

ACCEL

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

DECLARATIONS

Memorandum Number: ACC2324MOD51

Member Agency: City of Modesto
1010 10th Street, Suite 2200
Modesto, CA 95353

Coverage Period: July 1, 2023 to July 1, 2024
12:01 a.m. Pacific Time

Retained Limit: \$1,000,000 ultimate net loss each occurrence

Limit of Liability: \$9,000,000 ultimate net loss each occurrence, excess of retained limit
\$27,000,000 ultimate net loss aggregate

Deposit: \$2,209,944

Coverage Forms by Layer:

\$4,000,000 excess of \$1,000,000

ACCEL Memorandum of Excess Liability Coverage
MOC0723

Schedule of Endorsements:

Member Agency - Endorsement 1

Reinstatement of Excess Aggregate Limits - Endorsement 2

\$5,000,000 excess of \$5,000,000

ACCEL Memorandum of Excess Liability Coverage
ACCEL ELMOCANML0723

Schedule of Endorsements:

Blanket Additional Covered Party and Primary/Non-Contributory - ACCEL AI 01 07/17
Dam Extension - ACCEL DAM 01 05/18
Defense Cost - ACCEL DEF 01 05/18
Limited Lead in Potable Water Liability Coverage - ACCEL LED 01 05/18
Exclusion of Certified Acts of Terrorism - ACCEL TERX 01 07/17
Transit Coverage – Scheduled Cover Party - ACCEL TRA 02 08/17
War Exclusion - ACCEL WAR 01 07/17
Blanket Waiver of Subrogation - ACCEL WAV 01 07/17
Exclusion - Access or Disclosure of Confidential or Personal Information Ata-Related
Liability – With Limited Bodily Injury Exception - ACCEL CYB 01 07/20
Exclusion - Organic Pathogens - ACCEL ORG 01 07/20

ACCEL's Claim

Servicing Organization:

George Hills
P.O. Box 278
Rancho Cordova, CA 95741

This DECLARATIONS page, together with the ACCEL MEMORANDUM OF EXCESS LIABILITY COVERAGES and AMENDMENTS or ENDORSEMENTS, if any, form the full and complete coverage between ACCEL and the Member Agency. Words with special meaning are shown in **bold face** and are explained in the Glossary Section.

EXCESS LIABILITY MEMORANDUM OF COVERAGES (MOC0723 and ACCEL ELMOCANML0723)

Signed by:



AUTHORIZED REPRESENTATIVE

July 1, 2023

DATE

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

MEMORANDUM OF EXCESS LIABILITY COVERAGE

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

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

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

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

A. COVERAGE OF MEMBER AGENCY

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

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

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

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

B. DEFENSE OF MEMBER AGENCY

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

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

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

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

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

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

II. AUTHORITY'S LIMIT OF LIABILITY

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

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

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

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

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

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

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

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

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

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

III. WHO IS A COVERED PARTY

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

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

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

(2) With respect to any **hired automobile**, to the owner, or lessee thereof other than the **Member Agency**, or to any agent or employee of such owner or lessee; or

(3) To liability arising from the ownership, maintenance, or use of any **automobile** assigned to an airport premises while such **automobile** is on the premises of an airport which is owned, maintained or operated by the **Member Agency**.

D. Any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum of Coverage, but only with respect to **Bodily Injury** and **Property Damage** resulting from operations performed by or on behalf of the **Member Agency** or facilities owned or used by the **Member Agency**.

E. As respects any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to name such person or organization as an additional covered party, coverage afforded by this Memorandum of Coverage shall be subject to all terms, exclusions and conditions of this MOC, as applicable, and shall apply only to the limit of liability coverage required by such contract.

IV. WHAT THE AUTHORITY WILL NOT COVER (EXCLUSIONS)

This Memorandum does not apply:

A. To liability arising out of the partial or complete structural failure of any **dam**.

B. To **Bodily Injury, Property Damage** or **Personal Injury** arising out of the ownership or maintenance or use or operation of any airfield or similar aviation facility.

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

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

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

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

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

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

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

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

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

- N. To liability, including, but not limited to, liability for civil rights violations, arising out of or in connection with land use planning, land use regulation, Code Enforcement, the adoption or administrative application of any ordinance, resolution or regulation, rent control, or zoning, by whatever names called, regardless of whether or not such liability accrues directly against the **Member Agency** or by virtue of any agreement entered into by or on behalf of the **Member Agency**.

O. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive damages, or injunctive relief, equitable relief or declaratory relief, writs of mandate or any other form of relief other than the payment of **damages**. This exclusion applies whether the fine, assessment, restitution, disgorgement, exemplary or punitive **damage** is awarded by a court or by an administrative or regulatory agency. Restitution and disgorgement as used herein refer to the order of a court or administrative agency for the return of a specified item of property or a specific sum of money, because such item or property or sum of money was not lawfully or rightfully acquired by the **covered party**

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

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

Q. To liability:

- (1) With respect to which a **covered party** under the Memorandum is also a **covered party** under a nuclear energy liability policy issued by Mutual Atomic Energy Liability Underwriters, American Nuclear Insurers, or Nuclear Insurance Association of Canada, or any successor organizations, or would be a **covered party** under any such policy but for its termination upon exhaustion of its limit of liability; or,
- (2) Resulting from the “hazardous properties” of “nuclear material” and with respect to which (a) any person or organization is required to maintain financial protection

pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **covered party** is, or had this Memorandum not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, with any person or organization, or,

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

As used in this exclusion:

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

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

V. WORDS AND PHRASES WITH SPECIAL MEANING

Aircraft means a vehicle designed for the transport of persons or property principally in the air. Aircraft does not mean **Unmanned Aerial Vehicles (UAVs)**, 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 to which Excess Insurance, if any, applies. If no Excess Insurance applies, then the **occurrence** shall be treated as arising when the **occurrence** begins.

- F. Other Coverage. The coverage afforded in this Memorandum shall be excess of and shall not contribute with any valid and collectible insurance, coverage provided by a **risk retention pool**, or coverage provided through a risk-purchasing group that is available to the **covered party**, other than any excess or umbrella insurance or coverage procured by the **Authority** or the **Member Agency** which is specifically meant to apply in excess of the coverage afforded by this Memorandum.
- G. Subrogation. In the event of any payment under this Memorandum, the **Authority** shall be subrogated to all the **covered party's** rights of recovery therefor against any person or organization and the **covered party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **covered party** shall do nothing after loss to prejudice such rights.
- H. Withdrawal/Cancellation. The **Member Agency** may withdraw from the **Authority** and cancel this coverage only pursuant to Section XIX of the **Authority's** JPA Agreement.
- I. Changes. This Memorandum shall not be changed except by written endorsement hereto.

VII. ARBITRATION

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

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

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

A. Requesting arbitration:

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

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

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

B. Arbitration procedures:

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

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

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

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

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

C. Discovery:

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

D. Testimony under oath:

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

E. Hearing decision:

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

F. Certified court reporter:

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

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

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

H. Effect of arbitration decisions:

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

I. Costs of arbitration:

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

J. Interpretation and application of rules:

With respect to any procedure not herein expressly provided for, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration (Section 1280 et seq.). The arbitrator(s) shall interpret and apply these rules in so far as they relate to the arbitrator(s)' power and duties. All decisions of the arbitration panel shall be decided by a majority vote.

K. Not applicable to excess carriers:

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

Issued by the Authority for California Cities Excess Liability.

By: _____
Secretary

ACCEL

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

Endorsement Number: 1

Issued to: City of Modesto, etal

**This Endorsement Forms a
Part of Memorandum Number:** ACC2324MOD51

Effective Date: July 1, 2023 to July 1, 2024
12:01 a.m. Pacific Time

MEMBER AGENCY

Member Agency as shown on the Declarations Page is amended to include the following:

City of Modesto
City of Modesto Redevelopment Successor Agency Oversight Board



AUTHORIZED REPRESENTATIVE

July 1, 2023

DATE

ACCEL

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

Reinstatement of Excess Aggregate Limits

Endorsement Number: 2

This Endorsement Forms a part of Memorandum Number: ACC2324MOD51

The Memorandum of Coverage provides pooled liability self-insurance coverage subject to per-**Occurrence** Limits of Liability shown on the Declarations Page as the Limit of Liability of \$9,000,000 in excess of the **Retained Limit** and **aggregate Limit** of \$27,000,000.

ACCEL also purchases coverage in excess of the per-**Occurrence** Limits of Liability. Coverage in excess of the Limit of Liability per **Occurrence** up to \$25,000,000 per **Occurrence** is provided by commercial carriers as indicated in the appropriate Declarations pages.

