



AGENDA

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

JPA: ACCEL UNDERWRITING COMMITTEE MEETING

DATE/TIME: Tuesday, November 29, 2022 at 1:30 PM

LOCATION: Teleconference

Link: <https://alliantinsurance.zoom.us/j/99706247753?pwd=UWhmdjFBendsdVFMSIF0U2JHOVlZz09>

Dial: (669) 900-6833

Meeting ID: 997 0624 7753

Passcode: 864381

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 LOCATIONS VIA TELE - CONFERENCE**
- **City of Anaheim**, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805
 - **City of Bakersfield**, 1600 Truxtun Ave., 4th Floor, Bakersfield, CA 93301
 - **City of Salinas**, 200 Lincoln Avenue, Salinas, CA 93901
 - **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

- 1 1. Approval of Minutes for the March 30, 2022 Underwriting Committee Meeting
The Committee will review these minutes and will take action to approve or give direction.

(A)

C. REPORTS

1. UNDERWRITING COMMITTEE'S REPORT

6-18

19-34

- 1 a) New Exposures:
- i. Completed Questionnaire - City of Bakersfield Tele911 Program
 - ii. Member Locations - Battery Farms
- Members will review and discuss the new exposures and may take action or provide direction.*

(A)

35-38

39-58

- 1 b) Proposed Changes to ACCEL's Memorandum of Coverage (MOC):
- i. Unmanned Aerial Vehicles (UAVs)
 - ii. Fines and Assessments Exclusion
- The Committee will review and discuss the proposed changes to the ACCEL MOC. Action may be taken or direction given.*

(A)

59-61

- 1 c) Dates of Loss for Employment Practices Liability Claims
Members will discuss policy language regarding date of loss for employment practices claims. The Committee may take action or provide direction.

(A)



D. PUBLIC COMMENTS

(1)

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. B.1
Underwriting Committee
November 29, 2022

Wednesday, March 30, 2022 at 1:00 PM

**LOCATION:
Teleconference**

Link: <https://alliantinsurance.zoom.us/j/91656370580?pwd=WllpVmpJMDFBUiVDT2FqUUJobmZlZz09>

Dial: (669) 900-6833

Meeting ID: 916 5637 0580

Passcode: 646475

MEMBERS PRESENT:

Jena Covey, City of Bakersfield
Sandra Blanch, City of Palo Alto
Rhonda Combs, City of Salinas
Mark Howard, City of Santa Barbara
Ross Brandon, City of Santa Cruz

MEMBERS ABSENT:

Tracey Matthews, City of Anaheim

GUESTS AND CONSULTANTS:

Ben Oram, George Hills Company
Conor Boughey, Alliant Insurance Services
Lorissa Huey, Alliant Insurance Services

A. CALL TO ORDER

Mark Howard called the meeting to order at 1:04 PM.

B. Consent Calendar

B1. Approval of Minutes for the December 15, 2021 Underwriting Committee Meeting

A motion was made to approve the consent calendar.



MOTION: Jena Covey

SECOND: Ross Brandon **MOTION CARRIED**

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

C. REPORTS

C1. Underwriting Committee’s Report

C1a. Unmanned Aerial Vehicle (UAV) Usage Guidelines Policy and Procedure Review

Conor Boughey reported that the Unmanned Aerial Vehicle (UAV) Usage Guidelines is scheduled to be reviewed every even numbered year.

Conor will send the Members information on the City of Chula Vista’s Drone Program.

Committee Members discussed the idea of surveying the ACCEL Members about their drone exposures. Sandra Blanch mentioned that the ANML application had a new question about drones this year.

The Committee agreed that no substantial changes are needed for the UAV Usage Guidelines and directed the Program Administrators to update the reviewed date to March 30, 2022.

No reportable action took place.

C1b. ACCEL’s Memorandum of Coverage Proposed Changes: Wage Exclusion

Conor Boughey reported that Exclusion R. eliminates coverage for wages/benefits arising out of wrongful termination, discrimination, or civil rights violations.

Ben Oram, ACCEL’s Litigation Manager suggested proposed changes to the exclusion to clarify the intent.

Conor commented that Byrne Conley, ACCEL’s Legal Counsel reviewed the proposed changes.

A motion was made to recommend to the Board at the March 31 and April 1, 2022 Board Meeting to adopt the proposed changes to Exclusion R. effective July 1, 2022 as shown in the agenda packet.



MOTION: Ross Brandon **SECOND:** Mark Howard **MOTION CARRIED**

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

D. PUBLIC COMMENTS - No public comments were made.

ADJOURNMENT

Mark Howard adjourned the meeting at 1:30 PM.

DRAFT



Item No. C.1.a.i
Underwriting Committee
November 29, 2022

NEW EXPOSURES:

COMPLETED QUESTIONNAIRE - CITY OF BAKERSFIELD TELE911 PROGRAM

ISSUE: The City of Bakersfield has requested the Underwriting Committee review a new activity of the City, the Fire Department will have iPads that are owned by Kern County when they respond to an emergency call where a patient needs to speak with a doctor. The patient will have an option of telemedicine services with a physician at the scene on the iPad. The physician will then determine what additional care the patient might need besides heading to the emergency room. The City has completed the New Exposure Questionnaire and provided the attached Kern County Tele911 Policy and MOU for the Tele911 iPads. The City is still pending an indemnification agreement with Tele911.

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.

The Committee will review with the Member, and discuss ACCEL's Memorandum of Coverage (MOC) and potential exclusions that may apply, such as the med mal exclusion, or suggestions for the City to consider in the contract negotiations.

The following exclusion is contained in the MOC for med mal exposures:

- 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.



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

Additional Consideration

In favor: ACCEL has a medical malpractice exclusion for medical services provided by a doctor, nurse, or dentist and there is a give back for paramedics, emergency medical dispatchers, technicians, or similar personnel. The Committee may determine that this is still considered emergency medicine and may want to clarify the intent of the language in the MOC.

Against: ACCEL's intent is to only cover emergency medicine administered by paramedics, emergency medical dispatches, technicians, or similar personnel and this activity is considered a non-emergency medicine exposure.

FISCAL IMPACT: Cannot be determined at this time.

BACKGROUND: Tele911 is a new startup in Pasadena seeking to add telehealth services to emergency ambulance responses, which says will prevent countless unnecessary and expensive trips to the ER.

Pasadena startup Tele911 Inc. seeks to expand paramedics' options with a telehealth platform that allows them at the scene to consult with physicians trained in emergency response. When paramedics arrive on scene at a 911 call and determine the patient doesn't need further emergency medical care, until now they've had only two choices: Transport the patient to the emergency room or leave the patient at the scene.

(Source: Fine, Howard. "Startup Tele911 Seeks to Enhance Emergency Response Systems" Los Angeles Business Journal, June 14, 2021, <https://labusinessjournal.com/healthcare/tele911-enhance-emergency-response-systems/>)

Various news articles about Tele911 can be found here: <https://tele911.com/press/>

Release Date: May 23, 2022

City of Kissimmee Fire Department to Introduce Innovative Tele911 Program

KISSIMMEE, Fla. – The City of Kissimmee Fire Department (KFD) will be integrating telemedicine and patient navigation into the Emergency Medical Services (EMS) system with the Tele911 program starting Monday, June 6.

KFD partnered with Tele911, Inc. to reduce ambulance transports to the Emergency Room for residents who call 911 with non-emergency medical issues. KFD is one of the first fire departments in Florida to use this service.

Patients will be evaluated by KFD paramedics, who will determine if they are stable and can participate in a live telehealth visit. The Tele911 emergency physician will make an

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



appropriate disposition and treatment plan that meets the patient's needs. The patient will also receive a next day follow-up with a physician.

Patients who are not transported will also receive a follow-up by a Tele911 social worker to provide them with linkage to primary care and social services.

