language from the United Educators (UE) endorsement.

Included in the agenda packet were a few options in redlined that showed Byrne Conley, ACCEL’s Legal Counsel suggested language and the UE language using ACCEL’s coverage terms.

A motion was made to recommend to the Board to keep the existing language for the UAV give back which is Option 1, and adopt Option 1A for the definition that adds language about the Certificate of Waiver of Authorization (COA) and similar federal regulations, which is what Byrne suggested.



MOTION: Mark Howard **SECOND:** Rhonda Combs **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Rhonda Combs	Mark Howard	Ross Brandon
Aye			X	X	X
Nay					
Abstain					

C1c. New Proposed ACCEL Coverage/General Counsel Agreement

Conor Boughey reported that Byrne Conley, ACCEL’s Legal Counsel (Coverage and General) has proposed a new agreement with increased rates. Conor added that Byrne has not increased the rates since 2015.

A motion was made to recommend to the Board to accept the new rates as shown in the agenda packet.

MOTION: Rhonda Combs **SECOND:** Ross Brandon **MOTION CARRIED**

	Tracey Matthews	Jena Covey	Rhonda Combs	Mark Howard	Ross Brandon
Aye			X	X	X
Nay					
Abstain					

D. PUBLIC COMMENTS - No public comments were made.

ADJOURNMENT

Mark Howard adjourned the meeting at 10:20 AM.



Item No. C.1.a
Underwriting Committee
September 25, 2023

NEW ACCEL EXPOSURE QUESTIONNAIRE: CITY OF ONTARIO ONTARIO ACCESS CENTER

ISSUE: The City of Ontario has requested the Underwriting Committee review a new City exposure, the “Ontario Access Center”. In order to address housing needs, the City had formerly contracted with a third party to help manage homeless and low-income services at the Ontario Access Center located in Ontario. The City received no responses on an RFQ to continue these services through a third party. As a result, the City will now be assuming these responsibilities until a viable third party partner is found. The City is also in the process of procuring a new location and Ontario Access Center operations will be moved to this site.

Under the Underwriting Standards Policy and Procedure, the following applicable criteria warrants this review:

2. A new service within the Member Agency that would not be considered traditional for the majority of cities in California.

8. Any service agreement situation or arrangement that brings about an increased exposure to loss that is concerning, or reasonably should be concerning, to the risk management personnel/function of the Member Agency.

RECOMMENDATION: It is recommended that the Committee review Ontario’s new exposure questionnaire and provide feedback, direct staff, or take action.

Additional Consideration

In favor: A member of ACCEL is disclosing a new risk to ACCEL. Typically, ACCEL provides feedback to confirm if an exposure is likely to be covered or not, or provide feedback to the entity regarding structure, contract language or other input. In this case, the Committee may want to discuss how uniform this exposure is among the members and provide guidance on ideal implementation.

Against: The Underwriting Committee may become aware of a risk that is challenging and not suited for ACCEL because it is not common to Members, not covered by policy language or should be addressed through separate available coverage. If the Committee were to want to move towards excluding an exposure, the Committee should take action to recommend action by the Board of Directors.

FISCAL IMPACT: No immediate financial impact is expected.



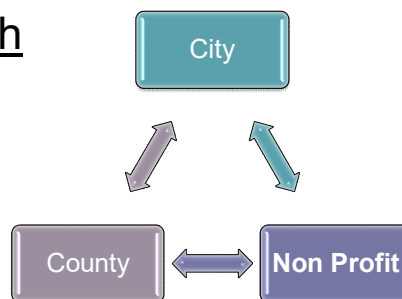
BACKGROUND: Cities have worked in different ways over the years, but generally the preferred method to provide housing for those in need, has been to contract with a local non-profit to run a center that is supported by the local City and County. Other Members of ACCEL operate navigation centers and low cost housing using this method, such as the example on the next page:

“Just wanted to follow up with you on the conversation during the last ACCEL board meeting regarding housing projects for the unhoused and low-income housing. As I mentioned, the City has a long standing relationship with the Burbank Housing Corporation (BHC), which is a separate non-profit. I confirmed that the City largely functions as a funding partner for BHC, which owns and operates several low income housing projects in the City. There are a handful of properties (a childcare facility and a couple housing projects) that the City owns for which the City has long term lease/operator agreements in place with BHC. If you are interested in looking at the funding agreements or the lease/operator agreements, let me know and I can get those for you.”

Example: Homeless Shelters

Changing landscape, many entities are now considering creating a shelter or transitional facility with low barriers to entry:

- Accept animals
- Accept impaired individuals
- Accept couples
- Accept personal belongings



Example low barrier to entry facility:

<https://www.voa-ncnn.org/wts>

ATTACHMENT:

1. New Questionnaire proposed by City of Ontario.

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: 8/26/21

Member Agency: City of Ontario

Date: 06/26/23

New Exposure Proposal Name: Ontario Access Center

Expected Implementation Date: 07/01/23

Ongoing Program/Service: **Yes** or No

If time-limited, end date: N/A

Does current MOC address exposure proposal: Yes or **No**

If yes, please insert applicable language:

1. Provide a brief summary of your request (i.e., the Member Agency is proposing to implement/expand “x” program and wants the Board to amend the MOC to cover the new exposure – or – confirm that coverage is already available).

The City of Ontario Housing Services Department will be expanding upon current services provided by the City of Ontario starting July 1, 2023. The City’s agreement with Mercy House, a third party, that has helped in managing homeless and low-income services and the Ontario Access Center (OAC) located at 435 S Bon View Ave, Ontario, CA 91761 will terminate June 30, 2023. As such, the City plans to continue to offer services by managing the programs internally. The City received no responses to its RFQual for alternate operators for homeless and low-income services in the future. Should another operator be identified to operate the Ontario Access Center, it is anticipated that the contract would begin October 1, 2023; however City will be assuming these responsibilities July 1, 2023 as funding from grants are available.

2. Describe the proposal under consideration (include information on the size/extent of the proposal; key factors driving the proposal; key hazards or exposures created by the proposal; proposal partners and their respective roles; etc.).

The City will administer and operate the Ontario Access Center which will provide the following services for a total of 2,000 persons: Motel vouchers for emergency shelter via agreement with local motels (city currently working with legal on drafting template agreement), housing counseling and housing stabilization services for low-income households at risk of homelessness, day-use lockers for storage, access to showers and laundry facilities. *Note: Access to showers and laundry services are currently placed on hold but may have in future.* Additionally, City working with legal on drafting participant waiver for motel voucher program.

The City will coordinate program activities, to the fullest extent possible, with other homeless service providers working in the City of Ontario.

City staff at the OAC will build a rapport with clients and offer assistance when needed. Staff may also refer clients for various grant funded programs such as Tenant Based Rental Assistance (TBRA) as they deem necessary.

Additionally, the Ontario Motor Inn (1522 W Mission Blvd., Ontario, CA 91762) will be procured and the Ontario Access Center operations will be moved to this site. At this time, it is anticipated that this facility will be operated by City employees. This location will have 33 non-congregate shelter rooms available for emergency housing.

3. Describe the financial impact of the proposal on the City (i.e., payroll, service and supply expenses, capital costs, revenue generation, etc.).

It is planned that approximately seven new staff members will be hired to manage the Access Center and to provide homeless/low-income services through street outreach, basic needs, and referrals to housing programs. New staff will consist of positions such as: office specialist, case managers, and senior community services supervisor. Additionally, security guards will be contracted for the location through an existing City agreement.

In the future, the City is also interested in securing the Ontario Motor Inn to provide services directly to participants which will be purchased for approximately \$4.3 million (final amount is still in discussion).

4. Describe the steps that the City will take to minimize/eliminate the hazards or exposures created by the proposal (address implementation phase and ongoing management).

Security staff will be onsite 24/7 with City staff planned initially from 8:00 am to 11:00 am Monday – Thursday. It is anticipated that operations will return to traditional business hours after October 1, 2023.

Training will be provided to City staff by experts in providing homeless and low-income services. Training will include basic operations along with specialized training for working with vulnerable populations and those with mental illness.

5. Provide any additional information to assist the Underwriting Committee and/or Board with evaluating the proposal (e.g., immunities, legislation, jurisdictional issues, political issues, public benefit, etc.).

City residents have come to rely on and benefit greatly from the services provided. Therefore, the City is working hard to avoid disruptions to the benefits. Further, the City of Ontario has just passed “Measure Q”, a sales tax measure that has allocated funds to address homelessness.



Item No. C.1.b
Underwriting Committee
September 25, 2023

CITY OF SALINAS HOUSING FOR THE UNHOUSED

ISSUE: The City of Salinas has requested the Underwriting Committee review a new City activity. In order to address housing needs, the City is leasing a location and will provide housing to the unhoused.

Under the Underwriting Standards Policy and Procedure, the following applicable criteria warrants this review:

2. A new service within the Member Agency that would not be considered traditional for the majority of cities in California.

8. Any service agreement situation or arrangement that brings about an increased exposure to loss that is concerning, or reasonably should be concerning, to the risk management personnel/function of the Member Agency.

RECOMMENDATION: It is recommended that the Committee review Salinas's new exposure and provide feedback, direct staff, or take action.

Additional Consideration

In favor: A member of ACCEL is disclosing a new risk to ACCEL. Typically, ACCEL provides feedback to confirm if an exposure is likely to be covered or not, or provide feedback to the entity regarding structure, contract language or other input. In this case, the Committee may want to discuss how uniform this exposure is among the members and provide guidance on ideal implementation.

