



## 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, January 6, 2026 at 1:30 PM

**LOCATION:** Teleconference

Link: <https://alliantinsurance.zoom.us/j/99860198635?pwd=OGL7hNhjw3mALFJ9NGr22sgasWnsoW.1>

Dial: 1 (669) 900 6833

Meeting ID: 998 6019 8635

Passcode: 718027

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***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.***

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*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.*

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- MEMBER** • City of Anaheim, 201 South Anaheim Boulevard, Suite 503, Anaheim, CA 92805  
**LOCATIONS** • City of Burbank, 275 E Olive Avenue, Burbank, CA 91510  
**VIA TELE -** • City of Palo Alto, 250 Hamilton Avenue, Palo Alto, CA 94301  
**CONFERENCE** • City of Santa Cruz, 1200 Pacific Avenue, Suite 290, Santa Cruz, CA 95060

**PAGE**      **A. CALL TO ORDER**

**B. CONSENT CALENDAR** (A)

- 3-5**      *I*      1. Approval of Minutes for the September 11, 2025 Underwriting Committee Meeting  
*The Committee will review these minutes and will take action to approve or give direction.*

**C. REPORTS**

**1. UNDERWRITING COMMITTEE'S REPORT**

- 6**      *I*      a) New Member Marketing (A)  
*The Committee will review a potential new member to ACCEL and may take action to provide a recommendation to the Board or give direction.*
- 7-25**      *I*      b) New ACCEL Exposure Questionnaire: City of Modesto – Turlock Modesto (A)  
Administrative Services Contract  
*Members will review and discuss the new exposure questionnaire and may take action or provide direction.*
- 26-47**      *I*      c) Proposed Changes to ACCEL's MOC – Pollution Claims (A)  
*Members will review the proposed changes to the ACCEL MOC as regards to pollution claims and may take action to recommend changes to the Board or give direction.*



- 48-66            1        d) ACCEL's Policies & Procedures Review: (A)  
*The Committee will conduct its review and may take action to provide a recommendation to the Board or give direction.*
- i.        Underwriting Standards Policy and Procedure
  - ii.       New Exposure Questionnaire
  - iii.      Bylaws
  - iv.      Parametric Aggregate Erosion Policy and Procedure

- D. PUBLIC COMMENTS** (I)  
4    *The public is invited at this point to address the Committee on issues of interest to them.*

**ADJOURNMENT**



**MINUTES OF THE  
ACCEL UNDERWRITING COMMITTEE  
MEETING**

**Item No. B.1  
Underwriting Committee  
January 6, 2026**

**Thursday, September 11, 2025 at 2:00 PM**

**LOCATION:  
Teleconference**

Link:

<https://alliantinsurance.zoom.us/j/96395060431?pwd=31K4ziVwRdPISSjq9JAcKLXbsZiKwG.1>

Dial: 1 (669) 444 9171

Meeting ID: 963 9506 0431

Passcode: 229856

**MEMBERS PRESENT:**

Tracey Matthews, City of Anaheim (Joined 2:04pm)  
Alvaro Valdez, City of Burbank  
Kelly-Louise Poggetti, City of Palo Alto  
Mark Howard, City of Santa Barbara  
Ross Brandon, City of Santa Cruz (Left 3:06pm)

**MEMBERS ABSENT:** None

**GUESTS AND CONSULTANTS:**

Conor Boughey, Alliant Insurance Services  
Thomas Joyce, Alliant Insurance Services  
Lorissa Huey, Alliant Insurance Services  
Byrne Conley, Gibbons & Conley (Left 2:46pm)

**A. CALL TO ORDER**

Ross Brandon called the meeting to order at 2:04 PM.

**B. CONSENT CALENDAR**

**B1. Approval of Minutes for the May 14, 2025 Underwriting Committee Meeting**

A motion was made to approve the Consent Calendar.



**MOTION:** Alvaro Valdez **SECOND:** Mark Howard **MOTION CARRIED**

	Tracey Matthews	Alvaro Valdez	Kelly-Louise Poggetti	Mark Howard	Ross Brandon
Aye	X	X		X	X
Nay					
Abstain			X		

**C. REPORTS**

**C1. UNDERWRITING COMMITTEE’S REPORT**

**C1a. Parametric Policy & Procedure Review Frequency**

Thomas Joyce reported that the purpose of this item was to determine the review frequency of the new Parametric Policy & Procedure (P&P) that the Board approved to accompany the new Parametric Earthquake policy effective 7/1/25. The Committee reviewed the existing policy & procedure review schedule.

Direction was given that the Committee would review this new P&P every year. The Committee’s reasoning was that this was a new P&P and should be reviewed frequently. This meeting did not constitute a review, and the Committee wants to review this P&P in 2025.

**C1b. Review of ACCEL’s MOC vs. Common Pollution Claims**

Conor Boughey reported that ACCEL Members had been having questions about pollution claims such as sewer backups and ACCEL’s coverage position on these exposures. ACCEL’s Coverage Counsel, Byrne Conley, presented his memo on ACCEL’s pollution exclusion to the Committee along with their comparison of various other JPA pollution exclusions. The Committee discussed this at length and determined that a time limit to report was not feasible for these types of claims.

The Committee gave direction to discuss with the Board at the October 2025 Board Meeting, it’s intent to propose changes to the MOC effective 7/1/26 to provide coverage for third party liability only for sewer backups with no time element for reporting language. The Committee will convene after the October 2025 Board Meeting. The Program Administrators are to work with ACCEL’s Coverage Counsel on a proposed language.



## **C1c. PRISM Medical Malpractice Program Discussion**

Conor Boughey provided the Committee with an update on the potential PRISM Med Mal application process. This is in response to the increased exposure of “pop-up clinics” or other medical services being provided to the community of the ACCEL Member cities. The Committee also received an update on the specifics of the PRISM Med Mal coverage and expressed concern on some of the coverage limitations. The limitations in question were a current lack of coverage for physical medicine being performed at non-established medical facilities.

Direction was given that applications would not be sent to the Members at this time and this item would be discussed at the coming October 2025 Board Meeting.

## **D. PUBLIC COMMENTS**

There were no public comments.

## **ADJOURNMENT**

The Meeting was adjourned at 3:06 PM.



**Item No. C.1.a**  
**Underwriting Committee**  
**January 6, 2026**

### NEW MEMBER MARKETING

**ISSUE:** A prospective new member is seeking to apply to ACCEL and has been in contact with Conor Boughey. Conor will provide an update to the Underwriting Committee.

At the time of the agenda mailing, no formal applications have been filed.

**RECOMMENDATION:** The Committee is to discuss the potential New Member prospect and may take action to make a recommendation to the Board to begin the underwriting process if the formal application is submitted or provide further direction.

#### Additional Consideration

**In favor:** A vote in favor would indicate that expanded the Authority's membership is a benefit as it could strengthen the pool if the Member has high payroll and favorable loss history.