KFD and Tele911 will provide emergency medicine telehealth services and social worker follow-ups, allowing KFD paramedics to offer an even higher level of patient care, address social determinants of health, and reduce response times for actual emergencies.

For more information about the Kissimmee Fire Department, visit www.kissimmee.gov.

ATTACHMENT:

1. New Exposure Questionnaire Completed by the City
2. Kern County Tele911 Policy
3. Kern County & Bakersfield iPad MOU

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: 8/26/21

Member Agency: City of Bakersfield

Date: 9/14/22

New Exposure Proposal Name: Tele911 program

Expected Implementation Date: 10/01/2022

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:

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).

Incorporating telemedicine into EMS operations will allow the Bakersfield Fire Department to provide access to a higher level of patient care compared to currently available resources. Tele911 shall be utilized by both BLS and ALS providers who have received proper training and have been provided the mandatory equipment, in order to get the highest level of care to the patient. Tele911 is being implemented by Kern County EMS in response to Covid related surge, an ongoing staffing crisis with ambulance providers/hospitals and increased call and transport volumes. Telemedicine can allow selected stable patients to be treated and released on scene (Treatment in Place), which avoids medically unnecessary ambulance transport to an emergency department.

1. 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 of Bakersfield is proposing to implement the Tele911 telehealth program on all of their apparatus. The program will give the fire department the ability to connect specific patients to a California certified emergency room doctor. The doctor will be able to assess the patient and make determinations on treatment and patient destination. The BFD will not be providing any care that exceeds the scope of their abilities. Doctors can prescribe medication which the patient will have to pick up later or recommend an urgent care or emergency room for further care.

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

There will be no financial impact to the City. Tele911 also assumes the liability for the treatment and care of patients they treat. City is working with Tele911 to prepare an agreement. This will allow apparatus to complete assignment from non-emergent calls and decrease long on scene times waiting for responding ambulances.

3. 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).

The Tele911 organization assumes all liability for their treatment and care. The BFD is only facilitating the meeting between doctor and patient through an iPad provide by Kern County EMS. Patients must also elect treatment to meet with Tele911 doctors.

4. 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.).

Pending an agreement with Tele911. Attached is the Kern County EMS policy.

TELE911 (1017.00)

I. PURPOSE

Incorporating telemedicine into our EMS operations will allow us to provide access to a higher level of patient care compared to currently available resources. Tele911 shall be utilized by both BLS and ALS providers who have received proper training and have been provided the mandatory equipment, in order to get the highest level of care to the patient. Tele911 is being implemented in Kern County in response to Covid related surge, an ongoing staffing crisis and increased call and transport volumes. Telemedicine can allow selected stable patients to be treated and released on scene (Treatment in Place), which avoids medically unnecessary ambulance transport to an emergency department.

Telemedicine is also extremely valuable for high-risk refusals, especially for our older population of patients and for patients who refuse transport Against Medical Advice (AMA). This allows an emergency physician to assist with decision-making, arrange follow-up care and prescribe any necessary medications. A social worker will attempt to contact all patients who are not transported to help navigate them to primary care and social services to reduce their dependence on the 911 system for non-emergent conditions. This improves patient outcomes and makes our resources more available for time-critical calls.

II. INDICATIONS FOR CONSULTING TELEMEDICINE

Telemedicine shall be contacted for:

- 1. All stable patients who meet the Telemedicine Medical Screening Criteria (attached) and who provide verbal consent for a telemedicine consult.***
- 2. All patients \geq age 65 who refuse ambulance transport (excluding patients with minor trauma or public assists which involve moving patients with limited mobility from the floor to a chair, wheelchair, or bed, etc.)***
- 3. All patients who refuse transport Against Medical Advice (AMA)***

III. PROCEDURE TO CONSULT TELEMEDICINE

1. Telemedicine should only be contacted *after* a complete patient assessment has been performed and the following have been documented in the ePCR:
 - a. Patient demographics, including name, age, DOB, address, phone number, and health insurance information.
 - b. Complete set of vital signs that fall within established parameters, including BP, HR, RR, and SpO2.
 - c. Any diagnostics as indicated (blood glucose, 4 lead ECG, or 12 lead ECG).
2. Request verbal consent from the patient to contact an emergency physician via telemedicine to better assist in their care and follow-up.
3. Tap the Tele911 mobile app on your mobile device.
4. Select the appropriate incident displayed on the CAD list and initiate an encounter. If there is no CAD connection, click “*Proceed Without an Encounter*”.
5. Select the patient’s insurance information (if known) from the insurance drop down list.
6. Indicate whether an interpreter is needed, and if so, for what language.
7. Allow the Tele911 physician to join the conversation by allowing access to the mobile device’s microphone and camera.
8. Provide a brief patient report to the Tele911 physician.
9. Flip the camera to the patient when prompted by the Tele911 physician.
10. The patient’s disposition will be final as per the Tele911 physician and the patient.
11. Complete the documentation on the ePCR to indicate that telemedicine was contacted and enter the final patient disposition, which will be one of the following:
 - a. Treatment in Place (no transport)
 - b. Transport to a hospital ED
 - c. Patient refusal of transport/AMA

TELE911 MEDICAL SCREENING CHECKLIST FOR TELEMEDICINE

QUESTIONS	YES	NO
Age > 1 year	<input type="checkbox"/>	<input type="checkbox"/>
HR 60-120 (adults or normal for age in peds)	<input type="checkbox"/>	<input type="checkbox"/>
SBP > 100 (adults or normal for age in peds)	<input type="checkbox"/>	<input type="checkbox"/>
RR 12-24 (adults or normal for age in peds)	<input type="checkbox"/>	<input type="checkbox"/>
Pulse ox \geq 94%	<input type="checkbox"/>	<input type="checkbox"/>
Patient does not meet Specialty Center Criteria	<input type="checkbox"/>	<input type="checkbox"/>

GCS 15 or patient is at their neurologic baseline	<input type="checkbox"/>	<input type="checkbox"/>
Not combative/aggressive	<input type="checkbox"/>	<input type="checkbox"/>
Not a pregnancy-related complaint	<input type="checkbox"/>	<input type="checkbox"/>

If ALL of the answers to the criteria above are YES (GREEN)

OR

If the patient is \geq age 65 and is not being transported

OR

If the patient refuses transport Against Medical Advice (AMA), request verbal consent from the patient for a Tele911 consult to assist with their care.

Non - transport with age \geq 65	<input type="checkbox"/>	<input type="checkbox"/>
Refusal of transport Against Medical Advice (AMA)	<input type="checkbox"/>	<input type="checkbox"/>

MASTER MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, entered into between the **County of Kern** (hereinafter referred to as "**COUNTY**") and Bakersfield Fire Department (hereinafter referred to as the **RECIPIENT**) for the purpose of transferring equipment to support the Kern County EMS System. This memorandum of understanding shall be in force and effect on (Date of MOU Execution) and shall terminate (a year from date of MOU execution), to be formally renewed at that time as resources allow.