Against: The Underwriting Committee may become aware of a risk that is challenging and not suited for ACCEL because it is not common to Members, not covered by policy language or should be addressed through separate available coverage. If the Committee were to want to move towards excluding an exposure, the Committee should take action to recommend action by the Board of Directors.

FISCAL IMPACT: Cannot be determined at this time.

BACKGROUND: Cities have worked in different ways over the years, but generally the preferred method to provide housing for those in need, has been to contract with a local non-profit to run a center that is supported by the local City and County. Other Members of ACCEL operate navigation centers and low cost housing using this method, such as the example on the next page:

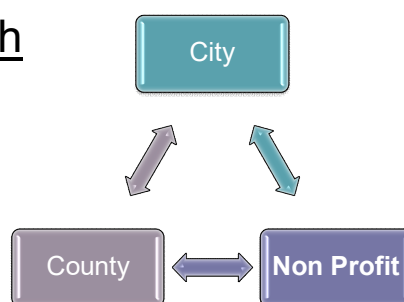


“Just wanted to follow up with you on the conversation during the last ACCEL board meeting regarding housing projects for the unhoused and low-income housing. As I mentioned, the City has a long standing relationship with the Burbank Housing Corporation (BHC), which is a separate non-profit. I confirmed that the City largely functions as a funding partner for BHC, which owns and operates several low income housing projects in the City. There are a handful of properties (a childcare facility and a couple housing projects) that the City owns for which the City has long term lease/operator agreements in place with BHC. If you are interested in looking at the funding agreements or the lease/operator agreements, let me know and I can get those for you.”

Example: Homeless Shelters

Changing landscape, many entities are now considering creating a shelter or transitional facility with low barriers to entry:

- Accept animals
- Accept impaired individuals
- Accept couples
- Accept personal belongings



Example low barrier to entry facility:

<https://www.voa-ncnn.org/wts>

ATTACHMENT: None



Item No. C.1.c
Underwriting Committee
September 25, 2023

VETERINARIAN SERVICES MEMBER SURVEY

ISSUE: The City of Burbank approached the ACCEL Administrator requesting information and guidance on E&O coverage for City veterinarians under the ACCEL MOC. A survey was conducted among the ACCEL membership to gauge other member's exposure in this area.

RECOMMENDATION: It is recommended that the Committee review, provide feedback, and may take action or provide direction.

FISCAL IMPACT: Cannot be determined at this time.

BACKGROUND: The City of Burbank approached the ACCEL Administrator requesting information and guidance on E&O coverage for City veterinarians under the ACCEL MOC. As it stands, the ACCEL MOC excludes coverage for liability arising out of medical professional services provided by any doctor, nurse, or dentist employed by or contracted by the Member Agency, Including:

1. Rendering or failure to render:
 - a. Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of foods or beverages in connection therewith.
 - b. Any service or treatment conducive to health or of a professional nature.
 - c. Any cosmetic or tonsorial service or treatment.
2. Furnishings of, or dispensing of, drugs or medical, dental, or surgical supplies or appliances.

This exclusion does not apply to the activities of paramedics, emergency medical dispatchers, technicians or similar personnel.

ATTACHMENT:

1. Member Results of Veterinarian Survey

Member Name	1. Perform animal control services? a. Performed by entity or contracted to third party (if contracted, please outline indemnification)?	2. Own or operate an animal shelter? a. Performed by entity or contracted to third party (if contracted, please outline indemnification)?	3. Perform any other animal related services? a. If yes, please describe: b. Performed by entity or contracted to third party (if contracted, please outline indemnification)?	4. Do any animal services utilize a nurse, doctor, veterinarian or medical director? a. If yes, please describe: b. Is med mal coverage provided or purchased?
City of Anaheim	No	No	No	No
City of Bakersfield	Yes CBACC (City of Bakersfield Animal Care Center) is managed by SPCA and governed by City's Agreement with SPCA (Agmt. No. 2022-185, including Amend. No. 1). That agreement includes in the scope the provision of vet services, handled and coordinated by SPCA at its discretion. That agreement includes insurance requirements naming City as additional insured, and also includes mutual indemnification. Animal Control (City employees)– outside of CBACC operations – utilizing outside vet services as needed in the field is a City thing, not CBACC/SPCA.	Yes, own—Contract operations—See above (Question 1)	a: vaccination clinics, euthanasia in the field and at the clinics b: Info provided above (Question 1)	b: No
City of Burbank	Yes, performed in house.	Yes, operated in house.	N/A	a: Yes, we hire veterinarians as City employees. b: Not currently.
City of Modesto	We have an Animal Control Unit comprised of Animal Control Officers and part time staff to help with administrative work. We do contract with the Stanislaus County Animal Services Agency for sheltering.	No, we do not. We contract with the Stanislaus County Animal Services Agency.	We provide services in the City limits regarding multiple animal complaints including but not limited to strays, dead animals, barking dogs, roosters in City limits, and various licensing and vaccination enforcement.	We are contracted with the Stanislaus County Animal Services Agency for sheltering which includes medical when needed. We also partner with a local veterinary office for emergency, after hours medical needs.
City of Monterey	No	No	No	No
City of Mountain View	No	No	No	No
City of Ontario	No	No	No	No
City of Palo Alto	Yes. Performed by entity	Palo Alto does own an animal shelter; operated by third party at this time	contracted to third party	At this time, contracted to third party
City of Salinas	City provides Animal Services via a Joint Powers agreement with County of Monterey who is the lead agency providing services and employees. The County of Monterey is self-insured.	City provides Animal Services via a Joint Powers agreement with County of Monterey who is the lead agency providing services and employees. The County of Monterey is self-insured. The County owns and operates an animal shelter.	City provides Animal Services via a Joint Powers agreement with County of Monterey who is the lead agency providing services and employees. The County of Monterey is self-insured.	a. City provides Animal Services via a Joint Powers agreement with County of Monterey who is the lead agency providing services and employees. The County of Monterey is self-insured. The County employees a Veterinarian and Registered Veterinary Technician. b. The County of Monterey is self-insured.
City of Santa Barbara	Performed by Santa Barbara	Animal shelter owned and operated by Santa Barbara County.	Do not understand the question.	Veterinarian hired under contract with indemnification and insurance (GL, workers' compensation, professional liability).
City of Santa Cruz	No	No	No	No
City of Santa Monica	Yes. a. Performed by CSM.	CSM owns and operates the shelter. a. Performed by CSM.	Yes. a. Adoptions, pet licensing. b. Performed by CSM.	Veterinarian services provided by a third-party, a local veterinarian.
City of Visalia	Performed by entity	Performed by entity	I am not sure what they mean by other animal related services, do they have examples? We just do the usual animal services pertaining to any animal shelter.	Yes, We have a contracted vet that has their own med mal coverage. They come in twice a week to give medical advice or treatment plans for animals in our care. We also contract with a clinic to perform our spay/neuter surgeries on our animals.



Item No. C.1.d
Underwriting Committee
September 25, 2023

PROPOSED CHANGES TO ACCEL'S MEMORANDUM OF COVERAGE (MOC):
CLAIMS REPORTING

ISSUE: Excess claims reporting is critical to ACCEL's contract with insurers, as a result ACCEL's Claims Committee has revised the Claims Handling Policy and Procedure (P&P) to match the broadest claims reporting requirements of our excess insurers. By doing this, any claim that is reportable to an excess carrier will now also be reportable to ACCEL pursuant to our Claims Handling P & P. However, the P&P is an administrative policy, whereas the Memorandum of Coverage (MOC) is ACCEL's coverage document and contains its own reporting requirements. As a result, the Underwriting Committee should review the MOC to confirm if ACCEL's claims reporting should be updated and broadened, kept the same, or another option developed during the meeting.

RECOMMENDATION: It is recommended that the Committee review and may take action to recommend to the Board to update the MOC language or further direction.

Additional Consideration

In favor of updating the MOC: A vote in favor indicates the Committee would like to broaden ACCEL's reporting requirements to match our excess insurance partners, which should help to avoid late reporting issues. Expanding claim reporting requirements would result in ACCEL reviewing more reportable claims, and the litigation manager would be responsible to report the claims with exposure to ACCEL and excess partners.

Against change to the MOC: A vote against would indicate ACCEL's claims reporting requirements within the MOC only apply to ACCEL's layer of coverage, and ACCEL does not change our reporting requirements because of excess insurers. An increase in reporting requirements is burdensome and unnecessary.

FISCAL IMPACT: No financial impact is expected, although some increases in time may occur due to increased claims reported.