**Against:** A vote against indicates that the Committee does not want to expand Membership at this time.

**FISCAL IMPACT:** No financial impact is expected from the recommended action.

**BACKGROUND:** Each year staff provides a report of cities that may be moving between Pools, or facing membership challenges. We will discuss opportunities in more detail at the meeting.

At the 2018 Strategic Planning, the size of ACCEL was discussed. At that meeting, the Board discussed the ideal number is 15 and no less than 10. New Members must have a Risk Management Program, not adverse to City loss portfolio, must be less than 20% of total Membership, and have at least of 30K population minimum. A larger group could indicate a demand for more services.

At the October 2018 Board Meeting, the Board Members agreed that they would not accept a JPA joining, the individual municipality must apply as an individual. The Board did not define an ideal size of the pool, but agreed that the general goal would be between 12 and 18 members.

Then at the October 2022 Strategic Planning, the Board discussed whether ACCEL can attract potential new beneficial members. The Executive Committee discussed this at its January 2023 Committee Meeting and provided the Board a verbal update.

**ATTACHMENT:** None.



**Item No. C.1.b**  
**Underwriting Committee**  
**January 6, 2026**

### NEW ACCEL EXPOSURE QUESTIONNAIRE: CITY OF MODESTO TURLOCK MODESTO ADMINISTRATIVE SERVICES CONTRACT

**ISSUE:** The City of Modesto has requested the Underwriting Committee review a new City exposure, the “Turlock Modesto Administrative Services Contract”. The City of Modesto is providing Supervisory Fire Admin Services for the neighboring City of Turlock. The City of Modesto is specifically providing “Fire Chief” and “Deputy Fire Marshall” services in exchange for a fee. As the contract is written, the indemnity is mutual and each city is responsible for their respective employees.

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

5. Services for a government entity that is not geographically adjacent to the Member Agency.
7. A situation or arrangement in which the Member Agency shares management staff (by position, such as a battalion chief, not necessarily any named individuals) with another entity in (i) non-emergency situations or circumstances, or (ii) other circumstances which may give rise to employment practices liability exposures for the Member Agency (unless there exists in the Service Agreement at least adequate indemnification allocation language between the parties).
8. Any service agreement situation or arrangement that brings about an increased exposure to loss that is concerning, or reasonably should be concerning, to the risk management personnel/function of the Member Agency.

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

#### Additional Consideration

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

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



**FISCAL IMPACT:** No immediate financial impact is expected.

### **BACKGROUND:**

ANGELINA MARTIN

*Turlock Journal*

Published: Jan 25, 2022, 10:23 PM

Modesto Fire Chief Alan Ernst could soon serve as head of the Turlock Fire Department after the City of Turlock failed to permanently fill the position over the last year and a half. While the contract needs approval from both cities involved, the Turlock City Council on Tuesday took care of its part with a split-vote approval of the agreement.

In December, the City Council directed staff to explore all possible options when it comes to control of TFD, giving the go-ahead to request a contract proposal from Modesto Fire for administration, management and command services. The department has been without a permanent fire chief since June 27, 2019, after [then-Chief Robert Talloni was fired](#) by the City.

The result of that firing was a department that felt more like “a ship in the sea without direction,” Turlock Firefighters Local #2434 President Chad Hackett [told the Journal](#) in September 2021. With only interim chiefs since then, TFD has struggled under the weight of administrative needs; the contract agreement approved by the Council this week is intended to alleviate that pressure. Despite initially voicing concern over the contract proposal in December, Hackett told the City Council on Tuesday that after several meetings with Ernst, Turlock Firefighters Local #2434 now supports the contract.

“We had at least a handful of meetings with some very good dialogue...We do look forward to working with Chief Ernst and moving the Turlock Fire Department forward and being a regional partner within Stanislaus County,” Hackett said.

Turlock’s Interim Fire Chief Michael Botto explained to the Council in December that exploring the option of a contract with Modesto Fire was timely, as TFD is lacking not only a permanent fire chief, but also a Division Chief of Operations and Division Chief of Training.

The contract fills the role of Turlock Fire Chief and provides access to the full support of the regional fire administrative team. The agreement is through June 2026, and will cost the City about \$180,000 less than staffing its own command team over that same time period.

“I truly believe that we are stronger together, and we really look at these as partnership agreements,” Ernst told the Council Tuesday. He added that other departments Modesto is partnered with, like Oakdale, are able to provide a level of service to residents that would have been unaffordable to the city before.



“It’s very important to us that we continue to have the identity of the local fire agencies and the communities we serve, and we want to support that as much as possible,” Ernst said.

The City of Turlock will join the City of Oakdale, Oakdale Fire Protection District, City of Ceres, Stanislaus Consolidated FPD and the City of Modesto as a participating member of a fully-staffed regional administration team. While Ernst will serve as Turlock’s Fire Chief, a Modesto Assistant Fire Chief will be assigned as a liaison to Turlock, serving as a point of contact for the City Manager and executive staff, attending City Council meetings and serving as a fire department representative in executive management activities.

Additionally, a Modesto Fire Deputy Chief will provide daily TFD operational and administrative responsibilities and will be assigned to and stationed in the TFD administrative headquarters. Ernst will attend and participate in Turlock’s happenings “as needed and warranted,” according to the staff report, and will be available to both the City Council and City Manager. The Division Chief of Operations position will be filled from within the Turlock Firefighters Local 2434 by qualified applicants, providing promotional opportunities.

In late October, the City Council also approved a \$79,235 contract with Citygate Associates, LLC, for a six-month Fire Master Plan review/study which will review the fire department’s operations and level of service delivery. The study will serve as a roadmap to provide direction for capital improvement funding needs and assist the City in long-range fiscal planning, and Citygate provided its input on the contract during Tuesday’s meeting.

Gary Stewart of Citygate said the company “strongly, strongly” endorses the contract as the best-fit solution for TFD for the next several years, at minimum. Should the City change its mind, the agreement contains an exit clause.

“For Turlock Fire Department to get an experienced, fully functional management team is far preferable to promoting several new chief officers while, at the same time, possibly hiring an outside fire chief that doesn’t know the city, the community, or maybe is a first-time fire chief,” Stewart told the Council.

Turlock resident Ron Bridegroom opposed the contract and brought up Measure A, which was approved in 2020 and touted as a City-wide tax meant to fully fund public safety services. Money to fund the contract will come from the General Fund.

“The voters did not vote for this,” Bridegroom said. “You’re just irritating the public and I have no idea why you’re doing that.”

Councilmember Rebecka Monez lauded Hackett for a letter he wrote to Council as well, which further detailed his support of the contract.

“Over the last six to eight months, the politics surrounding our fire department have gotten nasty. And nobody on either side of the issue ever wants to see that happen,” Monez said. “I am just ecstatic that Chief Ernst, Chief Botto, President Hackett and our union negotiators at Local #2434 have reached across the aisle and come together, because what I’ve always wanted is the best for our fire



department and the best for our citizens. And I believe that’s absolutely what we’re going to end up with.”