IT IS HEREBY MUTUALLY AGREED between the parties hereto as follows:

1. The **COUNTY** hereby loans to the **RECIPIENT** and **RECIPIENT** hereby accepts from the **COUNTY** the equipment listed on the attached Exhibit A, which by this reference is made a part of this Agreement. Initial transfer shipping costs, if required, are the responsibility of the **RECIPIENT**. The cost to receive, offload, and store the equipment is the responsibility of the **RECIPIENT**. **RECIPIENT** shall not sell, give, move or store out of state, or otherwise dispose of the transferred equipment without the express written permission of **COUNTY**.
2. The equipment shall be used solely for the purpose of direct communication with Tele911 while on scene of a 911 call.
3. The equipment is provided to **RECIPIENT** at factory settings. **RECIPIENT** is responsible for downloading all mandatory software/Apps necessary for the connection and evaluation by Tele911 physicians. **RECIPIENT** is responsible for managing each device assuring appropriate use of each device. No other modifications to any **COUNTY** equipment may be made by the **RECIPIENT** without advance written permission from the **COUNTY**. The **RECIPIENT** is responsible for maintaining the equipment inventory at all times for Tele911 use in the field. **RECIPIENT** acknowledges that **COUNTY** retains the right to recall all equipment with little or no notice.
4. **Housing, Maintenance, Sanitation, Repair, and Replacement:** During the term of this loan, the **RECIPIENT** agrees to adequately house, staff, operate, maintain and repair the equipment, at its sole cost and expense, save as might otherwise be expressly provided in this Agreement. Equipment shall be housed in a manner to provide reasonable protection against inclement weather, sabotage, theft or malicious damage. The equipment shall be maintained in such condition that it is available for immediate emergency use, and at the same standard as other emergency equipment operated by the **RECIPIENT**. Maintenance, repairs, and sanitation shall be the responsibility of the **RECIPIENT**.
5. **INSPECTION OF EQUIPMENT:** The **RECIPIENT** agrees that representatives of the **COUNTY** may inspect the equipment as needed. The **COUNTY** agrees to provide the **RECIPIENT** prior notice and to conduct inspections during the normal daylight business hours of the **RECIPIENT**.
6. **INSURANCE PROTECTION (OTHER THAN COUNTY AGENCIES):**

- a. The **RECIPIENT** agrees forthwith to furnish evidence of insurance covering the replacement value of the equipment, including associated in the event of fire, theft, flood/water damage, vandalism and other causes.
- b. **RECIPIENT** agrees to defend, indemnify, and hold the **COUNTY** harmless from any personal injury, or unauthorized disclosure of Protected Health Information (PHI) or property damage claims arising out of **RECIPIENT'S** maintenance, use or operation of the equipment under the terms of this Agreement.

7. **TERMINATION OF AGREEMENT:**

- a. Either party may terminate this Agreement upon 7 days written notice to the other party or the **RECIPIENT** may relinquish or **COUNTY** may repossess any portion of the equipment upon like notice to the other party, except that **COUNTY** may repossess any portion thereof without written notice whenever it determines, in its sole judgment, that the **RECIPIENT** is not maintaining or repairing the equipment in accordance with this Agreement, or that the equipment is needed for an urgent use by **County**.
 - b. If either party terminates this agreement pursuant to paragraph a. above, **RECIPIENT** agrees to return said equipment to **COUNTY** in the same condition as received, excepting reasonable wear and tear, acts of God, and / or conditions over which the **RECIPIENT** has no control. In such termination **RECIPIENT** agrees to pay the actual cost of the equipment return or replacement.
 - c. As inventory discrepancies will occur whenever items of equipment are replaced, deleted or added by the **COUNTY** or replaced by the **RECIPIENT**, it is mutually agreed that no amendment to this Agreement need be made at the time of the change; provided however, at the termination of this Agreement a complete reconciliation of all equipment will be made. The **RECIPIENT** further agrees that all replacements for equipment will be made with identical or substantially like items.
8. The **COUNTY** may in its sole discretion and for such good cause as it determines waive in writing in whole or in part any requirement of this Agreement that the equipment shall be maintained in operating condition, or repaired, or replaced, providing that any such waiver shall be applicable only to the specific apparatus or equipment to which it refers.
9. The **COUNTY** assumes no liability hereunder, and **RECIPIENT** agrees to indemnify **COUNTY**, for claims or losses accruing or resulting to any person, firm or corporation furnishing or supplying work, services or material or services in connection with the **RECIPIENT's** performance of this Agreement, or from any claims and losses accruing or resulting to any person, firm or corporation injured or damaged by **RECIPIENT's** negligence or intentional acts (collectively, the "Liabilities." **RECIPIENT** shall not be required to indemnify **COUNTY** for Liabilities resulting solely from negligence, intentional acts, or omissions of **COUNTY**, its officers, employees, or agents.

10. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

~~Name of Recipient~~

~~Authorized Official (Signature)~~

~~Name of Authorized Official (Printed)~~

~~Date~~

~~Physical Address for Asset~~

~~Primary Contract Name~~

~~Phone Number:~~

~~Email:~~

~~County of Kern~~

~~Public Health Services Director (Signature)~~

~~Name of Authorized Representative~~

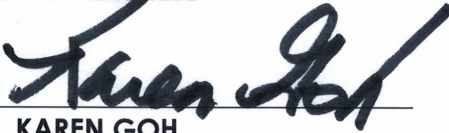
~~Date~~

~~Approved as to Form:~~


~~Approved as to Insurance:~~

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the date first written above.

"CITY"
CITY OF BAKERSFIELD


By: 
KAREN GOH
Mayor

"COUNTY"
COUNTY OF KERN

By: 
Print Name: Bryon Carrigan
Title: Director of Public Health

APPROVED AS TO FORM:
VIRGINIA GENARO
City Attorney

By: 
JOSHUA H. RUDNICK
Deputy City Attorney

Insurance: 

APPROVED AS TO CONTENT:
BAKERSFIELD FIRE DEPARTMENT

By: 
JOHN FRANDO
Fire Chief

COUNTERSIGNED:

By: 
RANDY MCKEEGAN
Finance Director

Attachment: Exhibit "A"

Exhibit A

iPad Tracking			
iPad #	Phone #	IMEI	Issued to
51	661-246-6011	356749110159649	BFD
52	661-432-5316	356749110622679	BFD
53	661-484-6630	356749110061134	BFD
54	661-484-6638	356749110088160	BFD
55	661-484-6627	356749110155332	BFD
56	661-484-6622	356749111075901	BFD
61	661-484-6621	356749110065242	BFD
62	661-484-6634	356749110375963	BFD
63	661-484-6633	356749110581552	BFD
64	661-484-6590	356749110069376	BFD
65	661-484-6593	356749110153238	BFD
66	661-484-6589	356749110833029	BFD
67	661-432-5360	356749110386622	BFD
68	661-364-7697	356749110063247	BFD
69	661-484-6594	356749110312230	BFD
70	661-447-6153	356749111044113	BFD
71	661-447-6304	356749110864933	BFD
72	661-484-6636	356749111020600	BFD
73	661-484-6592	356749110525955	BFD
74	661-431-8692	356749110338987	BFD



Item No. C.1.a.ii
Underwriting Committee
November 29, 2022

NEW EXPOSURES:

MEMBER LOCATIONS - BATTERY FARMS

ISSUE: Cities across the State are being asked to host battery systems and the ACCEL Members should consider the impacts to the entity and how ACCEL's Memorandum of Coverage (MOC) will apply.

In 2021, a survey was sent to the Board to gather information on each entities' utility services and one of the survey questions asked if the City owns or operates any electric storage facilities (battery farms). The results indicated that the City of Santa Barbara plans to purchase battery back-up components for use at the water treatment plant.

The Committee will review with the Member, and discuss ACCEL's Memorandum of Coverage (MOC) and potential exclusion that may apply, such as the failure to supply exclusion.

The following exclusion is contained in the MOC:

- J. To liability arising out of or contributed to by any complete or partial failure to supply water, electricity or gas.

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

Additional Consideration

In favor: As we move towards more renewable energy sources, more power storage is needed. Additional ACCEL Members may have battery farms in the future. ACCEL Members should be aware of the risk and how this exposure impacts coverage. We do not recommend any action at this time, but the Committee will discuss this emerging risk.

Against: ACCEL could move to exclude these types of new exposures.