BACKGROUND: Insurer's previously required the 'deadly sins' to be reported, and they were:

1. Paralysis, paraplegia, or quadriplegia
2. Loss of eyes or limbs
3. Spinal Cord or brain injury
4. Sensory organ or nerve injury or neurological deficit



5. Serious burns
6. Substantial disability or disfigurement
7. Death
8. Amputation or loss of use of a major extremity
9. Any disability where it appears reasonably likely that there will be a disability that lasts more than one year
10. Rape, sexual abuse offense/molestation of any individual
11. Any class action

The proposed changes would also add the following claims as reportable:

1. Any claim reserved at the Total Incurred of 50% or greater of the retained limit; inclusive of all expenses, suffices and related claims
2. In addition, the Claims Servicing Organization is also required to report the following losses regardless of reserve:
 - a. Any claim with an assigned trial date in the next 30 days that has not been otherwise reported
 - b. Class action suites
 - c. Law enforcement actions alleging excessing use of force or wrongful conviction.
 - d. Claims involving allegations of harassment. Including but not limited to sexual, employment -based or third-party.
 - e. Sexual misconduct or molestation – including allegations of assault, misconduct, rape and related offenses
 - f. Fatalities
 - g. Spinal cord injuries resulting in any degree of paraplegia or quadriplegia.
 - h. Nerve damage injuries resulting in paralysis or loss of sensation
 - i. Brain damage claims including; but not limited to, closed head injuries, permanent disorientation, behavior disorder, personality change, seizure, motor deficit or other cognitive disorders.
 - j. Burns – Third degree burns involving 10% of the body, or second degree burns involving 30% of the body.
 - k. Amputation – complete or partial
 - l. Impairment of vision or hearing – 50% or greater.
 - m. Multiple injuries arising out of one occurrence, including but not limited to; massive internal injuries or multiple fractures involving more than one claimant.

ATTACHMENT:

1. ACCEL MOC proposed language – redlined

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

MEMORANDUM OF EXCESS LIABILITY COVERAGE

The **Authority** is an intergovernmental, risk-sharing, joint powers authority, duly formed pursuant to State of California Government Code Sections 6500 - 6512.

This Memorandum of Excess Liability Coverage is a contract between the **Authority** and a **Member Agency** which sets forth certain duties, responsibilities and obligations of each party. This Memorandum of Excess Liability Coverage is not an insurance policy or document, and is not necessarily subject to the particular rules of law, which apply to an insurance policy or document interpretation.

Throughout this Memorandum, words and phrases in boldface type have special meaning, which are defined in SECTION V. WORDS AND PHRASES WITH SPECIAL MEANING.

I. WHAT THE AUTHORITY PAYS ON MEMBER AGENCY'S BEHALF

A. COVERAGE OF MEMBER AGENCY

The **Authority** will reimburse the **covered party** for the **ultimate net loss** excess of the **retained limit** which the **covered party** shall become legally obligated to pay by reason of liability:

- (1) Imposed by law, or
- (2) Assumed by contract, for **damages** because of:

COVERAGE A - BODILY INJURY LIABILITY
COVERAGE B - PROPERTY DAMAGE LIABILITY
COVERAGE C - PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY
COVERAGE D - PERSONAL INJURY LIABILITY

to which the Memorandum applies, caused by or arising out of an **occurrence**.

B. DEFENSE OF MEMBER AGENCY

The **Authority** shall not be called upon to assume charge of the investigation or defense of any claim. However, in the case of a claim or proceeding which, in the opinion of the **Authority**, may result in an **ultimate net loss** exceeding the **retained limit**, the **Authority** has certain rights as set forth below:

1. On any claim in which, in the opinion of the **Authority**, the **covered party** is acting reasonably in the handling, defense or settlement of a claim, the **Authority** may, at its own expense, associate in or participate with the **covered party** in the negotiation, investigation, defense, appeal or settlement of such claim; however, the **Authority** shall not have

the right to take over or control the negotiation, investigation, defense, appeal or settlement of such claim.

2. On any claim in which, in the opinion of the **Authority**, the **covered party** is acting unreasonably in the handling, defense or settlement of such claim, the **Authority** may, at its own expense, assume control of the negotiation, investigation, defense or appeal of such claim. However, nothing contained in this Section B.2. shall be construed as to allow the **Authority** to settle a claim, or to force a **covered party** to settle a claim, within the **retained limit**.
3. On any claim in which, in the opinion of the **Authority**, it is clear that the claim will result in an **ultimate net loss** exceeding the **retained limit**, the **Authority** may, at its own expense, assume control of the negotiation, investigation, defense, settlement or appeal. Such assumption of control may include requiring **covered party** to tender its **retained limit**, once it has been determined that there exists a reasonable, fair and realistic settlement opportunity in excess of the **retained limit**.
4. If a settlement demand is acceptable to the **Authority** and is not acceptable to the **covered party**, and the **Authority** tenders to the **covered party** an amount equal to the difference between the remainder of the **retained limit** and said settlement demand (or up to the applicable Limit of Coverage, whichever is less), then the **Authority's** agreement to indemnify or to pay on behalf of the **covered party** for the **ultimate net loss** hereunder shall be discharged and terminated, and the **Authority** shall have no further obligations with respect thereto.

The procedure for the **Authority** to invoke sections I.B.2, 3 and 4 above shall be as follows. The Liability Claims Administrators or Program Administrator may submit the issue of assuming control of a claim directly to the Board of Directors, for decision, by presenting a written recommendation to that effect. The staff and **covered party** will have the right to submit written materials and present oral arguments to the Board, subject to reasonable time constraints. The Board may determine to assume control of a claim by a two-thirds (2/3) vote of those present and voting. The affected Board member (i.e. whose member entity is the defendant in the claim) shall be disqualified from the final discussion and vote on the issue, but shall be counted as a “no” vote.

The **covered party** shall fully cooperate with the **Authority** in all matters pertaining to a claim or proceeding. No claim shall be settled for an amount in excess of the **retained limit** without the prior written consent of the **Authority**.

II. AUTHORITY’S LIMIT OF LIABILITY

Regardless of the number of (1) **covered parties** under this Memorandum, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought, the **Authority’s** liability is limited as follows:

- A. With respect to the Coverage provided, the **Authority’s** liability for **Bodily Injury, Property Damage, Public Officials Errors and Omissions**, and **Personal Injury** or any combination thereof arising out of any one **occurrence** shall be limited to the **ultimate net loss**

which is in excess of the amount shown as the **Member Agency's** self-insured retention as specified in the Declarations, or for the **ultimate net loss** which is in excess of any scheduled underlying insurance under this Memorandum; but then only up to the sum set forth in the Declarations as the **Authority's** limit of liability for any one **occurrence**. In the event that a **structured settlement** is utilized in the resolution of a claim, only the present value of the agreed upon payments (the present value "cost" of the **structured settlement**) shall be considered in satisfaction of a **Member Agency's** self-insured retention. The total liability of the **Authority** for all **ultimate net loss** because of all **occurrences** during the period of time to which this Memorandum applies shall not exceed the limit of liability shown in the Declarations as "Aggregate".

- B. The **Authority** acknowledges that the **Member Agency**, from time to time, may directly purchase with its own funds (subject to the policies and procedures of the **Authority**) underlying insurance, or may participate in an underlying **risk retention pool**, with limits of liability less than, equal to, or greater than the amount of the **Member Agency's** retention for certain operations, events, and hazards for which this Memorandum provides coverage, however, these underlying insurance policies do not need to be scheduled.

It is agreed that this Memorandum of Coverage (subject to its exclusions, terms and conditions) shall provide coverage in excess of the per occurrence limits, but not the aggregate limits, of such insurance or **risk retention pool**, subject to the following conditions:

1. If the limits of liability of the underlying policy or **risk retention pool** are less than the **Member Agency's** retention, the **Member Agency** shall bear the risk of the difference. However, if such limits are greater than the **Member Agency's** retention, this Memorandum of Coverage will apply in excess of the greater limit.
2. All **defense costs** paid or payable, or obligations to provide defense or pay **defense costs**, under such underlying or other insurance shall be primary to and not contribute with the **Authority's** obligation to pay **defense costs** as required under this Memorandum.
3. If the **Member Agency** fails to meet its financial obligation for its **retained limit**, it is understood that the coverage provided under this Memorandum of Coverage will not drop down and provide coverage, and the limits of liability provided under this Memorandum of Coverage shall continue to apply as if the **Member Agency** had met its obligation and the limits of liability stated in the declarations are still in effect.
4. If the underlying insurance or **risk retention pool** coverage is canceled, or the limits reduced, then it is understood that the coverage provided under this Memorandum of Coverage will not drop down and provide coverage, and the limits of liability provided under this Memorandum of Coverage shall continue to apply as if the limits of liability stated in the declarations are still in effect.

5. If the limits of liability of such aggregate coverage limits are reduced, for whatever reason, this shall have no effect on the limits of liability afforded by this Memorandum of Coverage; coverage provided under this Memorandum of Coverage will not drop down and provide coverage; and this Memorandum of Coverage shall apply as if the limits of liability stated in the declarations are still in effect.

The terms of this section (section 5) apply equally to any other pool operated by the **Authority**. Should a **Member Agency's** aggregate limits be reduced or exhausted in another **Authority** pool, the coverage provided under this Memorandum of Coverage shall not drop down and provide coverage; and this Memorandum of Coverage shall apply as if the limits of liability stated in the declarations are still in effect.

6. It is understood that the pool represented by this Memorandum of Coverage operates separately and distinctly from any other pools operated by the **Authority**.
7. It is understood that should **Member Agency's** underlying insurance, or coverage provided by any other **Authority** pool, fail to respond, or be financially unable to respond, to its obligations, the risk for this failure or inability to respond shall be borne by the **Member Agency** and not the **Authority**; but only up to the limit of the **Member Agency's** retained per **occurrence** limit (\$1,000,000 per **occurrence**) under this Memorandum of Coverage.

Nothing contained herein shall operate to increase the **Authority's** limit of liability under this Memorandum of Coverage.