Councilmember Larson, on the other hand, agreed with Bridegroom’s sentiment. She too applauded City employees for coming together over the topic, but noted it was likely because they saw “the writing on the wall,” as Turlock has been exploring the option since September.

“It goes against what the voters of Measure A wanted. They wanted us to invest in our fire services... I don’t see any reason at this point to pay a Modesto Fire Chief to oversee the Turlock Fire Department, especially at a contract of a length of five years,” Larson said.

“This is an investment in the fire department,” Mayor Amy Bublak said, defending the contract. “...This is because the communication was finally opened up, everyone got to the table and had the discussions that they needed to have about their lives and how this will affect our firefighters. That vote took place, they agreed to this and I’m happy to support them with this.”

The Council approved the contract in a 4-1 vote, with Larson dissenting.

Source:

<https://www.turlockjournal.com/news/government/council-votes-enter-fire-services-contract-modesto/>

### **ATTACHMENT:**

1. New Questionnaire proposed by City of Modesto
2. Turlock Modesto Administrative Services Contract

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: 1/7/25

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Member Agency: **City of Modesto**

Date: **9/22/25**

New Exposure Proposal Name: **Turlock Modesto Administrative Services Contract**

Expected Implementation Date: **Immediate**

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

If time-limited, end date:

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

If yes, please insert applicable language:

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

**City of Modesto has provided Supervisory Fire Admin Services to the City of Turlock for the past year. This is a contract to extend that service.**

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

**The City of Modesto would provide "Fire Chief" and "Deputy Fire Marshall" services to the City of Turlock. The Indemnity is mutual and contains a provision that each city will be responsible for their own employees. So the key hazard is expanding the City's Fire Administrative services.**

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

**In the attached contract there is a Fee Schedule that breaks down the money the city will receive. I do not believe there is any revenue being generated by the contract.**

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

**We have carefully reviewed the indemnity and a Subrogation clause will protect the City's Worker's Comp program.**

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

**The City Manager's office and the Fire Department is supportive of the agreement as they endeavor to increase community cooperation between Fire Departments. I don't specifically know why this particular contract is structured this way.**

**AMENDED AND RESTATED  
AGREEMENT TO PROVIDE FIRE ADMINISTRATIVE SERVICES BETWEEN  
THE CITY OF MODESTO AND THE CITY OF TURLOCK**

This Amended and Restated Agreement for fire administrative services (“Agreement”) is made and entered into this \_\_ day of September, 2025 (the “Effective Date”), by and between the City of Modesto (“City of Modesto”), a California municipal corporation and the City of Turlock (“City of Turlock”), a California municipal corporation, collectively referred to as the “Parties” in this Agreement.

**RECITALS**

**WHEREAS**, both City of Modesto and City of Turlock provides fire protection, prevention, suppression services, and related services such as emergency medical services, emergency preparedness, mitigation of hazardous materials incidents, and special operations including, but not limited to, confined space rescue, technical rescue, and water rescue (“Fire Services”), in addition to administrative services, including, but not limited to, payroll, human resources, budgeting, data analysis and overall department oversight within the territorial limits of the cities of Modesto and Turlock; and

**WHEREAS**, the City of Modesto and the City of Turlock entered into that certain agreement for the provision of fire administrative services dated February 8, 2022 (“Original Agreement”); and

**WHEREAS**, City of Turlock desires to continue to contract with City of Modesto for the provision of fire administrative services for the Turlock Fire Department (“Turlock Fire”), within the City and Turlock jurisdictional boundaries (“Fire Administrative Services”), with some amendments; and

**WHEREAS**, City of Modesto is willing, able, and possesses the capacity to continue to perform the Fire Administrative Services; and

**WHEREAS**, the Parties desire to enter into a fruitful and long-term partnership for the provision of the Fire Administrative Services; and

**WHEREAS**, the Parties agree that this Agreement will ensure the provision of continued Fire Administrative Services; and

**WHEREAS**, it is the desire of the Parties to address, by this Agreement, all matters which are related to the Fire Administrative Services to be provided to Turlock Fire by City of Modesto; and

**WHEREAS**, this Agreement shall replace and supersede the Original Agreement in its entirety; and

**WHEREAS**, this Agreement is entered into pursuant to Government Code sections 54981 and 6502; and

**WHEREAS**, the Parties acknowledge they have complied with the provisions of the Meyers Miliias-Brown Act (Gov. Code §§ 3500 *et seq.*) and applicable laws, rules, and ordinances

with respect to its employees affected by this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants in this Agreement, it is agreed by and between the Parties hereto as follows:

## **ARTICLE I DEFINITIONS**

1.1 **Fire Administrative Services.** “Fire Administrative Services” means those services described in Article III of this Agreement.

1.2 **Fiscal Year.** “Fiscal Year” means the annual period commencing on July 1 and ending June 30 of any calendar year.

## **ARTICLE II TERM OF AGREEMENT**

2.1. **Initial Term.** The initial term of this Agreement shall be for four years, four and one-half months, from February 15, 2022, to June 30, 2026.

2.2. **Extension of Term.** This Agreement may, by approval of the Parties and their governing bodies, be extended for one additional two (2) year term. The term of the extension shall be for two years, from July 1, 2026 to June 30, 2028.

2.3. **Termination.** Notwithstanding Sections 2.1 and 2.2 and any other provision of this Agreement, either Party may terminate this Agreement by providing twelve (12) months' written notification to the other Party, and the term of this Agreement or any extension thereof shall be shortened accordingly. Written notification of termination shall be in the form of a Resolution by the applicable Party's governing body. The twelve (12) months' written notification requirement shall not be triggered until such Resolution is tendered, delivered, or mailed to the other Party. Notwithstanding the foregoing, the City of Modesto may terminate this Agreement pursuant to Section 5.2 of this Agreement.

## **ARTICLE III DUTIES OF CITY UNDER THIS AGREEMENT**

3.1 **Scope of Services.** City of Modesto shall provide Fire Administrative Services for Turlock Fire, as more specifically described in this Article, within the jurisdictional area of City of Turlock. In providing such services, City of Modesto shall oversee the provisions of Turlock Municipal Code Title 4 Chapter 4-3 entitled “Fire Codes and Administration” (“Turlock Fire Code”). Throughout the term of the Agreement and as reasonably needed or as requested by City of Turlock, City of Modesto shall consult with City of Turlock regarding City of Modesto's implementation of the provisions of this Agreement.

3.2 **Bi-Annual Review of Services.** Unless otherwise waived by all the Parties, City of Modesto agrees to, and shall cooperate in, a bi-annual review of the expectations outlined in this Article, that shall take place at a mutually agreeable time between the Parties. If areas of improvement are identified in the course of this review, then a reasonable corrective action plan shall be mutually developed and agreed upon. Such corrective action shall be memorialized in a writing signed by all the Parties.