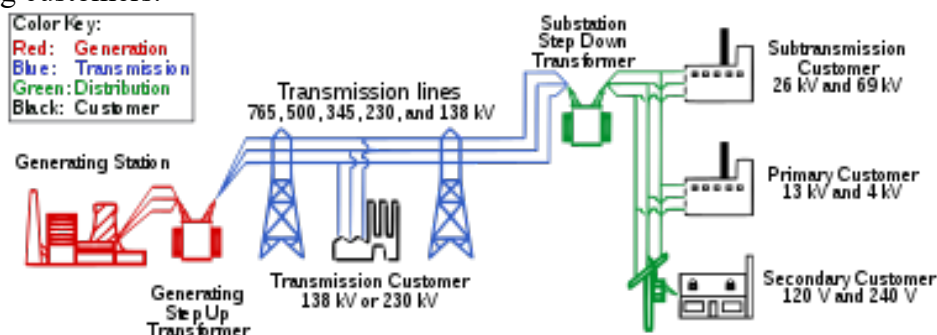
FISCAL IMPACT: Cannot be determined at this time, none expected.

BACKGROUND: At the December 16, 2020 Underwriting Committee (UC) Meeting, we discussed that California cities are proposing new ways to provide green energy to their residents. While some cities have provided Community Choice Energy options, others are going further and working with partners to create green energy power generation and distribution. Each of these scenarios may be structured in a unique way and should be discussed with Alliant.



There are three core issues related to this risk:

1. **Generation:** Generating the power that will ultimately reach the residents. This can be solar, geothermal, natural gas, etc.
2. **Transmission:** To carry the power from generation facilities, transmission lines travel long distances to local transformers.
3. **Distribution:** Distribution grids are typically within city limits and route the energy to the paying customers.



Included as an attachment from the December 2022 UC Meeting was the Article: CA Town Tests New Model for Microgrid. A small California City in the Salinas Valley, has a \$70M micogrid to provide a business park with round the clock reliable power at a cheaper rates, and overcome a grid upgrade bottleneck.

<https://www.greentechmedia.com/articles/read/california-town-tests-new-model-for-microgrids-as-a-service>

The UC requested that a survey a survey be sent out to the ACCEL Members regarding Gas and Electric Operations. The results of that survey were included in the March 2021 Board Meeting Agenda Packet, and there was no further direction from that meeting.

ATTACHMENT:

1. “Powered Up” Monterey County Weekly Article
2. “Practical Considerations for Siting Utility-Scale Battery Projects” Power Magazine Article
3. ACCEL Discussion Forum Post – Battery Energy Storage Agreements – Waiver of Liability
4. “ 4 months later, investigators still looking for cause in APS battery facility explosion” Fox 10 Article
5. ACCEL Survey Results – Gas and Electric Operations

Powered Up

Batteries are part of the new world of renewable energy, fires and all.

By Sara Rubin

Mother's Day this year was on a beautiful day, breezy and sunny. And those conditions helped make Sunday, May 8 a historic day for California: Renewable energy sources set a new record, generating 103 percent of the power actually needed. It was a headline-making milestone.

Of course, storage is the next big milestone. How can you capture that surplus of carbon-free energy and tap into it on a rainy day? That's where batteries play an increasingly important role, and where new technologies are vying to lead the way.

And some of them are going to have to put out literal fires along that journey. On Tuesday, Sept. 20, commuters were already stuck in traffic as the news broke of a fire in Moss Landing, where a lithium ion battery in a Tesla megapack at PG&E's Elkhorn plant caught fire. Firefighters responded around 2am to find a battery pack in flames, and after burning for about six hours, it continued smoldering all day. Fire officials issued a shelter-in-place order for the area, urging people to stay inside and close their windows to avoid breathing in potentially hazardous fumes. Highway 1 was closed to traffic before dawn, and did not reopen until 6:50pm, more than 17 hours after the fire first started.

The 182.5-megawatt Elkhorn plant went into operation on April 18, featuring 256 Tesla Megapack battery units on 33 concrete slabs. The plant was designed and constructed jointly by PG&E and Tesla, and is maintained by both companies; PG&E owns the facility. It's one of the largest utility-owned, lith-

ium-ion battery energy storage systems in the world.

And it's located next door to the world's largest lithium-ion battery storage facility, owned and operated by Texas-based Vistra Corp. These facilities have transformed Moss Landing's industrial center, in the shadow of decommissioned smoke stacks, into a renewable energy industrial center.

Since Vistra's 300-megawatt facility started operating in December of 2020, firefighters have responded to two reports of smoke there in the past year, both of which shut down facility operations.

“We are going to have to take some risks.”

Neither Vistra nor Tesla responded to my request for an interview about what we should know when lithium-ion batteries catch fire. So I asked Richard Stedman, Air Pollution Control Officer at the Monterey Bay Air Resources District. He emphasizes that there's a lot we don't know, and that dose, duration and frequency of exposure all influence the potential damage from inhaling toxic components. But lithium itself is toxic, as are hydrofluoric acid and hydrochloric acid. “There are toxic and hazardous constituents in the smoke, but there's not a really good way to measure those,” Stedman says.

Vistra's two separate facilities and PG&E's facility all kicked into gear relatively quietly, humming along and storing power to deliver to the grid. It's only when there is a disaster that most of us notice they are even there. Given that

there have been three firefighter responses in a year, that's a lot of noticing—and given the health unknowns, Vistra, PG&E and Tesla owe all of us more explanation so we know what we've gotten into.

Still, I would rather live in the neighborhood of cutting-edge battery storage than a nuclear plant. This technology comes at a time the world is grappling with how to move away from oil and gas—also destructive, sometimes in an acute oil spill kind of way, but more insidiously in an everyday way as they cook our planet and threaten life as we know it. Other carbon-free alternatives, like nuclear, come with their own devastating worst-case-scenario risks. California lawmakers just agreed to extend the life of PG&E's Diablo Canyon nuclear plant, which is situated right near a fault line in San Luis Obispo County. The plant was previously scheduled to go offline in 2025.

The big picture is envisioning a transformation of our energy supply to usable renewables, knowing that no energy source has zero risk. “We're going to have to get off fossil fuels, and we are going to have to take some risks to get there,” Stedman says.

California's target is to get all of its electricity from renewable sources by 2045. As we saw on Mother's Day, we can already do that—and we must, to avert the biggest threat of all: climate change. ★

Sara Rubin is the *Weekly's* editor. Reach her at sara@mcweekly.com.



SQUID FRY

SMOKED OUT...Squid has lived in fire-prone California for long enough to know that even a whiff of smoke is cause for alarm. Sometimes that's a good thing—like when firefighters responded quickly in the middle of the night (see story, left) to a **Tesla** battery pack in flames at **PG&E's** Elkhorn battery plant in Moss Landing. Sometimes it means Squid starts yelling when the toast is burning.

First responders are used to the whole range of serious calls and false alarms. On Sept. 7, according to **California Highway Patrol's** incident page, a call came in at 10:22pm: "Roof on fire." Within three minutes, someone was assigned to respond. Seven minutes after that, a particularly delicious resolution: No disaster, it turned out. Per CHP's report: "Neg fire, they are smoking some good ribs."

Squid was unable to confirm whether the CHP officer on scene got to sample said ribs, but Squid hopes so. Even without a detailed food review, Squid still got more detail about that non-fire from reading the CHP report than Squid got from PG&E regarding the battery fire. A spokesperson put out a statement that said little, and when pressed for more, all Squid could get was: "We have nothing to add beyond our statement at this time."

Puff, puff, pass.



WITH FRIENDS LIKE THESE...Squid was oozing around Carmel not too long ago, and heard talk of a City Council candidate renting a home from a very rich developer who has a keen interest in his projects winning approval. Squid's colleague later interviewed the candidate, **Parker Logan**, owner of **Sade's Cocktails**, and Logan readily confirmed that he is renting a home on Scenic Drive owned by Monaco billionaire **Patrice Pastor**.

Pastor owns what Carmelites refer to as "The Pit," the giant hole in the ground at Dolores Street and 5th Avenue. He's tried a couple of times to get a mixed-use commercial project passed by the **Carmel Planning Commission**, only to be rejected over designs commissioners said didn't fit village character.