III. WHO IS A COVERED PARTY

Each of the following is a **covered party** to the extent set forth below:

- A. The **Member Agency** as set forth in the Declarations, any and all commissions, agencies, districts, authorities, boards (including the governing board) or similar entity coming under the **Member Agency's** direction or control or for which the **Member Agency's** board members sit as the governing body. The **Member Agency** includes all departments and constituent agencies of the **Member Agency**.
- B. Any person who is an elected or appointed official, employee or authorized volunteer of the **Member Agency** whether or not compensated while acting for or on behalf of the **Member Agency** including while acting on outside boards at the direction of the **Member Agency**.
- C. Any person while using any **automobile** and any person legally responsible for the use thereof, provided the actual use of the **automobile** is with the permission of the **Member Agency**. The coverage extended by this Section C shall not apply:
 - (1) To any person or organization, other than the **Member Agency**, or to any agent or employee thereof, engaged in selling, repairing, servicing, delivering, testing, road

testing, parking or storing **automobiles**, with respect to any **occurrence** arising out of any such occupation; or

- (2) With respect to any **hired automobile**, to the owner, or lessee thereof other than the **Member Agency**, or to any agent or employee of such owner or lessee; or
 - (3) To liability arising from the ownership, maintenance, or use of any **automobile** assigned to an airport premises while such **automobile** is on the premises of an airport which is owned, maintained or operated by the **Member Agency**.
- D. Any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum of Coverage, but only with respect to **Bodily Injury** and **Property Damage** resulting from operations performed by or on behalf of the **Member Agency** or facilities owned or used by the **Member Agency**.
- E. As respects any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to name such person or organization as an additional covered party, coverage afforded by this Memorandum of Coverage shall be subject to all terms, exclusions and conditions of this MOC, as applicable, and shall apply only to the limit of liability coverage required by such contract.

IV. WHAT THE AUTHORITY WILL NOT COVER (EXCLUSIONS)

This Memorandum does not apply:

- A. To liability arising out of the partial or complete structural failure of any **dam**.
- B. To **Bodily Injury, Property Damage** or **Personal Injury** arising out of the ownership or maintenance or use or operation of any airfield or similar aviation facility.

This exclusion shall not apply, however, to liability arising out of the ownership, operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned, or operated by the **covered party**.

- C. To liability arising out of the ownership or maintenance or loading or unloading or use or operation of any **aircraft**.

This exclusion does not apply to claims arising out of the ownership, operation, use, maintenance or entrustment to others of any **Unmanned Aerial Vehicle (UAV)** that is an unmanned aircraft system owned by, or operated by, or rented to, or loaned to, or operated on behalf of, any Member of the Authority or Entity.

- D. To liability arising out of the ownership or maintenance or loading or unloading or use or operation of any watercraft over 35 feet in length, unless added by specific endorsement.

- E. To any obligation for which the **covered party**, or any carrier as insurer therefor, may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.
- F. To liability for **Bodily Injury** to any employee of the **covered party** including the spouse, child, unborn child or fetus, parent, sibling or dependent of the employee, arising out of and in the course of his employment by the **covered party**, except with respect to liability of others assumed by the **covered party** under contract.
- G. To liability for **property damage** to:
 - (1) Property owned by the **covered party**;
 - (2) Property rented to or leased to the **covered party** where the **covered party** has assumed liability under contract for **damage** to or destruction of such property, unless the **covered party** would have been liable in the absence of such contract; and
 - (3) **Aircraft**, or watercraft, in the care, custody or control of the **covered party**.
- H. To liability arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:
 - (1) At or from premises owned, leased or occupied by the **Member Agency**, except for public streets and roads when the discharge, dispersal, release or escape was not participated in by a **covered party**;
 - (2) At or from any site or location used by or for the **covered party** for the handling, storage, disposal, processing or treatment of **pollutants** or waste;
 - (3) Which are at any time transported, handled, stored, treated, disposed of or processed as **pollutants** or waste by or for the **Member Agency** or any person or organization for whom the **Member Agency** may be legally liable;
 - (4) At or from any site or location on which the **Member Agency** or any contractors or subcontractors working directly on the **Member Agency's** behalf are performing operations:
 - (a) If the **pollutants** are brought on or to the site or location in connection with such operations; or
 - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**.
- I. To liability arising out of any governmental direction or request that **pollutants** be tested for, monitored, cleaned up, removed, contained, treated, detoxified or neutralized.

- J. To liability arising out of or contributed to by any complete or partial failure to supply water, electricity or gas.
- K. To liability arising out of medical professional services provided by any doctor, nurse, or dentist employed by or contracted by the **Member Agency**, including:
 - (1) Rendering, or failure to render:
 - (a) Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of foods or beverages in connection therewith.
 - (b) Any service or treatment conducive to health or of a professional nature.
 - (c) Any cosmetic or tonsorial service or treatment.
 - (2) Furnishing of, or dispensing of, drugs or medical, dental, or surgical supplies or appliances.

This exclusion does not apply to the activities of paramedics, emergency medical dispatchers, technicians or similar personnel.

- L. To liability arising out of the ownership or operation of any hospital or medical clinic.
- M. To claims for loss or **damage** including consequential loss or any liability of any and all **covered parties** arising out of or in any way connected with the application of the principles of eminent domain, condemnation proceeding, retroactive condemnation, inverse condemnation or reverse condemnation, by whatever name called, regardless of whether such claims are made directly against the **covered party** or by virtue of any agreement entered into by or on behalf of the **covered party**.

This exclusion does not apply, however, to **Property Damage** for which the **covered party** may be legally responsible, and for which recovery is sought by claimant or plaintiff pursuant to a claim for inverse condemnation, by whatever name called; provided, however, that in any case in which a claim of inverse condemnation is made against the **covered party**, coverage shall exist for **Property Damage** only, and there shall be no coverage for reduced value of property (diminution of value), plaintiff's attorney fees and expert fees, severance **damages**, relocation costs, or any other form of relief, however denominated.

- N. To liability, including, but not limited to, liability for civil rights violations, arising out of or in connection with land use planning, land use regulation, Code Enforcement, the adoption or administrative application of any ordinance, resolution or regulation, rent control, or zoning, by whatever names called, regardless of whether or not such liability accrues directly against the **Member Agency** or by virtue of any agreement entered into by or on behalf of the **Member Agency**.
- O. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive damages, or injunctive relief, equitable relief or declaratory relief, writs of mandate or any other form

of relief other than the payment of **damages**. This exclusion applies whether the fine, assessment, 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 specified item of property or a specific sum of money, because such item or property or sum of money was not lawfully or rightfully acquired by the **covered party**

P. Under Coverage C, **Public Officials Errors and Omissions** to:

- (1) **Bodily Injury or Personal Injury;**
- (2) **Property damage;**
- (3) Refund of taxes, fees or assessments.
- (4) Liability of a **covered party** (a) arising in whole or in part out of a **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled or (b) arising out of the actual or alleged violation of the penal code, or a penal ordinance, committed by or with the knowledge or consent of any **covered party**, except that any act pertaining to any other **covered party** shall not be imputed to any other **covered party** for the purpose of determining application of these exclusions.
- (5) Liability arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
- (6) Failure to perform, or breach of, a contractual obligation.
- (7) Liability arising out of fiduciary activities as respects employee benefit plans, but however, this exclusion does not apply to administration of the Members employee benefits programs. Administration is defined as giving counsel to employees with respect the benefits; interpreting the benefits; handling of records in connection with benefits; and effecting enrollment, termination or cancellation of employees under the benefits, provided all such acts are authorized by the **Member Agency**.

Q. To liability:

- (1) With respect to which a **covered party** under the Memorandum is also a **covered party** under a nuclear energy liability policy issued by Mutual Atomic Energy Liability Underwriters, American Nuclear Insurers, or Nuclear Insurance Association of Canada, or any successor organizations, or would be a **covered party** under any such policy but for its termination upon exhaustion of its limit of liability; or,
- (2) Resulting from the “hazardous properties” of “nuclear material” and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **covered party** is, or had this Memorandum not been issued would be, entitled

to indemnify from the United States of America, or any agency thereof, with any person or organization, or,

- (3) Resulting from “hazardous properties” of “nuclear material,” if:
- (a) The “nuclear material” (i) is at any “nuclear facility” owned by, or operated by or on behalf of, a **covered party**, or (ii) has been discharged or dispersed therefrom;
 - (b) The “nuclear material” is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a **covered party**; or
 - (c) The liability arising out of the furnishing by a **covered party** of services, materials, parts of equipment in connection with the planning, construction, maintenance, operation or use of any “nuclear facility,” but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (c) applies only to “**Property Damage**” to such “nuclear facility” and any property threat;

As used in this exclusion:

- (a) “Hazardous properties” include radioactive, toxic, or explosive properties;
- (b) “Nuclear facility” means: (i) any nuclear reactor; (ii) any equipment or device designed or used for (aa) separating the isotopes of uranium or plutonium, (bb) processing or utilizing spent fuel, or (cc) handling, processing, or packaging “waste”; (iii) any equipment or device used for the processing, fabricating or alloying of “special nuclear material” if at any time the total amount of such material in the custody of the **covered party** at the premises where such equipment or device is located consists of or contains more than 25 grams of uranium m235; (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and (v) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operation;
- (c) “Nuclear material” means “source material,” “special nuclear material,” or “byproduct material”;
- (d) “Nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (e) “**Property Damage**” includes all forms of radioactive contamination of property.