Certain of those carriers have **aggregate limits** of coverage applicable to all claims against a **Member Agency** within the period of time to which this Memorandum applies. Excess carriers providing coverage in excess of \$25,000,000 limits per **Occurrence** in turn may have provisions that “drop down” to replace the underlying limits, when exhausted, but subject to their own **aggregate limits** as well.

It is the intent of ACCEL to reinstate any **Member Agency’s** per-**Occurrence** limits for the coverage layer in excess of the Limit of Liability per **Occurrence** up to a Limit of Liability of \$25,000,000 per **Occurrence** in the event of erosion of the \$25,000,000 Limit by exhaustion of **aggregate limits** that are not replaced by other excess carriers.

This reinstatement of coverage is in addition to, and not limited by, the per-**Occurrence** and **Aggregate Limits** of Coverage in Coverage Form ACC2324MOD51. Coverage is provided according to the terms, conditions, definitions and exclusions of the excess policy or policies whose limits are being reinstated, which are hereby incorporated by reference, and coverage will apply only if coverage would have been provided by the excess carrier(s) but for the exhaustion of their **aggregate limit(s)**.

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

MEMORANDUM OF EXCESS LIABILITY COVERAGE

Various provisions in this Memorandum of Coverage restrict coverage. Read the entire Memorandum of Coverage carefully to determine rights, duties and what is and what is not covered.

Throughout this Memorandum of Coverage, the word **you** refers to the **Member Agency** shown in the Declarations. The word **Authority** refers to ACCEL.

The word **Covered Party** means any person or organization qualifying as such under **SECTION V—WHO IS A COVERED PARTY, COVERED PERSONS OR ENTITIES**. Other words and phrases that appear in **bold face type** have special meaning. Refer to **SECTION VII—DEFINITIONS**.

In consideration of the payment of the premium, if paid, in reliance upon all statements and representations made in the application, including information furnished in connection therewith and the information shown in the Declarations made a part hereof and subject to all of the terms of this Memorandum of Coverage, the **Authority** agrees with the **Member Agency** as follows:

SECTION I - COVERAGE AGREEMENT

The **Authority** will pay on behalf of the **Covered Party** for **ultimate net loss** to which this Memorandum of Coverage applies in excess of the **retained limit** because of:

- Coverage A. **BODILY INJURY and PROPERTY DAMAGE**
to which this Memorandum of Coverage applies, caused by an occurrence;
- Coverage B. **PERSONAL INJURY**
to which this Memorandum of Coverage applies, caused by an offense;
- Coverage C. **PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY**
to which this Memorandum of Coverage applies, caused by a **wrongful act**; or,
- Coverage D. **EMPLOYMENT PRACTICES LIABILITY**
to which this Memorandum of Coverage applies, caused by a **wrongful act**.

SECTION II - DEFENSE AND SETTLEMENT COSTS

After the amount of the **retained limit** has been exhausted by payment of judgments, settlements or **defense costs** or any combination thereof, the **Authority** will reimburse the **Covered Party** for **excess defense costs**. The **Authority's** liability for **excess defense costs** is subject to, and not in addition to, the **Authority's** limit of liability.

The **Authority** shall have the right, but not the duty, to associate itself, at its own cost, with the **Covered Party** in the control, investigation, defense or appeal of any claim or **suit** which, in the opinion of the **Authority**, is or may be covered by the Memorandum of Coverage. The **Covered Party** shall fully cooperate in all matters pertaining to such claim or **suit**.

No claim or **suit** shall be settled for an amount in excess of the **retained limit** without the prior written consent of the **Authority**, but such consent shall not be unreasonably withheld.

SECTION III - RETAINED LIMIT-THE AUTHORITY'S LIMIT OF LIABILITY

Regardless of the number of (1) **Covered Party's** under this Memorandum of Coverage, (2) persons or organizations who sustain injury or **damage**, (3) claims made, or (4) **suits** brought on account of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, the **Authority's** liability is limited as follows:

- A. With respect to **bodily injury, property damage, personal injury, public officials errors and omissions liability, and employment practices liability**, or any combination thereof, the **Authority's** liability shall be only for the **ultimate net loss** in excess of the **retained limit** as specified in the Declarations as the result of any one **occurrence**, offense, or **wrongful act**, and then for an amount not exceeding the **Authority's** limit of liability specified in the Declarations as the result of any one **occurrence**, offense, or **wrongful act**.
- B. For the purpose of determining the limit of the **Authority's** liability, as respects Coverages A and B, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence** under Coverage A or one offense under Coverage B. for the purpose of determining the limit of the **Authority's** liability, as respects Coverages C and D, all **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. There is no limit on the number of **occurrences**, offenses, or **wrongful acts** during the Memorandum of Coverage period for which claims may be made.
- C. **Bodily injury, property damage, personal injury, public officials errors and omissions liability or employment practices liability** taking place over more than one Memorandum of Coverage period shall be deemed to have taken place during the first Memorandum of Coverage period and only that limit of liability and **retained limit** shall apply.
- D. In the event that a **joint powers authority** is a **Member Agency** under this Memorandum of Coverage, a separate **retained limit** and a separate limit shall apply to each member of the **joint powers authority** that is a **municipality**.
- E. The Limits of Liability of this Memorandum of Coverage apply separately to each consecutive annual period, and to any remaining period of less than twelve (12) months, starting with the beginning of the Memorandum of Coverage period shown on the Declarations unless the Memorandum of Coverage period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Liability.
- F. The Completed Operations Hazard Aggregate Limit of Liability shown in the Declarations is the most that the **Authority** will pay under Coverage A because of **bodily injury or property damage** included in the **completed operations hazard**.

SECTION IV - MEMORANDUM OF COVERAGE PERIOD, TERRITORY

This Memorandum of Coverage applies to **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability** which occur anywhere in the world during the Memorandum of Coverage period, provided claim is made and **suit** is brought against the **Covered Party** in the United States of America (including its territories or possessions) or Canada.

SECTION V - WHO IS A COVERED PARTY, COVERED PERSONS OR ENTITIES

The following are **Covered Party's** under this Memorandum of Coverage:

- A. The **Member Agency**;
- B. Those individuals, including volunteers, who were or are now elected or appointed officials of the **Member Agency**, whether or not compensated, including members of the **Member Agency's** governing body or any other committees, boards, commissions or special districts of the **Member Agency**, while acting in course and scope of employment for or on behalf of the **Member Agency**;
- C. All special districts **governed directly** by the **Member Agency's** governing board and other districts or agencies but only if such special district or other district or agency is listed on the declarations page of the Memorandum of Coverage;
- D. Past or present employees or volunteers of the **Member Agency** or another entity that is a **Covered Party**, whether or not compensated, while acting under the direct supervision or control for or on behalf of the **Member Agency** or any other entity that is a **Covered Party**;
- E. Independent contractors and/or persons working on retainer while acting under the direct supervision or control for or on behalf of the Member Agency or other covered entity;
- F. Any legally authorized **joint powers authority** representing any **Member Agency**. The following are also **Covered Parties**, with respects to such **joint powers authority**:
 - (a) The interest of municipal agencies participating as member agencies in the **joint powers authority** and any and all districts, authorities, committees, trustees, boards, commissions, or similar entity subject to the direction or control of such agencies or for which the board members act as governing body. A member agency includes any department or constituent agency of the member agency; and
 - (b) Any individual who was previously or is presently elected or appointed as an official of a member agency in the **joint powers authority**, but only with respect to their duties as an official of the member agency, including acting on boards at the direction of the agency; or
 - (c) Any volunteer of the member agency only while performing duties related to the conduct of the member agencies or any employee of the member agencies within the scope of their employment or while performing duties related to the conduct of the member agencies.
- G. Any person designated in Paragraphs A through F:
 - (a) While acting within the scope of their duties with respect to the use of an **auto** not owned by the **Member Agency**, while being used in the business of the **Member Agency**, and then only excess over any other insurance specifically insuring such **auto**.
 - (b) While using any owned **auto** or **hired auto** and any person legally responsible for the use of the **auto** with the permission of the **Member Agency**. With respect to **hired auto**, this coverage will be excess over any other insurance specifically insuring such **hired auto**.

The coverage extended by this paragraph F shall not apply to:

Any person operating an **auto** while working in a business that sells, services, repairs, delivers, test, parks, or stores **autos** unless they are employees of the **Member Agency** acting for it or on its behalf; or

1. The owner or lessor of any **hired auto**, other than the **Covered Party**, or any agent or employee of such owner or lessor. This exception does not apply if the owner or lessor is a **Covered Party** designated in paragraphs A through E, above.