Before Squid's colleague could ask Logan about his rental situation, Logan began opining about how "a golden goose comes to town and spares no expense," only to be told he can't build his project in The Pit. Logan called the designs "architecturally complementary to the village."

Squid's colleague asked if Logan would recuse himself if a Pastor project came before council—the billionaire owns over \$80 million worth of properties in Carmel. "I would have to look into the legality of that," Logan said.

Given that any renter would have a vested interest in keeping a roof over their heads—especially in a ritzy neighborhood overlooking the Pacific—Squid bets the lawyers will have something to say about it. ✪

SEND SQUID A TIP: squid@mcweekly.com

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Energy Storage

Practical Considerations for Siting Utility-Scale Battery Projects



Getting the most cost-effective use out of a battery storage system

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So you want to buy a battery? Like real estate, one big concern is location. Where you put it, and where it is in relation to other assets, matters a lot.

Non-hydro energy storage has passed out of the experimental phase and is no longer the province of visionaries imagining a grid that operates in more than one direction (see this month's "[THE BIG PICTURE: Leading the Charge](#)"). Battery storage is big business—and getting bigger. A utility-scale battery storage system (BSS) can easily be a seven-figure (and larger) commitment.

Naturally, a lot depends on what the battery will be doing. Location issues for a BSS that is intended to smooth output from a solar photovoltaic (PV) plant or wind farm are not the same as for one designed to provide frequency regulation. Still, the location affects the battery's performance no matter what its job is.



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Where's the Interconnection?

One threshold concern, according to Jim McDowall, business development manager for Saft, who spoke to *POWER* in March, is the proximity to the nearest substation.

"If you are two miles away from the substation," he said, "you could be losing 5% of your power between the energy storage system and the point of interconnection, and that is certainly an issue in terms of the power purchase agreement."

That means that a more remote system has to take into account transmission losses in planning the project finances.

"It's better to have the system closest to the point of interconnection because then the battery doesn't have to work as hard," he said.

close x

have other concerns about where the system belongs.

McDowall discussed a battery project in Puerto Rico that Saft is building for Windmar at the 10-MW Coto Laurel Solar Farm (Figure 1). The battery is necessary so the plant can meet the Puerto Rico Electric Power Authority's (PREPA's) requirements for 4.5 MW of peak power for ramp-rate control and 1 MW for frequency response. But PREPA did not want to own the battery because of its previous less-than-optimal experiences with past battery storage projects. That meant placing it on-site with the PV plant.



1. Island time. Saft is providing a battery storage system for the Windmar Group's 10-MW Coto Laurel Solar Farm in Puerto Rico. As the island moves to increase its renewable generation to reduce dependence on imported fuel oil, energy storage capacity is growing to help stabilize the grid. *Courtesy: Windmar Group*

McDowall's concerns were echoed by Ike Hong, vice president of South Korean battery firm Kokam's Power Solutions Division, who spoke to *POWER* via email. Working for the Korean Electric Power Co. (KEPCO), Kokam recently deployed two of the largest BSSs in Korea (24 MW/9 MWh and 16 MW/6 MWh—the latter is shown in the opening photo), which were also among the largest lithium-nickel-manganese-cobalt (NMC) batteries in the world. These higher-power, lower-energy systems were designed for frequency response, which dictated where they needed to go.

"KEPCO sited the batteries at locations near major 154-kV or 345-kV substations," Hong said. "It's more effective to locate these energy storage systems closer to the substations, where voltage transmission occurs."

Centralized or Distributed?

Centralized locations also work better for balancing renewable generation, Tim Ash, AES Energy Storage's market director for the east and southeast U.S., told *POWER* in an interview (Figure 2).



2. Central storage. If the goal is to better integrate renewable generation, large centralized battery systems work better than smaller, distributed systems. AES Energy Storage's 10-MW system in Zeeland Province, Netherlands, supports the European grid via regional distribution system operator DELTA Netwerkgroep and transmission system operator, TenneT. *Courtesy: AES Energy Storage*

"If you are looking at integrating more renewables onto the network, there is no reason to have the energy storage system located with that system to mitigate the intermittency of the generation," he said. "Generally, it's more efficient to locate the energy storage resource at the network level to provide that real-time generation balancing more effectively from a centralized grid resource."

McDowall agreed. A group of renewable plants, he noted, "could have their own centralized storage system that could take care of a bunch of these facilities, because if one is ramping up when another is ramping down, those ramps might cancel each other out. So rather than having two battery systems controlling those two plants, you might find that if you aggregate a number of systems together, you do have a portfolio effect with a lot less variability."

Hong noted as well that there are economic benefits to going bigger with a single centralized BSS.

"It makes economic sense to build projects that are as large as possible in order to reap the economic benefits of scaling," he said. "It costs less to develop a single 24-MW project than two separate 12-MW projects. In addition, frequency regulation is most cost-effective when it can be implemented on as large a scale as possible. The cost-effectiveness of frequency response decreases when it is done on a more distributed, smaller scale."

But that isn't necessarily true for all applications, Ash noted. "There are applications where you can use energy storage to defer traditional infrastructure." In those cases, you may want to place the BSS as far down the chain as you can, down where you have transmission constraints well away from a substation.

Ash pointed to Consolidated Edison's (ConEd's) Brooklyn Queens Demand Management Program as one example. Faced with the prospect of having to spend upwards of \$1 billion to build a new

close x

demand management, including battery storage. The total cost is projected to be about half that of a new substation.

Very large BSSs can also replace peaking generation, Ash noted, as with the 100-MW system that AES is building for Southern California Edison (SCE) in Long Beach, Calif. (see [“Batteries Are Carving Out Space on the Grid”](#) in the May 2015 issue).

“One of the bigger options if you are looking at energy storage is replacing peaker plants as a means of meeting peaking capacity.” The SCE project, Ash said, will be located where the demand for peaking generation exists. “The capacity is specifically in the LA basin where we have the interconnection to provide peaking capacity.”

Good Neighbors

But location for a BSS matters for reasons beyond its role on the grid. Unlike peaking generation, batteries have very low noise profiles and no emissions, Ash noted. “Largely, it just sits there; it is automated, it is quiet, so you can put it in adjacent neighborhoods and similar areas, and you can wrap it in whatever you want it to look like. A lot of providers are incorporating them into the local look and feel of the neighborhood” in ways that aren’t possible with a substation or peaker plant.

What that means is an opportunity to bolster resiliency and reliability in areas that might resist more obvious infrastructure, and to build community and customer support if you do it right, Ash said.

“It has been our experience that communities tend to be very supportive of this technology because it is helping address constraints where the utility would otherwise have to put in some alternative transmission and distribution infrastructure. You don’t get the pushback you would get with a new substation or new overhead lines.”

Hong also noted that new, higher-density batteries can pack a lot of capacity into a small footprint. With its project for KEPCO, the utility “wanted to limit the real estate used for each project.” Kokam’s new ultra-high-power NMC battery technology allows it to put 2.4 MWh of energy storage in a 40-foot container, compared to 1 MWh to 1.5 MWh of energy storage for standard NMC batteries.

But with that smaller footprint and closer proximity to the community comes other concerns.

“One key consideration when packing a lot of energy storage into a small footprint is cooling of the batteries,” Hong said. “Most large energy storage systems require cooling systems, and when you are seeking to maximize the amount of batteries stored in each

More powerful HVAC systems can also increase the noise a BSS generates. Kokam addressed this issue in its BSSs for KEPCO by focusing the HVAC system so it cools the battery racks directly rather than using ambient cooling for the entire container. That uses up to 70% less power (Figure 3).



3. Direct cooling. Kokam's high-density battery design generates a lot of heat. Rather than cooling the entire container, the air conditioning system cools only the battery stacks directly, reducing the parasitic power drain. *Courtesy: Kokam*

High-density batteries are also a larger safety risk. "When you connect 5,000 75-Ah batteries together in a 40-foot container, you have a very high voltage and high power system in a very small location," Hong noted. That means using more sophisticated controls and battery management, which can increase costs.