- (f) “Source material,” “special nuclear material,” and “byproduct material” have the meaning given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
 - (g) “Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
 - (h) “Waste” means any “waste” material (i) containing “byproduct material” and (ii) resulting from the operation by any person or organization of any “nuclear facility” included within the definition of “nuclear facility” under paragraph (b) (i) or (ii) thereof;
- R. To liability arising out of past and future salary, wages, benefits and/or retirement proceeds alleged or claimed because of any adverse employment action including, but not limited to, unlawful **discrimination**, harassment, and/or retaliation against, violation of civil rights of, or wrongful termination of any employee or official of the **covered party**.
- S. **ERISA, COBRA, UCERA, WARN Act, and FLSA Liability.** We do not cover any liability imposed on the **covered party** under:
 - (A) the Employee Retirement Income Security Act of 1974;
 - (B) the Comprehensive Omnibus Budget Reconciliation Act;
 - (C) the Worker Adjustment and Retraining Notification Act;
 - (D) the Fair Labor Standards Act, including but not limited to any wage and hour or other claim arising under the FLSA or any California Wage Orders or any similar federal or state law;
 - (E) any similar federal, state or local laws;
 - (F) any amendments to such laws; or
 - (G) any regulations promulgated under any such laws.
- T. To **ultimate net loss** arising out of relief, or redress, in any form other than money **damages**.
- U. To any liability arising out of any investment decision, including, but not limited to, investing, re-investing, purchasing, acquiring, exchanging, selling and/or managing public funds.

V. WORDS AND PHRASES WITH SPECIAL MEANING

Aircraft means a vehicle designed for the transport of persons or property principally in the air. Aircraft does not mean **Unmanned Aerial Vehicles (UAVs)**, separately defined in Section V of this Memorandum.

Aggregate Limit means the total limit of coverage available for all occurrences during a program year.

Authority means the Authority for California Cities Excess Liability.

Automobile means a land motor vehicle or trailer licensed for highway use.

Bodily Injury means bodily injury, sickness, disease or emotional distress, including death resulting therefrom, and also includes care and loss of services by any person or persons.

Covered party means any person or entity set forth in Section III of this Memorandum.

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, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, 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 shall be considered a **dam**. In addition, no obstruction in the channel of a stream or watercourse upstream from the construction for percolation underground shall be considered a **dam**, except that no structure specifically exempted from jurisdiction by the State of California Department of Water resources, Division of Safety of Dams shall be considered a Dam, unless such structure is under the jurisdiction of any agency or the federal government

Damages means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a **covered party**. **Damages** includes attorney fees not based on contract awarded against the **covered party**, if the fees arise from an **occurrence** in which this coverage applies. **Damages** also include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the **covered party**, which are assumed by the **Member Agency** in a contract related to operations performed by or on behalf of the **Member Agency** or facilities owned or used by the **Member Agency**, where such attorney fees or costs attributed to a claim for **Bodily Injury** or **Property Damage** covered by this Memorandum.

Defense costs means all fees, costs and expenses caused by and relating to the adjustment, investigation, defense or litigation of a claim including attorney's fees, court costs and interest on judgments accruing after entry of judgment. **Defense costs** shall not include the salaries of employees or officials, or the office expenses of the **Authority**, the **covered party**, or any claims administration firm engaged by any **covered party**.

Discrimination - means action or inaction with respect to any present or former employee or applicant for employment with respect to their compensation, terms, conditions, rights, privileges or opportunities because of protected class category or characteristic established pursuant to any applicable federal, state or local statute or ordinance

Hired automobile means an **automobile** used under contract on behalf of or loaned to the **Member Agency** provided such **automobile** is not owned by or registered in the name of (1) the **Member Agency**, or (2) any other **covered party**.

Member Agency means the local public agency, designated in the declarations, which is a party signatory to the Joint Powers Agreement creating the **Authority** for California Cities Excess Liability. This coverage applies separately to each **covered party** against whom claim is made or suit is brought, except with respect to the limits of the **Authority's** liability.

Occurrence means: a) an accident or event which, during the coverage period, results in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of the **covered party** b) an act, accident or event, as defined under **Personal Injury** or **Public Officials Errors and Omissions**, during the coverage period which results in injury or **damage**; all injuries or **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

Owned automobile means an **automobile** owned by or under long term lease to the **Member Agency**.

Personal Injury means (a) false arrest, malicious prosecution, or willful detention; (b) libel, slander or defamation of character; (c) invasion of privacy; (d) wrongful entry or eviction, or other invasion of the right of private occupancy; (e) assault and battery; and (f) **discrimination** or civil rights violations.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The term **pollutant** as used herein is not defined to mean potable water or agricultural water or water furnished to commercial users or water used for fire suppression, and it is not defined to mean smoke from a hostile fire.

Property Damage means (1) physical injury to or destruction of tangible property, including the loss of use thereof, at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by an **occurrence** during the coverage period.

Public Officials Errors and Omissions means any and all breaches of duty by the **covered party** arising from negligent action or inaction, mistake, misstatement, error, neglect, inadvertence, or omission by the **covered party** in the discharge of duties with the **Member Agency**.

Retained limit means the amount of paid claim liability for which the **covered party** is responsible on a per **occurrence** basis, and which the **covered party** actually pays in cash, after making proper deduction for all recoveries, offsets, and salvages collectible, including, but not limited to, payments by or recoveries from other insurance which may be available to the **Member Agency**; provided, however, that recoveries and payments, as used herein, shall not include recoveries from or payments by an “underlying” insurer or pool as contemplated under Section II B. Further, a **Member Agency’s retained limit** includes **defense costs** expended by the **Member Agency** or on the **Member Agency’s** behalf by an underlying insurer or pool as contemplated under Section IIB.

Risk retention pool means any legally formed group of public entities joining together to share risk or joint-purchase insurance, or other insurance.

Structured settlement shall mean any agreement which provides for a program of future payments in the settlement of a claim, but in no event shall the present value be in excess of the judgment.

Unmanned Aerial Vehicle (UAV) means an aircraft (with its aerial system or control device) that is not controlled directly by a person from within or on the aircraft and is authorized to be operated by the Federal Aviation Authority (FAA) Small Unmanned Aircraft Regulations (14 Code of Federal Regulations Part 107), or that is authorized to be operated under a Certificate of Waiver or Certificate of Authorization pursuant to 49 U.S. Code sections 40102(a)(41)(D) and 40125(a)(2), and 44806, relating to agreements to operate “public aircraft” for “governmental functions” including but not limited to firefighting, search and rescue, and law enforcement. In the event any of these provisions are amended, any successor statutes or regulations will apply.

Ultimate net loss means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which a **Member Agency** is liable either by adjudication or compromise (with the written consent of the **Authority**) after making proper deductions for all recoveries and salvages collectible, and includes **defense costs** and interest on any judgment or award, whether such sums paid or payable, costs, or interest are incurred by the **Member Agency**, a **covered party** or the **Authority**.

VI. CONDITIONS

- A. **Deposit/Adjustment.** All deposits and retroactive adjustments for this Memorandum shall be computed and paid in accordance with the Joint Powers Agreement, By-Laws and the cost allocation plan adopted by the Board of Directors. The deposit is an estimate to be credited to the amount of retrospective adjustment determined under the cost allocation plan.
- B. **Inspection and Audit.** The **Authority** shall be permitted but not obligated to inspect the **Member Agency’s** property and operations at any time. The **Authority** may examine and audit the **Member Agency’s** books and records at any time prior to cessation of the **Member Agency’s** financial obligations under the Joint Powers Agreement.

C. Covered Party's Duties in the Event of Occurrence, Claim or Suit.

In the event of:

(1) **Member Agencies** will report to the Authority's Claims Administrator as soon as possible all events meeting any of the criteria identified below, without regard to liability:

a. Claims in which the **ultimate net loss** is estimated to exceed twenty-five percent (25%) of the **covered party's retained limit**.

b. Claims falling within any of the following classifications:

- i. Class action suits.
- ii. Law enforcement actions alleging excessing use of force or wrongful conviction.
- iii. Claims involving allegations of harassment, including but not limited to sexual, employment-based or third-party.
- iv. Sexual misconduct or molestation – including allegations of assault, misconduct, rape and related offenses.
- v. Fatalities.
- vi. Spinal cord injuries resulting in any degree of paraplegia or quadriplegia.
- vii. Nerve damage injuries resulting in paralysis or loss of sensation.
- viii. Brain damage claims including; but not limited to, closed head injuries, permanent disorientation, behavior disorder, personality change, seizure, motor deficit or other cognitive disorders.
- ix. Burns – Third degree burns involving 10% of the body, or second degree burns involving 30% of the body.
- x. Amputation – complete or partial.
- xi. Impairment of vision or hearing – 50% or greater.
- xii. Multiple injuries arising out of one occurrence, including but not limited to; massive internal injuries or multiple fractures involving more than one claimant.
- xiii. Severe disfigurement
- xiv. Long term hospitalization (30 days or more)
- xv. Multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.
- xvi. Any claim with an assigned trial date in the next 60 days that has not been otherwise reported.
- ~~i.~~
- ~~ii. one or more fatalities;~~
- ~~iii. spinal cord injuries (paraplegic or quadriplegic);~~
- ~~iv. amputations;~~
- ~~v. loss of sight or hearing;~~

- ~~vi. severe burns or disfigurement;~~
- ~~vii. serious head injuries;~~
- ~~viii. serious loss of use of any body part or function;~~
- ~~ix. allegations of sexual misconduct, molestation or similar;~~
- ~~x. long term hospitalization (30 days or more); or~~
- ~~xi. multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.~~

~~b.c.~~ Lawsuits or writs involving employment practices liability.