3.3 **Advisory Committee.** An Advisory Committee, consisting of Turlock City Manager, one representative from the Turlock City Council, and the City's Fire Chief and Modesto City Manager, shall be formed to discuss and provide advisory input regarding the delivery of Fire Administrative Services for Turlock. The Advisory Committee shall agree to meet no less than twice per year at a mutually agreeable time and location.

3.4 **Description of Fire Administrative Services to be provided by City of Modesto.** The City of Modesto shall provide the fire administrative services listed in this Section 3.4 for Turlock Fire to maintain Fire Services for the City of Turlock. The City of Modesto shall:

- A. Serve as the "Fire Chief" as defined in the Turlock Municipal Code=for Turlock Fire.
- B. Oversee and administer Turlock Fire operations including budget, training, personnel, facilities, and all other operations as directed by the Turlock City Council.
- C. Represent Turlock Fire in public meetings with local, state, and federal officials as needed to enhance and improve the protection of life in City of Turlock.
- D. Undertake Fire Services program planning and administration consistent with the terms and conditions of this Agreement.
- E. Assist in the development and administration of annual Turlock Fire budgets.
- F. Assist with emergency and disaster management within the Stanislaus County Emergency Operations Center as timely requested by the Turlock City Council.
- G. Coordinate procurement of all routine operational supplies, services, and equipment as necessary to provide the Fire Services outlined in this Agreement.
- H. Provide a Deputy Fire Marshal to coordinate and provide reasonable assistance to help ensure that fire safety inspections of all state-mandated occupancies are performed, enforcement of all applicable code related to fire prevention, and staff oversight within the City of Turlock. The Deputy Fire Marshal shall serve as the primary liaison for fire

prevention matters and shall work collaboratively with Turlock staff to ensure consistent and effective delivery of fire prevention services in alignment with Turlock’s municipal code and development review processes..

I. Maintain sufficient, segregated records relating to provision of Fire Administrative Services to Turlock Fire, including, but not limited to response time data for all incident responses. At a minimum, such records shall be sufficient to meet any and all federal and state reporting obligations as they relate to the provision of Fire Services, including but not limited to annual audits, mutual aid, and reimbursement for disaster response, hazardous material response, or other incident responses. Such records, reports and response data shall be provided to Turlock Fire, City of Turlock or the Turlock City Council at their request.

J. Coordinate the planning, development, and delivery of fire prevention and safety education programs for schools, businesses, community associations, child-care providers, and other members of the community. Fire prevention and life safety programs will be tailored to educate Turlock residents and business community in order to help preserve life and property.

K. Emergency Medical Services Oversight. Modesto shall provide enhanced administrative oversight and coordination of Emergency Medical Services (EMS) operations on behalf of Turlock. These responsibilities shall include, but are not limited to, assisting with EMS quality assurance and improvement programs, coordination with the County EMS Agency, support for EMS training and documentation systems, and providing administrative guidance on clinical operations and EMS policy development. Modesto shall assign personnel to ensure effective integration and compliance with local, state, and regional EMS standards and protocols.

### 3.5 Miscellaneous.

A. False Fire Alarms. City of Modesto will enforce the provisions of the Turlock Municipal Code providing for recovery of costs associated with responses to false fire alarms.

B. Hazardous Materials Releases. City of Modesto will enforce the provisions of the Turlock Municipal Code or Modesto Municipal Code providing for recovery of costs associated with responses to releases of hazardous materials.

## ARTICLE IV DUTIES OF CITY OF TURLOCK

4.1 **Payment for Fire Administrative Services.** City of Turlock shall compensate City of Modesto for the provision of Fire Administrative Services as further described in Article V of this Agreement.

4.2 **Fire Prevention Staff.** City of Turlock shall maintain Fire Prevention staff sufficient for continual operation. This staff shall include administrative support for scheduling, correspondence and billing, a Fire inspector(s) and plan review responsibilities.

**4.3 Vehicles.** The City of Turlock will provide vehicles for and to be driven by both the Deputy Chief and Deputy Fire Marshal. The Deputy Chief shall be provided with a vehicle equipped with radios and code 3 capabilities. The Deputy Fire Marshal vehicle will be similar to the fire inspector. City of Modesto employees shall also be permitted to drive and operate fire apparatus belonging to the City of Turlock. Any maintenance, repair, wear and tear, or malfunction of the vehicles will be the sole financial responsibility of the City of Turlock.

**4.4 Maintenance of Supplies.** The City of Turlock will continue to provide consumable supplies relevant to Fire Prevention and public outreach or education. Workstations will also be provided for the Deputy Chief, Deputy Fire Marshal.

## **ARTICLE V ANNUAL FIXED FEE FOR FIRE ADMINISTRATIVE SERVICES**

**5.1 Annual Fixed Fee for Services.** City of Turlock agrees to pay City of Modesto for all services provided pursuant to the terms and conditions of this Agreement in the amounts and times as set forth in Exhibit A and this Article.

A. The Fee Payment Schedule as set forth in Exhibit A is based upon the five (5) year budget projection describing the total reasonably anticipated costs of providing Fire Administrative Services for each Fiscal Year or portion thereof. Should the City of Modesto realize fiscal benefits through economies of scale if it contracts with additional agencies for fire administrative services, the fee for service paid by City of Turlock under this Agreement may be revised.

B. On the last day of each month throughout the duration of this Agreement, City of Turlock agrees to remit to City of Modesto payments amounting to 1/12<sup>th</sup> of the annual fiscal obligation hereunder, pursuant to the fee schedule set forth in Exhibit A. City of Turlock is responsible to pay the full monthly amounts as each are required pursuant to Exhibit A.

C. The Fee Payment Schedule and amounts due under this Agreement shall be pro-rated based upon Agreement execution date.

**5.2 Delinquent Payments.** In the event that City of Turlock fails to pay the entire amount described in Section 5.1.B. above within fifteen (15) calendar days of the due date (“Delinquent Payment”), the amount due shall be subject to the City of Modesto’s policy regarding delinquent payments in effect at the time of the Delinquent Payment.

A. In the event that City of Turlock does not pay the required monthly payment as identified in Section 5.1.B. within thirty (30) calendar days of the due date, the City of Modesto shall provide notice that all Fire Administrative Services may be terminated in thirty (30) calendar days.

B. In the event that City of Turlock does not pay the required monthly payment plus any penalty amounts assessed pursuant to City of Modesto policy at the end of the thirty (30) calendar day notification period give pursuant to Section 5.2.A, the City of Modesto shall have the option to terminate Fire Administrative Services immediately and without further notice.

5.3 **Service Level Reductions.** If budgetary constraints require service level reductions by any Party, all Parties agree to meet and confer.