Finally, where you locate a battery determines the environmental protections that are necessary. While containerized BSSs are, for the most part, sealed units that are less subject to weather impacts than other infrastructure, it's not a matter of just dropping the system where you need it.

David Miller, director of business development for Greensmith Energy Management Systems, which has deployed BSSs across the U.S., noted that containerized enclosures are usually rated NEMA 3R or NEMA 4, depending on the local environmental conditions, but they can be upgraded further. "The range of weather-proofing options allows us to configure the enclosure for a particular environment," he said. "Common packages that might be included in an enclosure include salinity protection if the system is located near an ocean, or humidity control if the system is located in a humid area. This range of enclosure options allows us to site energy storage in a tremendous range of geographies."

McDowall explained that the Saft project in Puerto Rico is being hardened against hurricanes, a regular issue in the island territory. That means the three 20-foot containers have to be on solid ground.

close x

Saft has also delivered BSSs to far less tropical environments. Last November, it installed a 950-kWh system for an electrical cooperative in Kotzebue, Alaska, above the Arctic Circle. The battery is equipped with a cold-weather package that allows it to operate at ambient temperatures down to -58F . ■

— **Thomas W. Overton, JD** is a *POWER* associate editor.

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Battery Energy Storage Agreements - Waiver of Liability

by Conor Boughey, Alliant!

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I came across a proposed agreement between a Community Clean Energy (CCE) Agency and a City, that requested the City waive liability as follows (I **bolded** my concern):

*Notwithstanding anything to the contrary contained herein, Seller and Buyer each hereby waive and release the other from any and all claims or liability for damage to any property that is caused by or results from a risk which is actually insured against or which is required to be insured against hereunder, **without regard to the negligence or willful misconduct of the entity so released.** All of Purchaser's and Seller's repair and indemnity obligations hereunder shall be subject to the waiver contained in this paragraph.*

Have any cities been asked to agree to this sort of waiver of liability? How was the situation resolved/agreed?

In this case, the CCE is stating they will be unable to attract solar and battery developers without this language.

For reference, this is dangerous stuff (sever injuries to city employees):
<https://www.fox10phoenix.com/news/4-months-later-investigators-still-looking-for-cause-in-aps-battery-facility-explosion>
(<https://www.fox10phoenix.com/news/4-months-later-investigators-still-looking-for-cause-in-aps-battery-facility-explosion>)

Any thoughts or experience in this area would be greatly appreciated. I believe this is a growing area of risk and eventually will effect many ACCEL cities who generate/store solar.

4 months later, investigators still looking for cause in APS battery facility explosion

By Nicole Garcia | Published August 7, 2019 | News | FOX 10 Phoenix

Search for cause in APS battery blast continues

It's been nearly four months since four Peoria firefighters were seriously hurt in an explosion at a solar batter facility in Surprise, and an investigation into the cause of the blast continues. FOX 10's Nicole Garcia reports.

PHOENIX (FOX 10) - It's been nearly four months since four Peoria firefighters were seriously hurt in an explosion at a solar batter facility in Surprise.

In April, members of Peoria's HAZMAT team responded to a fire at the APS battery facility that is known as the McMicken Site. Believing it was safe to enter, they opened the door, and an explosion blew them nearly 50 feet (ca. 15 m) away.

Since then, all four are out of the hospital and going through rehabilitation, but the cause of the explosion is still unknown.

The concept of a battery facility to store solar power for electricity is fairly new, and there isn't a precedent for this type of incident. What APS engineers and investigators are doing is discharging the energy out of all the lithium-ion modules, and then take apart each of them to inspect the insides of the units, looking for what caused the explosion.

APS officials have released video that shows the process of the disassembly. One by one, each battery module is disassembled, brought to a discharge station, and then moved to a location where they will be inspected. Lithium batteries are made of hazardous liquids, and in a lab, they're handled in airless glove boxes.

Engineering researchers at Arizona State University (ASU) are trying to come up with a lithium battery that uses solids, instead of liquids. When a lithium-ion battery overheats or is damaged, several reactions happen. The battery melts, then the liquid electrolytes in one side decompose, releasing a flammable gas.

"The gas is hydrocarbon gas like we use for the burner," said Hanqing Jiang, a battery expert at ASU's Engineering Research Center.

When the other side of the battery breaks down...

"It generates oxygen, and the flammable gas mixed together causes an explosion," said Jiang.

APS officials say there was a total of 378 battery modules in the McMicken Site, and each had its own fire suppression system.

APS is posting periodic updates on the investigation on its website, as they want to share what they're learning with the industry and first responders.

As for the injured firefighters, it is not known when, or even if, they will return to work.

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ACCEL Survey - Electric and Gas Operations

	Anaheim	Bakersfield	Burbank	Modesto	Monterey	Mountain View	Ontario
1. Does your city have electric operations?			Yes	The City purchases its electricity from both Modesto and Turlock Irrigation Districts. The City does have electricians on staff to work on street lights, traffic signals and at our Utilities sites (treatment plants, pump stations and well sites).			
a. Operating budget for these operations:			\$228,328,410				
b. Payroll for these operations:			Salary and benefits are \$40,824,561				
c. Number of employees for these operations:			286 FTEs				
d. Does your city generate electricity for 3rd parties?			No. But, the Magnolia Power Plant is sited at BWP. It's a SCPPA facility shared by other cities and Burbank is the operator. We place separate insurance on behalf of SCPPA to cover the SCPPA projects we operate.				
i. Please disclose generation facilities:		No. We do not have gas or electric managed by the City.			We do not have any gas or electric operations. All operations are contracted out with indemnification language favoring the City.	The City of Mountain View does not provide Electric or Gas utilities to the public so we do not purchase separate coverage.	
e. Does your city distribute electricity?			Yes				
i. Miles of above ground power lines:			205				
ii. Miles of below ground power lines:			130				
iii. Number of substations / transformers:			14 substations, 4 switching stations / 5825 distribution transformers				
f. Does your city own or operate any electric storage facilities (battery farms)?			No				
g. Does your city own or operate any Transmission lines?			Yes				
2. Does your city have gas operations?			No	Natural gas is purchased from PG&E.			
a. Operating budget for these operations:							
b. Payroll for these operations:							
c. Number of employees for these operations:							
d. Does your city distribute gas?							
i. Miles of gas lines:							
e. Does your city store gas?							
i. Number of locations storing gas:							

ACCEL Survey - Electric and Gas Operations

	Palo Alto	Salinas	Santa Barbara	Santa Cruz	Santa Monica	Visalia
1. Does your city have electric operations?	Yes		Santa Barbara generates electricity through hydro-electric, solar, and cogeneration which is bio-gas (burning methane to create electricity). Santa Barbara also participates in a power purchase agreement. Santa Barbara owns 3 solar arrays and all other solar are power purchase agreements.			
a. Operating budget for these operations:			No separate budget dedicated to the operations.			
b. Payroll for these operations:			No separate payroll dedicated to the operations; the functions are incorporated into the daily operations for the water and wastewater plants.			
c. Number of employees for these operations:			None			
d. Does your city generate electricity for 3rd parties?	Yes		The hydro-electric plant, solar farms, and cogeneration plant sell electricity to So Cal Edison.			
i. Please disclose generation facilities:		The City does not have electrical nor gas operations.	Hydro electric generators within Mission tunnel; the Mission tunnel connects a storage reservoir with the water treatment plant; the water travels through the tunnel to operate the hydro-electric turbines. Solar panels on existing buildings or structures. The cogeneration plant is part of the wastewater treatment plant.	The City of Santa Cruz does not have any of these operations.	We do not have either the electric or gas operations.	
e. Does your city distribute electricity?	Yes		No			
i. Miles of above ground power lines:	211					
ii. Miles of below ground power lines:	267					
iii. Number of substations / transformers:	2 substations					
f. Does your city own or operate any electric storage facilities (battery farms)?	No		Santa Barbara plans to purchase battery back-up components for use at the water treatment plant			
g. Does your city own or operate any Transmission lines?	No		No			
2. Does your city have gas operations?	Yes		No			
a. Operating budget for these operations:						
b. Payroll for these operations:						
c. Number of employees for these operations:						
d. Does your city distribute gas?	Yes					
i. Miles of gas lines:	211					
e. Does your city store gas?	No					
i. Number of locations storing gas:						