SECTION VI - EXCLUSIONS

As respects **ultimate net loss**, this Memorandum of Coverage does not apply, in whole or in part to:

A. AIRCRAFT

To **bodily injury** and **property damage** arising out of the ownership, maintenance, loading or unloading, use or operation of any:

1. **Aircraft**;
2. Airfields;
3. Runways;
4. Hangars; or
5. Buildings or other properties in connection with aviation activities.

This exclusion shall not apply, however, (1) 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**; or (2) to **non-owned aircraft** operated by or on behalf of the **Covered Party**; or (3) to those areas open to the public for the purpose of entering, leaving, or using the airport facilities (including parking lots and garages).

B. ASBESTOS

To any liability for past, present, or future claims or **suits** arising in whole or in part, either directly or indirectly, out of the mining, manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos, whether the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever.

C. BIDS

To liability of any **Covered Party** arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids.

D. BODILY INJURY

To **bodily injury** to any employee of any **Covered Party** arising out of and in the course of their employment by such **Covered Party** or to any fellow employee of any **Covered Party** arising out of and in the course of the fellow employee's employment; provided, however, that this exclusion does

not apply to **employment practices liability** or liability assumed by the **Covered Party** under any written contract.

E. CONTRACTUAL LIABILITY

As respects liability assumed by the **Covered Party** under any contract:

1. To any claim or **suit** for breach of contract;
2. To liability assumed by a **Covered Party** in a contract that is entered into subsequent to the commencement of **bodily injury, property damage**, offense, or **wrongful act**.
3. To any claim, judgment or agreement from any arbitration proceeding wherein the **Authority** is not entitled to exercise with the **Covered Party**, the **Covered Party's** rights in the choice of arbitrators, and in the conduct of such proceedings;
4. To any obligation for the rendering or failure to render professional services for the **Covered Party**, if the indemnitee of the **Covered Party** is an architect, engineer or surveyor, arising out of:
 - (a) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications; or
 - (b) The giving or the failure to give directions or instructions by the indemnitee, the indemnitee's agents or employees, provided such giving or failure to give directions or instructions is the primary cause of **bodily injury** or **property damage**; or

F. UNDER COVERAGE A

To **personal injury, public officials error and omissions liability**, and **employment practices liability**.

Nothing contained in this exclusion shall limit the **Covered Party's** coverage, if applicable, under Coverages B, C, or D of this Memorandum of Coverage.

G. UNDER COVERAGE B

To **bodily injury, property damage, public officials error and omissions liability**, and **employment practices liability**. Nothing contained in this exclusion shall limit the **Covered Party's** coverage, if applicable, under Coverages A, C, or D of this Memorandum of Coverage.

H. UNDER COVERAGE C

1. To **Bodily injury, property damage, personal injury**, or **employment practices liability**;
2. Injury to, destruction or disappearance of any tangible property (including money) or the loss of use thereof; or
3. Failure to perform, or breach of, a contractual obligation.

Nothing contained in this exclusion shall limit the **Covered Party's** coverage, if applicable, under Coverages A, B, and D of this Memorandum of Coverage.

I. UNDER COVERAGE D

To **property damage, personal injury** and **public officials errors and omissions** as defined in the Memorandum of Coverage. Nothing contained in this exclusion shall limit the

Covered Party's coverage, if applicable, under Coverages A, B, or C of this Memorandum of Coverage.

J. DAMS

To liability arising out of the rupture, bursting, overtopping, accidental discharge or partial or complete failure of any **dam(s)** owned by, leased or rented to, or otherwise in the control of the **Covered Party**.

K. EMINENT DOMAIN AND INVERSE CONDEMNATION

To liability, directly or indirectly, arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, whether grounded in federal or state law, 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 shall not apply to any inverse condemnation where any **suits** or claims for inverse condemnation are a result of negligence on the part of a **Covered Party**;

L. ERISA

1. To liability imposed upon a **Covered Party** (or which is imputed to a **Covered Party**) under the Employment Retirement Income Security Act of 1974 including subsequent amendments or any similar federal state or local law or regulation including but not limited to benefits payable under any **employee benefit program** (whether the plan is voluntarily established by the **Covered Party** or mandated by statute);
2. The **Covered Party's** activities in any fiduciary capacity listed above.