## **ARTICLE VI PERSONNEL**

6.1 **Hiring of Employees.** At the time of execution of this Agreement, all current full-time Turlock Fire administrative staff will remain employed in their current positions with Turlock Fire.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

7.1 **Mutual Indemnification.**

A. City of Modesto shall indemnify, defend and hold harmless City of Turlock (including their elected or appointed officials, employees, agents, volunteers, and attorneys as the same may be constituted now and from time to time hereafter) to the extent allowed by law and in proportion to City of Modesto's fault, against any and all third-party liability for claims, demands, costs, or judgments (direct, indirect, incidental, or consequential) of any kind including those involving bodily injury, personal injury, death, property damage, or other costs and expenses (including reasonable attorneys' fees, costs and expenses) arising or resulting from the negligent acts or omissions of its own elected or appointed officers, agents, employees, volunteers, or representatives carried out pursuant to the obligations of this Agreement.

B. City of Turlock shall indemnify, defend and hold harmless the City of Modesto (including its elected or appointed officials, employees, agents, volunteers, and attorneys as the same may be constituted now and from time to time hereafter) to the extent allowed by law and in proportion to City of Turlock's fault, against any and all third-party liability for claims, demands, costs, or judgments (direct, indirect, incidental, or consequential) of any kind including those involving bodily injury, personal injury, death, property damage, or other costs and expenses (including reasonable attorneys' fees, costs and expenses) arising or resulting from their negligent acts or omissions of their own elected or appointed officers, agents, employees, volunteers, or representatives carried out pursuant to the obligations of this Agreement.

7.2 **Mutual Indemnification Obligations Survive Termination.** As to activities occurring or being carried out in the performance of this Agreement and during the term of this

Agreement, the obligations created by Agreement Section 7.1 shall survive termination of this Agreement.

**7.3 Public Liability and Property Insurance.**

A. Each Party shall maintain in effect, at its own cost and expense, the following insurance coverage provided either through a bona fide program of self-insurance, commercial insurance policies, or any combination thereof:

(i) Commercial general liability or public liability with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

(ii) Auto liability insurance including owned, leased, non-owned, and hired automobiles, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(iii) Workers' Compensation in accordance with California Labor Code Section 3700 with a minimum of \$1,000,000 per occurrence for employer's liability, for the duration of time that such workers are employed.

B. All insurance required by this Agreement shall:

(i) Be placed: (1) with companies admitted to transact insurance business in the State of California and with a current A.M. Best rating of no less than A:VI or with carriers with a current A.M. Best rating of no less than A: VII; or (2) disclosed self-insurance with limits acceptable to the other Party.

(ii) Provide that each Party's insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the other Party and that the insurance of the other Party shall not be called upon to contribute to a loss covered by a Party's insurance.

C. Each Party shall file certificates of insurance with the other Party evidencing that the required insurance is in effect.

**7.4 Workers' Compensation.**

A. City of Turlock shall provide the City of Modesto with an endorsement that its Workers' Compensation insurer waives the right of subrogation against the City of Modesto, its officers, officials, employees, and volunteers for all claims on or after the Effective Date of this Agreement during the tenure of said Agreement.

**ARTICLE VIII  
MISCELLANEOUS**

8.1 **Amendments to Agreement.** No part of this Agreement shall be altered or amended without the written agreement of the Parties.

8.2 **Assignment.** The rights and obligations of the Parties under this Agreement are not assignable and shall not be delegated without the prior written approval of the Parties.

8.3 **Dispute Resolution.** The Parties recognize that this Agreement cannot represent a complete expression of all issues which may arise during the performance of the Agreement. Accordingly, City of Modesto and City of Turlock agree to meet and confer in good faith over any issue not expressly described herein to the end that City of Turlock will obtain the best Fire Administrative Services possible under the most favorable economic terms and that City of Modesto will be fairly and adequately compensated for the services it provides hereunder.

It is the Parties' intention to avoid the cost of litigation and to resolve any issues that may arise amicably if possible. To that end, the Parties agree to meet within ten (10) business days of a request made by the other Party in writing to discuss the issues and attempt to resolve the dispute. If the dispute is not resolved after that meeting, the Parties agree to mediate the dispute within thirty (30) calendar days of the meeting or as soon thereafter as possible. The mediator will be chosen by mutual agreement of the Parties. The costs of mediation will be borne by the Parties equally. No Party may initiate litigation prior to the conclusion of mediation. In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorney fees pursuant to California Civil Code Section 1717.

8.4 **No Waiver.** The waiver of any Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies that become due hereunder shall not be deemed to be a waiver for any preexisting or concurrent breach or violation by the other Party of any provision of this Agreement.

8.5 **Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties to it and their representatives, successors, and permitted assignees.

8.6 **Interpretation.** This Agreement shall be interpreted and construed reasonably and neither for nor against any Party, regardless of the degree to which any Party participated in its drafting. Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any Party being considered the Party "drafting" this Agreement.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever a reference is made herein to a particular provision of this Agreement, it means and includes all paragraphs, subparagraphs and subparts thereof, and, whenever a reference is made herein to a particular paragraph or subparagraph, it shall

include all subparagraphs and subparts thereof.

8.7 **Captions.** The captions in this Agreement are for convenience and reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

8.8 **References to Laws.** All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or re-codified, unless otherwise specifically provided.

8.9 **References to Days.** All references to days herein are to calendar days, including Saturdays, Sundays, and holidays, except as otherwise specifically provided. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed excluding the first day and including the last day.

8.10 **Time of Essence.** Time is of the essence of this Agreement and of every part of this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

8.11 **Severability.** If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and such remaining provision shall be enforced as if such invalid or unenforceable provision had not been contained herein.

8.12 **Choice of Law and Venue.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state and the venue shall be in Stanislaus County, California.

8.13 **Entire Agreement.** This Agreement represents the full and entire Agreement between the Parties regarding the matters covered herein.

8.14 **Counterparts.** This Agreement may be executed in counterparts each of which shall be considered an original.

8.15 **Exhibits.** The following Exhibits are attached hereto and incorporated as if fully set forth herein:

Exhibit A: Fee Payment Schedule (FY 2021-2022 – FY 2027-2028)

8.16 **Notices.** All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand, electronic mail, or by United States mail, postage prepaid, addressed to the Parties at the addresses set forth below or to such other address as may, from time to time, be designated in writing.

To City of Turlock:

Sue Borrego  
Turlock City Manager  
156 S. Broadway, Ste. 230  
Turlock, CA 95380

To City of Modesto:

Joseph Lopez  
Modesto City Manager  
1010 10<sup>th</sup> Street  
Modesto, CA 95354

8.17 **Joint Defense/Common Interest.** In the event of a third-party challenge of any type to this Agreement, the Parties agree to jointly defend the validity and implementation of the Agreement.