Item No. C.1.b.i
Underwriting Committee
November 29, 2022

PROPOSED CHANGES TO ACCEL'S MEMORANDUM OF COVERAGE (MOC):
UNMANNED AERIAL VEHICLES (UAVS)

ISSUE: ACCEL's MOC was previously silent on UAV coverage, but contained an aircraft exclusion which was not interpreted to apply to UAVs, so coverage for UAV operations was not excluded. In 2016, ACCEL took action to clarify the MOC language to explicitly state the aircraft exclusion does not apply to UAVs, and define UAVs as a small unmanned aircraft regulated by Part 107 of the FAA. Now, the FAA has changed their guidelines to allow governmental entities to fly UAVs outside of Part 107.

In order to fly a drone under Part 107, a person must have a Remote Pilot Certificate with a small unmanned aerial systems (UAS) rating obtained from the FAA, or that person is under the direct supervision of a remote pilot in command and the remote pilot in command has the ability to immediately take direct control of the flight of the small unmanned aircraft. This is also included in ACCEL's UAV Usage Guidelines Policy and Procedure.

Government agencies (including Federal, State, and tribal), law enforcement, and public safety entities have two options for operating drones under 55 pounds.

- Fly under 14 CFR part 107, the small UAS rule. Part 107 allows operations of drones or unmanned aircraft system (UAS) under 55 pounds at or below 400 feet above ground level (AGL) for visual line-of-sight operations only.
- Fly under the statutory requirements for public aircraft (49 U.S.C. §40102(a) and § 40125). Operate with a Certificate of Waiver or Authorization (COA) to be able to self-certify UAS and operators for flights performing governmental functions.

A Member Police Department is looking to operate drones without having a remote pilot airman certificate and use the Certificate of Waiver of Authorization (COA) instead. The Member City forwarded a COA from its Police Department to ask ACCEL if this is acceptable to ACCEL.

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

Additional Consideration

In favor of updating the MOC: The Committee may want to consider amending the MOC to allow for Members to be in compliance with UAV regulations outlined by the FAA, and not specifically mention which regulations govern use. This would allow the regulations to change without the need for ACCEL to amend language.



Against change to the MOC: The Committee might want to exclude coverage if the Members are not in compliant with the Part 107 certification. If so, no change to the current language is needed.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: At the December 2016 Board Meeting, the Board took action to amend the MOC (*effective 1/1/17*) and use the following language regarding UAV coverage:

Definition:

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 as regulated by the Federal Aviation Authority (FAA) Small Unmanned Aircraft Regulations (Part 107).

Aircraft Exclusion:

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 or operated by or rented to or loaned by or on behalf of any Member of the Authority or Entity.

The Board also directed the Program Administrators to draft UAV Guidelines that could be shared with the member agencies to provide a simple framework for appropriate use of UAVs. The attached guidelines aim to restate Part 107 in a more user friendly manner.

If members purchase an aviation policy for other City exposures, drones can be added to those insurance placements for minimal premium (approximately \$800 per drone). If no other aviation coverage exists, the premium will be higher for a standalone placement.

Further Info:

Per the FAA “What kind of Drone Flyer are You?” Identification Tool:

https://www.faa.gov/uas/getting_started/user_identification_tool

- If the drone weighs less than 55 pounds, there are two options: 1) Operate as a Public Aircraft Operation (PAO) with a COA or 2) Operation under Part 107 rules.
- If the drone weights more than 55 pounds the only option is to operate as a PAO with a COA.

Per the article, <https://www.adorama.com/alc/part-107-vs-coa-which-is-best-for-your-drone-program/>, some restrictions of Part 107 include but not limited to 1) flying only during daylight or in twilight with appropriate anti-collision lighting, 2) minimum weather is three miles from control station, and 3) can not fly over people, under a covered structure, or inside a covered stationary vehicle. Under Part 107, you must register the aircraft with the FAA, and have the designated drone pilots obtain the Remote Pilot Certificate.

On the other hand, the COA can provide a bit more flexibility such as permission to routinely fly within certain regions of controlled airspace, permission to fly over people in the event of a life safety



incident, and request other special provisions. This can be a preferred option for police and fire departments and local municipalities. A COA allows the agency to self-certify its drone pilots and drones for flights to perform governmental functions.

More information can be found here:

https://www.faa.gov/sites/faa.gov/files/uas/public_safety_gov/public_safety_toolkit/Law_Enforcement_Drone_Programs_Brochure.pdf

<https://www.dronepilotgroundschool.com/coa-part-107/>

On the FAA's FAQs website:

Can a single government entity create a Certificate of Waiver or Authorization (COA) that covers all departments with multiple operators and aircraft (e.g. sheriff dept, police, emergency management, aviation dept)? ^

Yes, an entire city can be under one COA, but the city needs to understand that anyone or any machine flying under that COA is the responsibility of the COA holder (the city in this example). The responsible person of the COA holder is responsible for exercising proper oversight and control over all who fly under that COA. It's important to understand as you design your command and control concept that in that scenario, if the COA is cancelled for any reason by the FAA, the entire group would be unable to fly under that COA. Some entities choose to centralize, while some choose to decentralize and have the various departments obtain their own COAs and manage their own crews and machines. This decision is at the discretion of the entity.

ATTACHMENT:

1. ACCEL's UAV Guidelines
2. ACCEL MOC Yellow Highlighted language about UAVs (Pages 45, 51, 53 of the agenda packet - See Item No. C.1.b.ii)

ADMINISTRATIVE GUIDELINES

SUBJECT: UNMANNED AERIAL VEHICLE (UAV) USAGE GUIDELINES

ADOPTED: February 15, 2017

REVISED DATE:

REVIEWED DATE: March 30, 2022

STATEMENT:

ACCEL's Memorandum of Coverage provides excess coverage for UAVs that are regulated by the Federal Aviation Authority (FAA) Small Unmanned Aircraft Regulations (Part 107). The following Guidelines summarize the FAA regulations and are suggested to be followed for usage of a UAV.

GUIDELINES:

- A person operating a small UAS (Unmanned Aerial System) must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command).
- Unmanned aircraft must weigh less than 55 lbs. (25 kg).
- Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer.
- At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses.
- Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle.
- Daylight-only operations, or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting.
- Must yield right of way to other aircraft.
- First-person view camera cannot satisfy "see-and-avoid" requirement but can be used as long as requirement is satisfied in other ways.
- Maximum groundspeed of 100 mph (87 knots) and maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure.
- Minimum weather visibility of 3 miles from control station.
- Operations in Class B, C, D and E airspace are allowed with the required ATC permission.
- Operations in Class G airspace are allowed without ATC permission.
- No careless or reckless operations.
- No carriage of hazardous materials.
- Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation.
- A person may not operate a small unmanned aircraft if they know or have reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS.
- External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft.
- Report to the City within 5 days of any operation that results in at least serious injury, loss of consciousness, or property damage of at least \$500.
- Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2).

A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency.