M. EXCLUDED ENTITIES AND OPERATIONS

To liability arising out of or in connection with the operation of any hospitals, clinics, or established health care facilities owned or operated by the **Covered Party** including, but not limited to the following:

The rendering of or failure to render the following medical professional services:

1. Medical, surgical, dental, x-ray, or nursing, service or treatment, to any person, including the furnishing of food or beverages in connection therewith;
2. Service or treatment related to physical or mental health or of a professional nature;
3. Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances if the injury occurs after the **Covered Party** has relinquished possession thereof to others;
4. Any cosmetic or tonsorial service or treatment.

This exclusion shall not apply, however, to any liability arising out of:

1. Ambulance operations;
2. Occupational physical examinations and services of nurses, paramedics, emergency medical technicians, speech therapists, speech pathologists, nutritionists, psychologists, audiologists, or physical therapists, if those operations, examinations or services are provided by the **Covered Party's** employees within the scope of their employment by the **Covered Party** and are not provided in any hospital or established health care facility;

3. Employment practices liability;

4. First aid to any person;
5. Any nursing services clinic that does not perform invasive surgery of any kind; or
6. Operations performed by coroners.

N. FAILURE TO SUPPLY

To **bodily injury** or **property damage** arising out of the failure to supply or provide an adequate supply of gas, steam, water or electricity. This exclusion does not apply if:

1. Such failure arises out of an **occurrence**; and
2. The combined capacity of the **Covered Party's** installed production facilities and contractual supply arrangements is equal to or greater than one hundred and ten percent (110%) of the electricity, steam and/or gas demand or one hundred percent (100%) of the water demand, whichever demand is applicable to the **Covered Party's** electric, gas, steam, or water system.

O. NON-COMPENSATORY AMOUNTS AND/OR DAMAGES, including but not limited to:

Fines, taxes imposed by law, penalties, sanctions, punitive or exemplary **damages**, the multiplied portion of any award, injunctive relief or costs to comply with injunctive relief, restitution, equitable relief or declaratory relief, writs of mandate or any other form of relief other than the payment of **damages**.

P. NUCLEAR

1. To any liability arising out of the hazardous properties of **nuclear material**; or
2. To any liability for any **ultimate net loss**, cost or expense arising out of nuclear reaction, nuclear radiation or radioactive contamination or to any related act or condition.

Q. POLLUTION

1. To **ultimate net loss** arising out of the actual or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** anywhere in the world;
2. To **ultimate net loss** arising out of any governmental direction or request that the **Authority**, the **Covered Party** or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize or assess the effects of **pollutants**; or
3. To **ultimate net loss**, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **pollutants**.

As used in this exclusion, **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste material. Waste material includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

However, this exclusion does not apply to liability arising out of:

- a. Water, whether recycled, reconditioned or reclaimed;
- b. Any discharge, dispersal, seepage, migration, release or escape directly or indirectly caused by fire, explosion, lightning, windstorm, vandalism or malicious mischief, riot and civil commotion, flood, collision, or upset of a motor vehicle, railroad vehicle, mobile equipment, automatic sprinkler leakage or **aircraft**;
- c. Police use of mace, oleoresin capsicum (o.c.), pepper gas or tear gas;
- d. Weed abatement or spraying;
- e. The **completed operations hazard**; or
- f. Any discharge, dispersal, seepage, migration, release or escape of **pollutants** that meets all of the following conditions:
 - 1) It was accidental and neither expected nor intended by the **Covered Party**. This condition would not serve to deny coverage for a specific incident where such discharge, dispersal, seepage, migration, release or escape of **pollutants** was a result of an attempt by the **Covered Party** to mitigate or avoid a situation where substantial third party **bodily injury, property damage or personal injury** could occur;
 - 2) It was demonstrated as having commenced on a specific date during the term of this Memorandum of Coverage;
 - 3) Its commencement became known to the **Covered Party** within seven calendar days and was further reported to the person responsible for risk management at the **Member Agency** within a reasonable time frame;
 - 4) Its commencement was reported in writing to the **Authority** within forty calendar days of becoming known to the person responsible for risk management at the **Member Agency**; and
 - 5) Reasonable effort was expended by the **Covered Party** to terminate the situation as soon as conditions permitted;

However, nothing contained in this provision 3, shall operate to provide any coverage with respect to:

- a. Any site or location principally used by the **Covered Party** or by others on the **Covered Party's** behalf, for the handling, storage, disposal, dumping, processing or treatment of waste material;
- b. Any fines or penalties;
- c. Any cleanup costs ordered by the Superfund Program, or any federal, state or local governmental authority. However, this specific exclusion c) shall not serve to deny coverage for third party clean-up costs otherwise covered by this Memorandum of Coverage simply because of the involvement of a governmental authority;
- d. Acid rain;

- e. Clean up, removal, containment, treatment, detoxification or neutralization of **pollutants** situated on premises the **Covered Party** owns, rents or occupies at the time of the actual discharge, dispersal, seepage, migration, release or escape of said pollutants; or
- f. Water pollution caused by oil or its derivatives.