EXHIBIT A  
FEE SCHEDULE

	<b>FY 21/22 (4.5 Months)</b>	<b>FY 22/23</b>	<b>FY 23/24</b>	<b>FY 24/25</b>	<b>FY 25/26</b>	<b>FY 26/27</b>	<b>FY 27/28</b>
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<b>July</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$32,643.83	\$59,600.84	\$63,941.76
<b>August</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$32,643.83	\$59,600.84	\$63,941.76
<b>September</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>October</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>November</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>December</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>January</b>		\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>February</b>	\$14,061.59	\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>March</b>	\$28,123.17	\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>April</b>	\$28,123.17	\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>May</b>	\$28,123.17	\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>June</b>	\$28,123.17	\$29,338.52	\$31,272.87	\$31,948.46	\$63,837.25	\$59,600.84	\$63,941.76
<b>Total</b>	<b>\$126,554.27</b>	<b>\$352,062.24</b>	<b>\$375,274.44</b>	<b>\$383,381.52</b>	<b>\$638,272.51</b>	<b>\$715,210.06</b>	<b>\$767,301.11</b>

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Amended and Restated Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. \_\_\_\_\_, adopted by the Council of the City of Modesto on the \_\_\_\_ day of \_\_\_\_\_, and the City of Turlock has caused this

Amended and Restated Agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO,  
a municipal corporation

CITY OF TURLOCK,  
a municipal corporation

BY: \_\_\_\_\_

BY: \_\_\_\_\_

SUE BORREGO, City Manager

ATTEST:

ATTEST:

(Seal)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DIANE NAYARES-PEREZ, City Clerk

NICOLE FIEZ, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

JOSE M. SANCHEZ, City Attorney

GEORGE A. PETRULAKIS

City Attorney

APPROVED AS TO FORM:

Federal ID # \_\_\_\_\_

BY: \_\_\_\_\_

Pursuant to Turlock Municipal Code Sections

CHRISTINA D. ALGER

2-3-201 and 2-4-407(c), I hereby appoint

Director of Human Resources (Risk)

Kevin Wise as the Fire Chief of the Turlock

Fire Department.

BY: \_\_\_\_\_

SUE BORREGO, City Manager



**Item No. C.1.c**  
**Underwriting Committee**  
**January 6, 2026**

### PROPOSED CHANGES TO ACCEL'S MOC – POLLUTION CLAIMS

**ISSUE:** At the October 2025 Board Meeting, the ACCEL Board provided direction to the Program Administrators to work with ACCEL legal counsel on new language regarding pollution claims. The goal was to explicitly add coverage for sewer backups for 3rd party liability only with no time element for reporting. The change was to be effective 7/1/26. Below is the recommended language changes to the MOC:

Adding the below to Exclusion H:

This exclusion does not apply to claims arising from sudden and accidental sewer backups into a home or business.

Adding the below as a sub-section to Exclusion I:

claim or suit brought under the Clean Water Act, including state or federal enforcement actions under 33 U.S. Code sections 1319, et seq.; citizen suits brought under sections 1365, et seq.; or state enforcement actions brought under the California Water Code sections 13385, et seq.; or claims or suits brought under any similar law relating to discharge permit violations.

Enforcement actions against cities under the Clean Water Act, either by regulatory agencies or citizen suits, are not covered because the only Damages available are fines or statutory penalties, which are excluded by Exclusion O.

**RECOMMENDATION:** It is recommended that the Committee discuss and take action to recommend the Board amend the language or leave the exclusion as is, or provide further direction.

#### Additional Considerations

**In favor:** The Committee may want to consider making a recommendation to the Board to amend the MOC to further clarify if sewer backup and sewage treatment is covered or excluded. These changes may be retroactive to July 1, 2025 or effective at the July 1, 2026 renewal.

**Against:** Members may be against proposing changes if they are in favor of the current language.

**FISCAL IMPACT:** No financial impact is expected from the recommended action.

**BACKGROUND:** This topic was initially brought up under the Claims Committee. Members expressed a desire to better understand the exposure of third party sewage backup and what coverage could be found

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under ACCEL's MOC. ACCEL's MOC is meant to provide coverage for General Liability, Auto Liability, Public Officials E&O, Employment Practices Liability, exposures and has a pollution exclusion noted below:

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.

The definition of "pollutants" in the MOC is below:

**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.

Ben Oram, ACCEL's Litigation Manager has provided the following information:

This issue was raised that issue with the Claims Committee in March 2025 because A Member case (Claim #1) is currently being handled a little differently than another Member's sewage case (Claim #2). In Claim #2, ACCEL provided an ROR, but in Claim #1, we provided a Partial Disclaimer. Rob Powers noted the

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difference, but he did not know that ACCEL decided to change the process in late 2021. Our past practice was to send RORs. Our current practice is to send a partial disclaimer for both inverse condemnation and pollution. We have not had to decide coverage in the face of a demand from a member. I expect that our current decision would be to deny the member coverage based on Exclusion H.

Claim #1: Homeowners claimed a tree root ball in the sewer main line caused a backup of raw sewage into their residence which then caused serious damage to the home and emotional distress to the family. Investigation indicates that a tree root ball actually originated near neighbor's sewer lateral line. Heimlich property lacked a backflow prevention device. Claimant alleges damage to real property of \$452K, personal property \$91K, loss of income \$40K, hotel and incidental monetary costs of \$48K, plus emotional distress. Plaintiff are pushing for settlement over \$1M. Causes of action include inverse condemnation arising out maintenance of the sewer main line. The claim is open and being monitored. We sent a partial disclaimer.

Claim #2: Homeowners and law firm owners claimed sewage backed up into their homes on five occasions over 2 years. Case was settled for \$700K. Backflow incident occurred during extreme weather, allegedly because the diameter of the pipe installed decades ago was not sufficient to handle increased users during extreme weather events. No backflow prevention device was installed. This was a residential home but the plaintiffs operated a law firm out of the back portion of the house.

Case law supports the characterization of sewage as a pollutant. Cases answering this question for insurance companies with the same definition refer to several sources for support.

“The Clean Water Act defines **pollutants** as “dredged spoil, solid waste, incinerator residue, **sewage**, garbage, **sewage** sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” (33 U.S.C.A. § 1362(6).)”  
[Ortega Rock Quarry v. Golden Eagle Ins. Corp., 141 Cal. App. 4th 969, 980-81, 46 Cal. Rptr. 3d 517, 526 \(2006\)](#)

The ACCEL MOC Exclusion H in the 22/23 MOC applicable to Claim #2 contains the same language as Exclusion I from the 16/17 MOC used in Loche. Sewage backups represent a large number of claims across most entities George Hills works with. Aging infrastructure, severe weather, increased user connections, all tax the systems currently installed.