Item No. C.1.b.ii
Underwriting Committee
November 29, 2022

PROPOSED CHANGES TO ACCEL'S MEMORANDUM OF COVERAGE (MOC):
FINES AND ASSESSMENTS EXCLUSION

ISSUE: ACCEL's Memorandum of Coverage (MOC) Exclusion O. for fines and assessments states:

O. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive 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**

Byrne Conley, ACCEL's Legal Counsel suggested to incorporate some of the Excess Carrier's Great American \$10M excess of \$15M layer exclusion (blue highlighted below) into ACCEL's exclusion, specifically injunctive, equitable or declaratory relief so that no one can argue ACCEL pays for non-monetary damages:

O. NON-COMPENSATORY AMOUNTS AND/OR DAMAGES, including but not limited to: Fines, taxes imposed by law, penalties, sanctions, punitive or exemplary **damages**, the multiplied portion of any award, injunctive relief or costs to comply with **injunctive relief, restitution, equitable relief or declaratory relief, writs of mandate or any other form of relief other than the payment of damages**

Attached in the agenda packet is a redlined version of the MOC with the blue highlighted language inserted, which has been reviewed by Byrne, and his approval is shown in the background section.

RECOMMENDATION: The Underwriting Committee may take action to make a recommendation to the Board to propose changes to the MOC or provide direction.

Additional Considerations

In favor: The proposed language further clarifies the intent of the current exclusion to align with the Excess Carrier's Great American \$10M excess of \$15M layer exclusion. The Committee may recommend to make these changes effective July 1, 2023.

Against: Members may be against accepting the changes if they are in favor of the current language. The MOC already implies that ACCEL only covers monetary damages. The changes could be retroactive because it is a clarification to current policy, not a change in intent.

FISCAL IMPACT: No financial impact is expected.



BACKGROUND: Bryne's comments:

"Looking at a recent case, it was pointed out by an excess carrier that the Great American first layer of excess policy contains an Exclusion O for "injunctive relief or costs to comply with injunctive relief, restitution, equitable relief or declaratory relief, writs of mandate or any other form of relief other than the payment of **damages**."

ACCEL has a somewhat similar exclusion, touching on restitution but not mentioning injunctive, equitable or declaratory relief: "Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive 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**."

Since our MOC only covers Ultimate Net Loss comprised of Damages and Defense Costs relating to damage claims, I do not think the MOC applies to writs or injunctive relief claims in its coverage grant. However, we might want to think about incorporating the Great American language excluding specifically "injunctive relief, equitable relief or declaratory relief, writs of mandate or any other form of relief other than the payment of **damages**."

I do not think it would represent a change in coverage, but would make the MOC more explicit on the point."

The Program Administrators inserted the Great American language into the ACCEL MOC and sent it to Byrne, and the feedback is shown below:

"This looks OK to me. I normally have it as a separate exclusion, but nothing wrong with the way it is placed here, either.

ATTACHMENT: Proposed Changes to ACCEL's MOC – 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 or operated by or rented to or loaned by or 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 indemnity 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).**

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 as regulated by the Federal Aviation Authority (FAA) Small Unmanned Aircraft Regulations (Part 107).

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. one or more fatalities;
 - ii. spinal cord injuries (paraplegic or quadriplegic);
 - iii. amputations;
 - iv. loss of sight or hearing;
 - v. severe burns or disfigurement;
 - vi. serious head injuries;
 - vii. serious loss of use of any body part or function;
 - viii. allegations of sexual misconduct, molestation or similar;
 - ix. long term hospitalization (30 days or more); or
 - x. 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.
 - c. Lawsuits or writs involving employment practices liability.
 - d. Any class action lawsuits.
 - e. 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.c
Underwriting Committee
November 29, 2022

DATES OF LOSS FOR EMPLOYMENT PRACTICES LIABILITY CLAIMS

ISSUE: ACCEL has had a few Employment Practices Liability (EPL) claims that almost penetrated ACCEL's layer, and we had issues identifying the date of loss trigger on EPL matters. For instance, ACCEL, the excess carrier, and the Member each determined a different date of loss. ACCEL doesn't want to conflict with its Members.

The Program Administrators reached out to Byrne Conley, ACCEL's Legal Counsel on whether there is any policy language that helps nail down an agreed date of loss.

RECOMMENDATION: The Committee will review the current MOC language and may take action or provide direction regarding the language used for EPL claims.

Additional Considerations

In favor: Some JPA MOCs call specific attention to EPL claims, and intend to define the number of occurrences and the date of occurrences specific to EPL claims. If ACCEL wants this specific language, a modification to the MOC should be considered.

Against: In review of the ACCEL MOC language, the occurrence section and multiple coverage period language, in conjunction, state that ACCEL interprets a series of events as one occurrence, and occurring when it first began. Because of this, no change is needed to the MOC. In discussions with Byrne, ACCEL's general council, there is no recommended change.

FISCAL IMPACT: No financial impact is expected.

BACKGROUND: Bryne's comments:

The ACCEL MOC does not really address EPL except for defining "Discrimination" and Exclusion R, which excludes salary, wages, benefits and/or retirement proceeds because any adverse employment action. The Occurrence definition, of course, treats a continuous or repeated exposure as one Occurrence:

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**.

The Retained Limit definition says it is on a “per Occurrence basis” which cross references the defined term Occurrence, as does Section II, Authority’s Limit of Liability. Section VI, Conditions, then provides at part 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.

What we use at CJPRMA, which I believe is also in ERMA’s MOC, as part of an EPL Sublimit, is:

All claims by all employees or former employees or applicants for employment arising from the same act, policy, or course of conduct by a covered party shall be considered as one occurrence for the purpose of the limit of coverage. All claims which allege employment practices liability for occurrences extending to a duration of more than one coverage period shall be treated as a single occurrence arising during the first coverage period when the occurrence begins.

This can be a tricky area of the law. It might be a municipal custom or policy involving multiple employees, such as job classifications and pay scales that allegedly discriminate (in ACCEL’s case, the Exclusion would then come into play). It might be a single harasser who harasses multiple victims. If it is employee vs. employee the claim might be for an alleged policy of tolerating a hostile work environment; but if it is a supervisor, liability will be imputed to the employer. It might be an arguably single employment decision to retaliate against several employees for whistleblowing. I had one case where ERMA and CJPRMA disputed whether three layoffs (alleged retaliatory discharges) by different supervisors at different times was one Occurrence or three, where Plaintiff alleged, and the City disputed, that the City Manager was the moving force behind all three. The arbitrator ruled one Occurrence, though I did not agree.

In molestation cases, the molester is normally considered to be acting outside of course and scope of employment, and the only claim is negligent hiring or supervision of the perpetrator. In those cases, the cases are split across the country on number of Occurrences – one per touching, one per claimant or one per perpetrator. When we had the Santa Monica case, ACCEL treated it as one per perpetrator.

The CJPRMA language was partly adopted in light of 9th Circuit case authority re *Monell* liability. I am attaching my letter to you re the George Floyd demonstrations that discusses the case, *Mead Reinsurance v. Granite State*. Note that the *Mead* case discussed an out-of-state case re an allegedly discriminatory employment practice re job classification. The

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thinking was that all claims arising from a single municipal policy, or the course of conduct of an individual harasser, would be treated as a single Occurrence.

To me the current language is fine, particularly where the membership is stable and the Retained Limit is the same from year to year. Mainly it makes a difference if we have different excess or reinsures and there is a claim that reaches them, and they dispute a date of loss. Within our coverage layer, it should not matter to the member which year we assign it to.

I have seen members move from one pool to the other where the alleged harassment or discrimination occurs over time, and the termination at a later time, where the date of loss makes a difference. Actually in that scenario I would say both pools have coverage triggered because the anti-stacking language is meant to prevent there from being multiple SIRs or Limits of Coverage, but does not extend coverage outside the period of membership.

So this email sting started with you saying there have been problems in the past over this issue, and I pointed to language I wrote for two other pools. But I view the language as simply being more a specific application (for EPL) of the two provisions ACCEL already has. It is a restatement of existing intent, not a change.

ATTACHMENT: None