R. PRIOR KNOWLEDGE

To liability if the **Member Agency's** risk manager or its Claims Servicing Organization:

1. knew that the **bodily injury** or **property damage** had occurred or the offense or **wrongful act** had been committed, in whole or in part, prior to the Memorandum of Coverage period; and
2. first reported all, or any part, of the **occurrence**, offense, or **wrongful act** to the **Authority** under another Memorandum of Coverage or to any other insurer under a previous Memorandum of Coverage.

If the **Member Agency's** risk manager or its Claims Servicing Organization knew, prior to the Memorandum of Coverage period, that the **bodily injury** or **property damage** had occurred, or the offense or **wrongful act** had been committed, then any continuation, change or resumption of such **bodily injury**, **property damage**, offense, or **wrongful act** during or after the Memorandum of Coverage period will be deemed to have been known prior to the Memorandum of Coverage period

S. PROFIT, REMUNERATION OR ADVANTAGE

To liability of a **Covered Party** arising, in whole or in part, out of any **Covered Party** obtaining remuneration or financial gain to which the **Covered Party** was not legally entitled except that any act for which a **Covered Party** is responsible shall not be imputed to any other **Covered Party** for purposes of this exclusion.

T. PROPERTY DAMAGE

To injury to or destruction of (1) property owned by a **Covered Party**, or (2) **aircraft** in the care, custody or control of any **Covered Party**, including **aircraft** of which the **Covered Party** is exercising physical control.

U. SECURITIES

To liability arising out of or by reason of:

1. The purchase, or sale, or offer of sale, or solicitation of any security, debt, bank deposit or financial interest or instrument;
2. Any representation made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument; or
3. Any depreciation or decline in price or value of any security, debt, bank deposit or financial interest or instrument.

It is further agreed that the **Authority** has no obligations to defend or pay for the defense of any claim or **suit** that may allege any of the foregoing.

V. SUBSIDENCE

To **property damage** arising out of **subsidence** for any reason whatsoever.

W. TRANSIT

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.

X. TAXES, FEES, ASSESSMENTS

To the refund of taxes, fees or assessments.

Y. UNINSURED/UNDERINSURED MOTORISTS

Any claim by or against a **Covered Party** for uninsured/underinsured motorist, no fault, or **personal injury** protection coverage.

Z. WILLFUL VIOLATION

To liability arising out of the willful violation of a penal statute, code, or ordinance committed by or with the knowledge or consent of any **Covered Party** except that any act for which a **Covered Party** is responsible shall not be imputed to any other **Covered Party** for purposes of this exclusion.

AA. WORKERS' COMPENSATION

To any obligation for which any **Covered Party** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.

SECTION VII - DEFINITIONS

A. **Administration** means:

1. Providing information to employees, including their dependents and beneficiaries, with respect to eligibility for or scope of **employee benefit programs**;
2. Handling of records in connection with **employee benefit programs**; or
3. Effecting, continuing or terminating any employee's participation in any benefit included in the **employee benefit program**.

However, **administration** does not include handling payroll deductions.

B. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.C. **Auto** means:

1. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility laws in the state where it is licensed or principally garaged.

D. **Bodily injury** means bodily harm, sickness, disability or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** includes mental injury, mental anguish, humiliation, shock or death if resulting directly from **bodily injury**.

Bodily injury shall include care, loss of services, loss of consortium, or death resulting at any time from the **bodily injury**.