A Member had a sewage claim demanding \$626K (Claim #3) which caused me to look at the language closer because the claim did not allege Inverse Condemnation, it just stated facts:

Exclusion H may turn on definitions of specific words:

H. To liability arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:

- (1) – “At or from any **premises** owned, leased, or occupied...” The spill was at a residential home so unless “premises” includes the sewer main, then this exclusion may not apply.
- (2) – “At or from any **site or location**...” Again, I am not sure if the sewer main can be called a “site” or “location” used for “...handling, disposal, processing or treatment...” If not, the exclusion would not apply.
- (3) – “Which are at any time **transported**, handled, stored, treated, disposed of or processed as pollutants...” If the sewer main is defined as a means of transportation or handling, exclusion could apply, but its not really clear to me. I think this is the best argument supporting exclusion.
- (4) – “At or from any **site or locations**...are performing operations.” Same as above.

**ATTACHMENT:** ACCEL 4x1 MOC - Redline

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## **AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY**

### **MEMORANDUM OF EXCESS LIABILITY COVERAGE**

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

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

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

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

##### **A. COVERAGE OF MEMBER AGENCY**

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

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

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

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

##### **B. DEFENSE OF MEMBER AGENCY**

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

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

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

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

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

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

## **II. AUTHORITY'S LIMIT OF LIABILITY**

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

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

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

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

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

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

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

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

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

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

### **III. WHO IS A COVERED PARTY**

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

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

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

- (2) With respect to any **hired automobile**, to the owner, or lessee thereof other than the **Member Agency**, or to any agent or employee of such owner or lessee; or
- (3) To liability arising from the ownership, maintenance, or use of any **automobile** assigned to an airport premises while such **automobile** is on the premises of an airport which is owned, maintained or operated by the **Member Agency**.

- D. Any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum of Coverage, but only with respect to **Bodily Injury** and **Property Damage** resulting from operations performed by or on behalf of the **Member Agency** or facilities owned or used by the **Member Agency**.
- E. As respects any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to name such person or organization as an additional covered party, coverage afforded by this Memorandum of Coverage shall be subject to all terms, exclusions and conditions of this MOC, as applicable, and shall apply only to the limit of liability coverage required by such contract.

#### **IV. WHAT THE AUTHORITY WILL NOT COVER (EXCLUSIONS)**

This Memorandum does not apply:

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

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

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

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

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

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

This exclusion does not apply to claims arising from sudden and accidental sewer backups into a home or business.

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 as well as any -claim or suit brought under the Clean Water Act, including state or federal enforcement actions under 33 U.S. Code sections 1319, et seq.; citizen suits brought under sections 1365, et seq.; or state enforcement actions brought under the California Water Code sections 13385, et seq.; or claims or suits brought under any similar law relating to discharge permit violations.

J. To liability arising out of or contributed to by any complete or partial failure to supply utilities including but not limited to: water, electricity, gas, and broadband/internet/wireless communication services.

K. To liability arising out of medical professional services provided by any doctor, nurse, or dentist employed by or contracted by or on behalf of 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, including any mobile 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. To liability for **Bodily Injury** or **Property Damage** arising out of any transit authority, transit system or public transportation system owned or operated by any **covered party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped persons transportation, or to contingent liability where such services are contracted.

## **V. WORDS AND PHRASES WITH SPECIAL MEANING**

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

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

**Authority** means the Authority for California Cities Excess Liability.

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

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

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

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

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

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, and no barrier which is not across a stream

channel, watercourse, or natural drainage area and which has the principal purpose of impounding water for agricultural use shall be considered a **dam**. In addition, no obstruction in the channel of a stream or watercourse upstream from the construction for percolation underground shall be considered a **dam**, except that no structure specifically exempted from jurisdiction by the State of California Department of Water resources, Division of Safety of Dams shall be considered a Dam, unless such structure is under the jurisdiction of any agency or the federal government

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Ultimate net loss** means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which a **Member Agency** is liable either by adjudication or compromise (with the written consent of the **Authority**) after making proper deductions for all recoveries and salvages

collectible, and includes **defense costs** and interest on any judgment or award, whether such sums paid or payable, costs, or interest are incurred by the **Member Agency**, a **covered party** or the **Authority**.

## **VI. CONDITIONS**

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

In the event of:

- (1) **Member Agencies** will report to the Authority's Claims Administrator as soon as possible all events meeting any of the criteria identified below, without regard to liability:
- a. Claims in which the **ultimate net loss** is estimated to exceed twenty-five percent (25%) of the **covered party's retained limit**.
  - b. Claims falling within any of the following classifications:
    - i. Class action suits.
    - ii. Law enforcement actions alleging excess use of force or wrongful conviction.
    - iii. Claims involving allegations of harassment, including but not limited to sexual, employment-based or third-party.
    - iv. Sexual misconduct or molestation – including allegations of assault, misconduct, rape and related offenses.
    - v. Fatalities.
    - vi. Spinal cord injuries resulting in any degree of paraplegia or quadriplegia.
    - vii. Nerve damage injuries resulting in paralysis or loss of sensation.
    - viii. Brain damage claims including; but not limited to, closed head injuries, permanent disorientation, behavior disorder, personality change, seizure, motor deficit or other cognitive disorders.
    - ix. Burns – Third degree burns involving 10% of the body, or second degree burns involving 30% of the body.
    - x. Amputation – complete or partial.
    - xi. Impairment of vision or hearing – 50% or greater.

- xii. Multiple injuries arising out of one occurrence, including but not limited to; massive internal injuries or multiple fractures involving more than one claimant.
  - xiii. Severe disfigurement
  - xiv. Long term hospitalization (30 days or more)
  - xv. Multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.
  - xvi. Any claim with an assigned trial date in the next 60 days that has not been otherwise reported.
- c. Lawsuits or writs involving employment practices liability.
- d. Demands in excess of \$250,000 arising out of any of the following settings:
- i. Statutory demand;
  - ii. Post closed discovery (not expert) demand;
  - iii. Mandatory Settlement Conference demand;
  - iv. Mediation demand; or
  - v. Arbitration demand.

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

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

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

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

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

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

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

- E. Multiple Coverage Periods. An **occurrence** with a duration of more than one coverage period shall be treated as a single **occurrence** arising during the coverage period 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.d**  
**Underwriting Committee**  
**January 6, 2026**

**ACCEL'S POLICIES AND PROCEDURES REVIEW:**

- I. UNDERWRITING STANDARDS POLICY & PROCEDURE**
- II. NEW EXPOSURE QUESTIONNAIRE**
- III. BYLAWS**
- IV. PARAMETRIC AGGREGATE EROSION POLICY AND PROCEDURE**

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

The last review was at the January 7, 2025 Underwriting Committee Meeting.

The Parametric Aggregate Policy and Procedure is to be reviewed annually as determined at the September, 25, 2025 Underwriting Committee Meeting.

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

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

**Additional Consideration**

**In favor:** If the Committee recommends changes, the Program Administrator will provide a redline document for the Board's consideration at the upcoming Board Meeting.

**Against:** If the Committee is not recommending any proposed changes, the reviewed date will be marked as today's meeting date. The scheduled reviews will be complete.