~~e.~~ Any class action lawsuits.

- d. Demands in excess of \$250,000 arising out of any of the following settings:
 - i. Statutory demand;
 - ii. Post closed discovery (not expert) demand;
 - iii. Mandatory Settlement Conference demand;
 - iv. Mediation demand; or
 - v. Arbitration demand.

Written notice containing particulars sufficient to identify the **covered party** and also reasonable obtainable information with respect to the date, time, place and circumstances thereof, and the names and addresses of the **covered party** and of available witnesses, shall be given by or for the **covered party** to the **Authority** or any of its authorized agents as soon as practicable.

With respect to any claim required to be reported in accordance with Section VI. C.(1), the **covered party** shall immediately forward to the **Authority** every demand, notice, summons or process received.

The **covered party** shall cooperate with the **Authority** and, upon the **Authority's** request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person who, or organization which, may be liable to the **covered party** because of injury or **damage** with respect to which coverage is afforded under this Memorandum; and the **covered party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **covered party** shall not, except at the **covered party's** cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid or **damage** mitigation.

The **Authority** may not be liable for **occurrences**, suits or claims in which the **Member Agency** fails to comply with this Subsection C.

- D. Action against Authority. No action shall lie against the **Authority** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay shall have been finally

determined either by judgment against the **covered party** after actual trial or by written agreement of the **covered party**, the claimant and the **Authority**.

No person or organization shall have any right under this Memorandum to join the **Authority** as a party to any action against the **covered party** to determine the **covered party's** liability, nor shall the **Authority** be impleaded by the **covered party** or the **covered party's** legal representative. Bankruptcy or insolvency of the **covered party** or of the **covered party's** estate shall not relieve the **Authority** of any of its obligations hereunder.

- E. Multiple Coverage Periods. An **occurrence** with a duration of more than one coverage period shall be treated as a single **occurrence** arising during the coverage period to which Excess Insurance, if any, applies. If no Excess Insurance applies, then the **occurrence** shall be treated as arising when the **occurrence** begins.
- F. Other Coverage. The coverage afforded in this Memorandum shall be excess of and shall not contribute with any valid and collectible insurance, coverage provided by a **risk retention pool**, or coverage provided through a risk-purchasing group that is available to the **covered party**, other than any excess or umbrella insurance or coverage procured by the **Authority** or the **Member Agency** which is specifically meant to apply in excess of the coverage afforded by this Memorandum.
- G. Subrogation. In the event of any payment under this Memorandum, the **Authority** shall be subrogated to all the **covered party's** rights of recovery therefor against any person or organization and the **covered party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **covered party** shall do nothing after loss to prejudice such rights.
- H. Withdrawal/Cancellation. The **Member Agency** may withdraw from the **Authority** and cancel this coverage only pursuant to Section XIX of the **Authority's** JPA Agreement.
- I. Changes. This Memorandum shall not be changed except by written endorsement hereto.

VII. ARBITRATION

It is the intent of this Section VII: (1) to provide an alternative, and confidential, alternative to litigation for the resolution of coverage disputes between a **Member Agency** and the **Authority**, and (2) that this Section shall apply to those disputes arising out of or in connection with claims or actions filed against the **Authority** by a **Member Agency**. The purpose of such confidentiality is to protect the interests of parties, particularly in a circumstance in which there is a pending, or the potential of an underlying case.

Arbitration shall be final and binding, and shall apply only in instances in which the **Member Agency** and the **Authority** agree to arbitration. Agreement by the **Authority** to arbitrate shall require a majority vote of the Board.

The Parties in the proceedings shall be the **Authority** and a **Member Agency** (hereinafter referred to in this Section VII as "Party" or "Parties").

A. Requesting arbitration:

Either a **Member Agency** or the **Authority** may request arbitration of disputes under this Section. To proceed with arbitration, the **Member Agency** and the **Authority** must have prior approval from their respective governing bodies. Such arbitration proceeding becomes non-cancelable once an arbitration agreement is executed by both the **Authority** and the **Member Agency**.

Upon receipt of a request for arbitration from a **Member Agency**, the Board decides whether or not the **Authority** shall agree to arbitration, and the time to make such decision shall not extend past the next two regularly scheduled Board meetings after receipt of such request, provided that such request is received no later than 14 days prior to the first of such two Board meetings.

Upon receipt of a request for arbitration from the **Authority**, the **Member Agency** decides whether or not it will agree to arbitration, and the time to make such decision shall not extend past the next two regularly scheduled **Authority** Board meetings after receipt of such request, provided that such request is received no later than 14 days prior to the first of such two **Authority** Board meetings.

B. Arbitration procedures:

If a dispute is submitted to arbitration, each Party shall, within thirty (30) calendar days, select one (1) arbitrator and submit their name in writing to the other Party. Within thirty (30) calendar days after their selection, these two arbitrators shall select a third, independent arbitrator. No arbitrator shall be employed by or in any way affiliated with the **Authority** or with any **covered party**. One of the three arbitrators must be an attorney with knowledge, expertise, and experience in the area of California insurance or memorandum-of-coverage law.

If the two selected arbitrators cannot agree on the selection of the third arbitrator within thirty (30) calendar days, either Party may petition the Contra Costa County Superior Court for the appointment of the third arbitrator pursuant to the provisions of Section 1281.6 of the California Code of Civil Procedure.

The arbitration panel shall choose a Chairperson from the three panelists; however, each arbitrator shall have an equal vote. The arbitration hearing shall commence within one hundred eighty (180) calendar days from the date of the selection of the complete panel.

Each Party shall pay the cost of its selected arbitrator and one-half the cost of the third, independent arbitrator. In addition, each Party shall be responsible for its own cost and expense of arbitration.

Except for notification of appointment, and as otherwise provided for in the California Code of Civil Procedure, there shall be no communication between the Parties and the arbitrator(s) relating to the subject of the arbitration, other than at scheduled hearings.

C. Discovery:

The procedures set forth in California Code of Civil Procedure 1283.05 relating to discovery (including, but not limited to, depositions) shall apply to any arbitration pursuant to this Section. The arbitration panel shall have the authority to designate any discovery under this arbitration as confidential.

D. Testimony under oath:

The testimony of witnesses shall be given under oath, as administered by a qualified individual, or shall be given under a declaration under penalty of perjury.

E. Hearing decision:

The decision of the panel shall be reported in writing. The written decision of the panel shall be given to both Parties within thirty (30) calendar days of the close of the hearing.

F. Certified court reporter:

Either Party electing to utilize a certified court reporter shall make arrangements directly with such certified court reporter and shall notify the other Party of such arrangements in advance of the hearing. Such Party shall pay the cost of recording the hearing if no transcript is ordered by the other Party. If such a transcript is ordered, the cost of the transcript and of recording the hearing shall be divided equally among the Parties ordering copies.

G. Funding of defense and payment of claims pending resolution of dispute:

The commencement of an arbitration process hereunder shall have no effect on the Parties' responsibilities for payment of fees or expenses related to investigation, defense, or litigation of a claim or lawsuit, until such time as a final decision has been rendered by the arbitration panel. The initiation of an arbitration process shall have no effect on the Parties' obligation, rights, or responsibilities under this Memorandum.

H. Effect of arbitration decisions:

All decisions made by the arbitration panel shall be final and binding upon the Parties.

I. Costs of arbitration:

Unless otherwise provided for herein, each Party shall bear its own costs associated with arbitration.

J. Interpretation and application of rules:

With respect to any procedure not herein expressly provided for, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration (Section

1280 et seq.). The arbitrator(s) shall interpret and apply these rules in so far as they relate to the arbitrator(s)' power and duties. All decisions of the arbitration panel shall be decided by a majority vote.

K. Not applicable to excess carriers:

These arbitration provisions are intended to bind only the **Authority** and its **Member Agencies**. They are not intended to be binding upon any of the **Authority's** excess carriers.

Issued by the Authority for California Cities Excess Liability.

By: _____
Secretary



Item No. C.1.e
Underwriting Committee
September 25, 2023

ACCEL'S UNDERWRITING GUIDELINES REVIEW:

- I. UNDERWRITING STANDARDS POLICY & PROCEDURE**
- II. NEW EXPOSURE QUESTIONNAIRE**
- III. BYLAWS**

ISSUE: Per the CAJPA Accreditation Report, the Underwriting Standards Policy and Procedure, New Exposure Questionnaire, and Bylaws (since it contains underwriting information for new Members), must be reviewed every 3 years. At the December 2017 Underwriting Committee Meeting, the Committee agreed to review these items every year.

The last review was at the December 16, 2020 Underwriting Committee Meeting.

The purpose of today's review is to be sure all Committee members are aware of this policy, provide feedback and apply this policy to the following agenda items.

RECOMMENDATION: It is recommended that the Committee discuss this item to take action to give a recommendation to the Board or give direction.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: ACCEL did not have a Policy and Procedure that dictates when a new exposure should be brought to the attention of the Authority. Members have operated with the understanding that any new services or services that are provided outside the city limits, should be brought forward, but there is no defined policy outlining this understanding.

In 2012 the Underwriting Committee created a Policy & Procedure and at the April 2012 Board Meeting the Board took action to approve the Underwriting Standards Policy and Procedure to help Members understand when a new or changing exposure should be brought to the attention of the Authority.

ACCEL was one of the first JPA's to work with CAJPA on this requirement, and ACCEL's policy has been used as a model for other JPAs.