**FISCAL IMPACT:** No financial impact is expected.

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

# ACCEL

## Authority for California Cities Excess Liability

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



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

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

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

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

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

Effective 7/1/2025 ACCEL bound a parametric earthquake policy and adopted a parametric aggregate erosion policy and procedure. At the 9/25/25 underwriting committee meeting, the Committee determined that this P&P would be reviewed annually as it was new.

**ATTACHMENT(s):**

- (1) Underwriting Standards Policy & Procedure
- (2) New Exposure Questionnaire
- (3) Bylaws
- (4) Parametric Aggregate Erosion Policy and Procedure

## **ADMINISTRATIVE POLICY AND PROCEDURE**

### **SUBJECT: UNDERWRITING STANDARDS REGARDING NEW EXPOSURES**

**DATE: April 12, 2012**

**AMENDED DATE: October 17, 2019**

**REVIEWED DATE: January 67, 20265**

### **POLICY STATEMENT**

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

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

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

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

### **PROCEDURE**

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

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

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

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: 1/~~67~~/2~~65~~

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Member Agency:

Date:

New Exposure Proposal Name:

Expected Implementation Date:

Ongoing Program/Service: Yes or No

If time-limited, end date:

Does current MOC address exposure proposal: Yes or No

If yes, please insert applicable language:

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

**AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY**

**BYLAWS**

**Amended & Restated January 23, 2025**

**Amended & Restated January 18, 2024**

**Amended & Restated January 20, 2022**

**Amended & Restated April 6, 2017**

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

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

**ARTICLE I  
DEFINITIONS**

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

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

**ARTICLE II  
OFFICES**

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

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

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

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

**ARTICLE III  
MEETINGS**

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

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

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

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

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

**ARTICLE V  
DUTIES OF THE OFFICERS**

The duties of the officers shall be as follows:

A. President

The duties of the President shall be to:

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

B. Vice President

The duties of the Vice President shall be to:

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

#### C. Secretary

The duties of the Secretary shall be to:

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

#### D. Treasurer

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

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

## **ARTICLE VI COMPOSITION AND DUTIES OF COMMITTEES**

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

### **Executive Committee**

#### A. Composition

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

#### B. Duties

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

## **Underwriting Committee**

### **A. Composition**

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

### **B. Duties**

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

## **Finance Committee**

### **A. Composition**

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

### **B. Duties**

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

## **Claims Committee**

### **A. Composition**

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

### **B. Duties**

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

## **ARTICLE VII BUDGET**

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

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

## **ARTICLE VIII DISBURSEMENT OF FUNDS**

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

### **A. Issuance of Checks**

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

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

**B. Unencumbered Operating Funds**

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

**ARTICLE IX  
INVESTMENT OF FUNDS**

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

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

**ARTICLE X  
FINANCIAL AUDIT**

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

**ARTICLE XI  
SETTLEMENT OF CLAIMS**

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

## **ARTICLE XII LIABILITY PROGRAM**

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

### A. Coverage

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

### B. Program Year

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

### C. Terms and Conditions of Coverage for New Member

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

### D. Claims Audit

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

### E. Deposit (and Audited) Premium Calculations

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

#### F. Rating Plan Adjustments

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

#### G. Underwriting Standards

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

### **ARTICLE XIII NEW MEMBERS**

Membership to ACCEL shall be in accordance with the following:

#### A. Application for Membership

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

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

#### B. Membership Approval

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

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

C. Participation

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

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

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

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

**ARTICLE XIV  
AMENDMENTS**

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

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

**ARTICLE XV  
OPTIONAL POOLED PROGRAMS**

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

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

Once approved, participating members agree to:

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

## **ADMINISTRATIVE POLICY AND PROCEDURE**

### **SUBJECT: PARAMETRIC AGGREGATE EROSION**

**DATE: June 12, 2025**

**AMENDED DATE:**

**REVIEWED DATE: 1/6/26**

### **STATEMENT**

ACCEL purchases insurance policies on behalf of Members, some insurance coverages include aggregate limits which may be eroded by Member claims. ACCEL bound a parametric earthquake policy with shared aggregate limits. The purpose of this policy and procedure is to outline the method for fund distribution in the event of aggregate limit exhaustion or other scenarios that require a sharing of limits between members. Because this policy's coverage trigger is earth shaking as opposed to building damage, ACCEL would know the full amount of the claim recovery shortly after the event.

The parametric policy includes certain maximum amounts that the insurer is liable to pay in the event of a loss. These are known as "Loss Limits" these limits are shared by all Members of ACCEL that participate in this parametric placement. For example, limits could be exhausted in the following situations:

- More than one agency is involved in the same loss event resulting in total payable claims in excess of the aggregate
- A series of unassociated loss events during the policy term involve more than one Member resulting in total payable claims in excess of the aggregate.

### **PROCEDURE**

The following Loss Limit Sharing Formula (LLSF) shall govern recoveries by Member Agencies from the parametric insurance carrier in any case where the total payable claims of affected Member agencies exceed either a per occurrence loss limit or an annual aggregate loss limit specified in the policy such that, in either case, the insurance coverage available is insufficient to pay claims of affected Member Agencies.

In the event ACCEL members exhaust the Loss Limit available, the following Loss Limit Sharing Formula (LLSF) will be applied to each Member’s recovery:

$$\frac{\text{Policy Loss Limit}}{\text{Total Amount Owed to All Members}} \times \text{Member Loss Limit} = \text{Member Payable}$$

**Example Scenario:**

Policy Loss Limit:	\$30,000,000
Member Limit:	\$10,000,000
Triggered Losses:	Member 1: \$10,000,000
	Member 2: \$10,000,000
	Member 3: \$10,000,000
	Member 4: \$10,000,000
	Member 5: \$10,000,000
TOTAL:	\$50,000,000

LLSF Result:  $\frac{\$30,000,000}{\$50,000,000} \times \$10,000,000 = \$6,000,000$

In the event that limits must be shared by different members under the parametric earthquake policy, each member’s recovery will be reduced by an equal share. For example, if the total limit available for an event is \$10M, and two members individually are entitled to \$7M and \$5M (12M total), their recovery would be reduced to \$5,833,333 and \$4,166,667 respectively by following the LLSF.

In any event where a single Member is to be paid an excess of \$5,000,000 from the policy limits, ACCEL will hold the amount excess of \$5,000,000 in short term funding and will pay the remainder of funds owed to that Member within 30 days of the end of the policy year, in addition to any interest accrued on this amount. The reason for such withholding is to account for the possibility of multiple covered events occurring in a single policy year affecting multiple Members and completely eroding the policy aggregate limits. Applying a \$5,000,000 cap on immediate payouts greatly diminishes the possibility of overpayment to Members

Members can appeal to the Board to request earlier payments of withheld funds in writing. The written request must be received by the Program Administrators at least one week prior to the Board Meeting. The Board will vote and may approve the request.