In an effort to improve the effectiveness, content, and the distribution of information to ACCEL's Underwriting Committee and Board, the New Exposure Questionnaire has been created with the idea that it may lead to providing a uniform approach to providing pertinent information about a new exposure. It should be completed by the Member Agency presenting a new exposure for consideration. This will streamline information gathering and decimation, making issues easier for all Board Members to more easily comprehend the information during a meeting.

ACCEL

Authority for California Cities Excess Liability

c/o Alliant Insurance Services
Corporation Insurance License No. 0C36861
560 Mission Street, 6th Floor, San Francisco, CA 94105



In 2018 Deb Hossli volunteered revising the format of the questionnaire by grouping the questions together to make it more concise and easier to complete.

The Underwriting Standards Policy and Procedure refers to new exposures for current Members only while the ACCEL Bylaws refers to underwriting requirements for new Members. CAJPA Accreditation recommended that the Underwriting Standards Policy and Procedure reference the ACCEL Bylaws to recognize ACCEL's underwriting standards for new Members. The Board amended the Policy and Procedure in October 2019 to add this recommended change.

ATTACHMENT(s): (1) Underwriting Standards Policy & Procedure
(2) New Exposure Questionnaire
(3) Bylaws

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: UNDERWRITING STANDARDS REGARDING NEW EXPOSURES

DATE: April 12, 2012

AMENDED DATE: October 17, 2019

REVIEWED DATE: ~~September~~ August 25, 2023~~4~~

POLICY STATEMENT

The Authority for California Cities Excess Liability (ACCEL) Board of Directors acknowledges that some California cities are involved in (i) joint powers agreements and intergovernmental agreements with other government entities, and, in some cases, (ii) other agreements with non-government entities, under which a city is contractually agreeing to provide certain services to the other party (collectively herein, “Service Agreements” plural, “Service Agreement” singular). Members of ACCEL may also be considering new activities that will increase the risk shared with ACCEL.

Because of the increased exposure to ACCEL as a result of these new activities, ACCEL has outlined the following procedure to bring these exposures to it for review.

For service agreements and new exposures that take effect subsequent to the date of this Policy, this Policy provides requirements for when a Member Agency shall bring a Service Agreement to the attention of ACCEL.

ACCEL’s Bylaws at Article XIII provide underwriting guidelines for prospective new Member Agencies.

PROCEDURE

Service Agreements and new exposures that must be brought to ACCEL for consideration by the Underwriting Committee and, as necessary, the Board of Directors, are those for any service, activity, or program that “significantly” increases a Member Agency’s exposure to loss. When submitting a new exposure to ACCEL for consideration, the New Exposure Questionnaire should be completed and submitted to the Program Administrators with all related proposed contracts.

It is the intent of the Board of Directors to define “significantly” by using the following criteria. New or proposed exposures that must be brought to ACCEL for consideration are those in which the new exposure is in any one or more of the following:

1. A service for another entity that the Member Agency does not currently provide or conduct for itself.
2. A new service within the Member Agency that would not be considered traditional for the majority of cities in California.
3. A high-risk recreational service.
4. An increase of 25% or more in the Member Agency's current payroll cost (excluding benefits) for providing or conducting such service within its own organization.
5. Services for a government entity that is not geographically adjacent to the Member Agency.
6. Services for an organization that is not a government entity.
7. A situation or arrangement in which the Member Agency shares management staff (by position, such as a battalion chief, not necessarily any named individuals) with another entity in (i) non-emergency situations or circumstances, or (ii) other circumstances which may give rise to employment practices liability exposures for the Member Agency (unless there exists in the Service Agreement at least adequate indemnification allocation language between the parties).
8. Any service agreement situation or arrangement that brings about an increased exposure to loss that is concerning, or reasonably should be concerning, to the risk management personnel/function of the Member Agency.

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: ~~98/256/234~~

Member Agency:

Date:

New Exposure Proposal Name:

Expected Implementation Date:

Ongoing Program/Service: Yes or No

If time-limited, end date:

Does current MOC address exposure proposal: Yes or No

If yes, please insert applicable language:

1. Provide a brief summary of your request (i.e., the Member Agency is proposing to implement/expand "x" program and wants the Board to amend the MOC to cover the new exposure – or – confirm that coverage is already available).
2. Describe the proposal under consideration (include information on the size/extent of the proposal; key factors driving the proposal; key hazards or exposures created by the proposal; proposal partners and their respective roles; etc.).
3. Describe the financial impact of the proposal on the City (i.e., payroll, service and supply expenses, capital costs, revenue generation, etc.).
4. Describe the steps that the City will take to minimize/eliminate the hazards or exposures created by the proposal (address implementation phase and ongoing management).
5. Provide any additional information to assist the Underwriting Committee and/or Board with evaluating the proposal (e.g., immunities, legislation, jurisdictional issues, political issues, public benefit, etc.).

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

BYLAWS

Amended & Restated January 20, 2022

Amended & Restated April 6, 2017

Amended & Restated October 18, 2013

Amended & Restated April 17, 2009

Amended & Restated January 20, 2022

**BYLAWS
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**BYLAWS
of the
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY**

For the regulation of the Authority for California Cities Excess Liability, except as otherwise provided by statute or Agreement creating the Authority for California Cities Excess Liability.

**ARTICLE I
DEFINITIONS**

The terms in these Bylaws shall be defined in the Agreement creating the Authority for California Cities Excess Liability, unless otherwise specified herein.

- A. "Authority" shall mean the Authority for California Cities Excess Liability created by the JPA Agreement.
- B. "Board" or "Board of Directors" shall mean the governing body of the Authority composed of one representative of each Member Agency.
- C. "Full Board" shall consist of all directors, whether, or not present at a Board Meeting.

**ARTICLE II
OFFICES**

The principal executive office for the transaction of business of the Authority is hereby fixed and located at:

Authority for California Cities Excess Liability
c/o Alliant Insurance Services
560 Mission Street, 6th Floor
San Francisco, CA 94105

The Board shall have the authority to change the location of the principal executive office from time to time. Any such change shall be noted in the Bylaws by the Secretary, and this section shall be amended to state the new location. Official notice shall comply with Section 53051 of the California Government Code.

Other business offices may at any time be established by the Board at any place or places where the Authority is qualified to do business.

**ARTICLE III
MEETINGS**

In addition to a required regular meeting as called for by the Joint Powers Authority agreement, the Board shall meet on an as-needed basis, as determined by the Board. Official minutes of the Board meetings shall be kept by the Authority at its principal executive office.

**ARTICLE IV
ELECTION OF OFFICERS AND APPOINTMENT OF COMMITTEE
MEMBERS**

The Board of Directors shall elect the officers from among the Board members. For each fiscal year, the officers shall be elected in the following manner:

- A. Each Board member may place another Board member in nomination for each office.
- B. Each Board member shall cast one vote for the candidate of their choice for each office.
- C. All terms of office shall be for one year. The officers shall begin serving terms upon the beginning of the fiscal year immediately following the election. The terms of office shall end on June 30 of each year.
- D. Elections shall be held whenever there is an office vacancy.
- E. Officers shall hold their positions as individuals and not as a representative of a specific public entity.

The Executive Committee will be comprised of the elected officers. The Executive Committee shall appoint members to the Underwriting, Claims and Finance Committees. Ad hoc committees may be appointed by the President.

**ARTICLE V
DUTIES OF THE OFFICERS**

The duties of the officers shall be as follows:

A. President

The duties of the President shall be to:

- 1. Preside at all meetings of the Board of Directors.
- 2. Serve on the Underwriting Committee.
- 3. Appoint ad hoc committees.
- 4. Perform such other duties as the Board may specify.

B. Vice President

The duties of the Vice President shall be to:

1. Act as the President in the absence of the President.
2. Serve as chairperson of the Underwriting Committee.
3. Perform such other duties as the Board may specify.

C. Secretary

The duties of the Secretary shall be to:

1. Cause minutes to be kept as specified in the Agreement.
2. Perform such other duties as the Board may specify.

D. Treasurer

The duties of the Treasurer shall be those specified in Section 6505.5 or 6505.6 of the California Government Code, and to:

1. Maintain or cause to be maintained all accounting and other financial records of the Authority.
2. Serve as chairperson of the Finance Committee.
3. Provide written quarterly financial/profit and loss statements in accordance with Government Code Section S6505.5(e). These reports shall be submitted to the Board of Directors at the next regularly scheduled meeting following their completion.
4. Perform other duties as specified by the Board

ARTICLE VI COMPOSITION AND DUTIES OF COMMITTEES

The operation of the Authority shall be overseen by four standing committees: Executive, Underwriting, Finance, and Claims. ACCEL Member Alternates may be appointed to serve as members of the Underwriting, Finance and Claims Committees, but not as Chairperson. Committee membership shall not meet or exceed a quorum of the Board.

Executive Committee

A. Composition

The Executive Committee shall be comprised of the President, Vice President, Secretary and Treasurer.

B. Duties

1. Oversee the day-to-day management of the Authority.
2. Make payments pursuant to previously authorized contracts within budget limits.
3. Authorize and reimburse expenses incurred for budgeted activities within budget limits.
4. Such other duties as may be specified for by the Board of Directors.

Underwriting Committee

A. Composition

The Underwriting Committee shall be comprised of the President, Vice President, and other Board members appointed by the Executive Committee. The Vice President shall serve as the chairperson.

B. Duties

1. Review membership criteria and applications of prospective members.
2. Review retrospective adjustments for appropriateness.
3. Interpret and make recommendations on revisions to the Memorandum of Coverage.
4. Review and recommend any coverage or exposure issues brought to the Board.
5. Review and make recommendations to the Board on all underwriting related issues (non-specific claim related issues) on all Authority documents.
6. Perform other underwriting duties as may be necessary.

Finance Committee

A. Composition

The Finance Committee shall be composed of the Treasurer and other Board members as appointed by the Executive Committee. The Treasurer shall act as the chairperson.

B. Duties

1. Recommend to the Board on how funds shall be invested.
2. Review deposit amounts for appropriateness.
3. Oversee administration of actuarial services.
4. Review the independent auditors' proposed audit scope and approach.
5. Review the performance of the independent auditor(s).
6. Recommend the appointment of the independent auditor(s) and review audit fees.
7. At the direction of the Board, review, with counsel, any legal matters that could have significant impact on the financial statements.
8. Review and make recommendations to the Board to maintain or change the Investment Policy in accordance with California Government Code.
9. Review and recommend Administrative Budget to the Board.

Claims Committee

A. Composition

The Claims Committee shall generally be made up of Board members appointed by the Executive Committee with one person being designated Claims Committee Chair by the appointed Board members on the Committee.

B. Duties

1. Monitor proper claim reporting to ACCEL by all member cities.
2. Recommend to the Board appointment of the claims auditor and claims administrator.
3. Administer claims auditing and claims administration contracts.
4. Recommend and keep current claims administration policy and procedures.
5. Review and provide oversight regarding the handling and defense of all claims reported per the policy and procedures.
6. Keep Board of Directors completely informed on all claims matters.
7. Interpret coverage issues, as they relate to specific claims, and make recommendations to the Board.
8. Make case settlement recommendations to the Board.
9. Perform other duties as may be assigned by the Board.

ARTICLE VII BUDGET

The annual budget process shall provide for and show the following reports and minimum considerations:

- A. The Administrative Budget shall include the general and administrative costs;
- B. The Member Account Summary shall include deposits, projected interest income and other income;
- C. The Retrospective Plan Calculation shall include audited estimated claims reserves and allocated claims adjustment costs.

ARTICLE VIII DISBURSEMENT OF FUNDS

The disbursement of funds shall be in accordance with the following:

A. Issuance of Checks

1. A register of all checks issued since the last Board meeting shall be provided at the subsequent Board meeting and approved by the Board.
2. The President, Vice President and Secretary have check signing authority and shall make payments pursuant to previously authorized contracts, which are within budget limits. This authority includes the power to authorize and reimburse expenses incurred for budgeted activities, which are within budget limits.

3. The disbursement of checks in any amount shall require at least two signatures.

B. Unencumbered Operating Funds

1. Unencumbered operating funds shall be allocated back to each member city at the end of each Fiscal Year. Any return shall be used as an offset on the following years fund deposit.
2. Any city leaving ACCEL may request and receive any unencumbered operating funds on an equal prorata basis at the end of the Fiscal Year in which they leave.

**ARTICLE IX
INVESTMENT OF FUNDS**

The investment of funds shall be in accordance with the Investment Policy adopted by the Board of Directors. Such investment shall be overseen by the Finance Committee.

A member city's Finance Director or their designee may act as the investment manager of the Authority's funds. If so, there shall be a written agreement prepared. The agreement shall address such areas as service charges, claim payment or withdrawal procedures, authorized investment vehicles and maturities, allocation of pooled investment earnings, and interim financial reporting.

**ARTICLE X
FINANCIAL AUDIT**

An annual financial audit shall be made by a Certified Public Accountant with respects to all receipts, disbursements, and other transactions. A report of such financial audit shall be filed as a public record with Member Agencies in accordance with the Government Code. All costs of such financial audit shall be paid by the Authority. The charge for such audit shall be charged against the Member Agencies in the same manner as all other administrative costs.

**ARTICLE XI
SETTLEMENT OF CLAIMS**

All claims settlement recommendations shall be presented by the Claims Committee to the Board for its approval prior to final settlement.

ARTICLE XII LIABILITY PROGRAM

The Liability Program shall be governed in accordance with the following:

A. Coverage

The excess liability program shall provide pooled self-insurance protection limits and coverages as specified in the Memorandum of Coverage for each Program Year.

B. Program Year

The program year shall begin on July 1 and shall end on the following June 30 for each Member Agency who enters the program effective on July 1.

C. Terms and Conditions of Coverage for New Member

A member joining ACCEL will have coverage for losses under the terms and conditions of the Memorandum of Coverage in effect on the date of the loss.

D. Claims Audit

1. An annual claims audit shall be made on the Authority and each Member Agency's claims prior to the annual retrospective calculations for retrospective adjustments, and a report of such claims audit shall be filed with each Member Agency.
2. Claims audit costs shall be paid by the Authority. The costs for such audit shall be allocated to the Member Agencies in the same manner as all other administrative costs.

E. Deposit (and Audited) Premium Calculations

1. For the purposes of determining the deposit, payroll shall be based on the year's preceding DE6 (or equivalent) payroll (Subject Wages) for quarters ending June 30, September 30, December 31 and March 31, submitted to the Treasurer no later than May 1. Members must also indicate, by including computerized payroll data, any payroll to be omitted from coverage, along with a verification letter from the city's Finance Officer.
2. For those members not providing such information by that date, ACCEL shall assign the task to an auditing firm and assess the cost of such work directly to the member agency.

F. Rating Plan Adjustments

1. On or after July 1, 1989 any member joining ACCEL, other than at the beginning of the Program Year, shall have their loss experience and payroll included in their initial Program Year's retrospective adjustment calculations in accordance with the Program Year definition contained in Article XII B.
2. For purposes of performing any rating plan adjustments, as well as for performing underwriting functions, all loss data common to all members shall be collected in accordance with the policy and procedures developed for that purpose.

G. Underwriting Standards

The Board of Directors shall develop underwriting requirements and guidelines that shall be met and reviewed in the membership underwriting process. These requirements and guidelines shall be those in Article XIII of these Bylaws and/or those adopted as policy and procedures.

ARTICLE XIII NEW MEMBERS

Membership to ACCEL shall be in accordance with the following:

A. Application for Membership

The Underwriting Committee shall provide prospective members with application forms, and establish procedures for their completion and submission. The application form shall include, but not be limited to, a request for the following information:

1. Underwriting data for the current year;
2. Underwriting data for the prior ten years;
3. Incurred losses, paid and reserved, including all allocated losses and administrative expenses equal to or greater than \$25,000, including payments made by insurance companies above an SIR, for the prior ten years;
4. A copy of the most recent claims audit and actuarial reports, if any;
and
5. A copy of the most recent audited financial statements.

B. Membership Approval

1. Membership shall be approved by a two-thirds vote of the Board.
2. Once a prospective member is accepted for membership, the invitation shall be good for 90 days after approval of the Board of Directors. If the prospective member joins ACCEL by governing body action, coverage may be, at the option of said prospective member, retroactive to the first of the month in which the member's governing body approved membership.

- Coverage shall become effective the first day of the month chosen by the prospective member within the approval period authorized by the Board of Directors. In no case shall coverage become effective during the middle of the month unless specifically approved by the Board of Directors. The new member shall have 30 days from date of governing body approval to make payment of fees and the deposit.
3. Administrative fees shall be prorated on a quarterly basis.
 4. Any prospective member joining ACCEL other than at the beginning of a Fiscal Year shall have contributions prorated to the end of the Fiscal Year in which they are covered.
 5. A new Board member shall submit a Conflict of Interest Form at time of the members acceptance to membership and annually thereafter in accordance with State of California.

C. Participation

1. All new members must participate in the ACCEL Liability Program for three (3) full Program Years regardless of when they join.

All new members are eligible to participate in other ACCEL Shared Risk Programs upon approval by a majority vote of the Board of Directors. Applications to participate in optional shared risk programs will be evaluated by the Underwriting Committee and then presented to the Board along with their recommendations.

Participation in the ACCEL Liability Program is required while participating in other ACCEL Shared Risk Programs.

Participation is required to a minimum limit of coverage determined by the Board of Directors at the June Board meeting preceding each Program Year.

**ARTICLE XIV
AMENDMENTS**

These Bylaws may be amended by a two-thirds vote of the Board provided that any amendment is compatible with the purposes of the Authority, is not in conflict with the Agreement and has been submitted to the Board at least 30 days in advance.

Any such amendment shall be effective immediately, unless otherwise designated.

**ARTICLE XV
OPTIONAL POOLED PROGRAMS**

From time-to-time, various members may join together to take advantage of the benefits of joint purchase of such programs as, but not limited to, excess Liability and Workers' Compensation insurance, premium financing, and claims auditing services. All brokerage fees for placement and servicing excess coverage, and direct costs for outside services, will be borne by the participants of the program(s). Decisions affecting the programs will be made by only those members participating in the program(s).

In addition to joint purchase insurance programs, members may participate in other shared risk programs created by the Authority, including but not limited to; underlyer self-insured liability retention options, Excess Worker's Compensation, etc. Applications to these programs are evaluated by the Underwriting Committee and then presented to the Board along with their recommendation.

Once approved, participating members agree to:

1. Members joining any alternative Shared Risk Program agree to participation for no less than three (3) full Program Years from the date of participation; and
2. Ongoing participation in the ACCEL Liability Program while participating in other ACCEL shared risk programs.