- E. **Completed operations hazard** includes **bodily injury** and **property damage** arising out of operations, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **Covered Party**. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
1. When all operations to be performed by or on behalf of the **Covered Party** under the contract have been completed;
 2. When all operations to be performed by or on behalf of the **Covered Party** at the site of the operations have been completed; or
 3. When the portion of the work out of which the **bodily injury** or **property damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include liability arising out of:

1. Operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof;
 2. The existence of tools, uninstalled equipment or abandoned or unused materials.
- F. **Covered Party** means any person or organization qualifying as a **Covered Party** under **SECTION V: WHO IS A COVERED PARTY, COVERED PERSONS OR ENTITIES** section of this Memorandum of Coverage. The coverage afforded 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.

G. **Dam** means any artificial barrier together with appurtenant works which:

1. Is twenty-five feet or more in height from the foot of a natural bed of stream or watercourse; or
2. Has water impounding capacity of fifty acre feet or more.

Except, any such barrier which is not in excess of twenty-five (25) feet in height regardless of storage capacity, or which has a storage capacity not in excess of fifteen (15) acre feet regardless of height, shall not be considered a **dam**; and, no structure specifically exempted from jurisdiction by the applicable state agency overseeing **dams** shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the federal government.

H. **Damages** mean monetary compensation resulting from: (a) **bodily injury** or **property damage**, (b) **personal injury**, (c) **public officials errors and omissions liability**, or (d) **employment practices liability**.

- I. **Defense costs** means reasonable fees charged by an attorney, including expenses of a claims servicing organization **the Covered Party** has engaged, and all other reasonable fees, costs, including third-party attorney's fees and costs as authorized by law or under contract, and expenses attributable to the investigation, defense, administration or appeal of a claim or **suit** within the scope of coverage afforded by this Memorandum of Coverage. **Defense costs** shall not include any allocated claims expenses, salaries or overhead incurred by attorneys who are employees of the **Covered Party**.
- J. **Employee benefit program** means a program providing some or all of the following benefits to employees, whether provided through a cafeteria, pre-tax plan, or otherwise:
1. Group life insurance, group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an employee may subscribe to such benefits and such benefits are made generally available to those employees who satisfy the plan's eligibility requirements;
 2. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plan equally available to all full time employees, provided that no one other than an employee may subscribe to such benefits and such benefits are made generally available to all employees who are eligible under the plan for such benefits;
 3. Unemployment insurance, social security benefits, workers compensation and disability benefits; or
 4. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.
- K. **Employment practices liability** means any claim or **suit** by a past, present, or prospective employee of the **Covered Party** (and the spouse, child, parent, brother or sister of that person as a consequence of **employment practices liability** at whom any of the **employment practices liability** is directed) arising out of the following **wrongful acts**: wrongful dismissal, discharge, or termination, either actual or constructive, of employment; employment related misrepresentation; **retaliation**; wrongful failure or refusal to employ or promote; wrongful deprivation of career opportunity or reassignment; wrongful discipline; failure to grant tenure or negligent employee evaluation; sexual or workplace harassment or humiliation of any kind, including, but not limited to, the alleged operation of a harassing workplace environment; negligence resulting in **damages** to a person that is a **whistle-blower**; unlawful discrimination, whether direct, indirect, intentional or unintentional; failure to provide adequate employee policies and procedures; or any act, error, or omission in the **administration** of the **Covered Party's employee benefit program**. **Employment practices liability** shall include actions brought under state, local, or federal law, whether common or statutory, and shall include, but not be limited to allegations of violations of the following federal laws, as amended, including regulations promulgated thereunder:
1. Americans With Disabilities Act of 1992 (ADA);
 2. Civil Rights Act of 1991;
 3. Age Discrimination In Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990;
 4. Title VII of the Civil Rights Law of 1964, as amended (1983), including the Pregnancy Discrimination Act of 1978;
 5. Civil Rights Act of 1866, Section 1981; and
 6. Fifth and Fourteenth Amendments of the U.S. Constitution.

- L. **Excess defense costs** means **defense costs** incurred by the **Covered Party** with the written consent of the **Authority** after the **retained limit** has been exhausted by payment of judgments, settlements and **defense costs**.
- M. **Governed directly** means the special district is governed by the **Member Agency's** governing board.
- N. **Hired auto** means an **auto** used under contract on behalf of or loaned to the **Member Agency**, provided **such auto** is not owned by or registered in the name of the **Member Agency** or any of its employees or servants.
- O. **Joint Powers Authority** includes an interlocal agency or similar authority within a jurisdiction and means two or more public agencies joined together by a joint agreement to exercise jointly power common to the contracting parties, including, but not limited to the power to create risk pooling and joint purchase of private insurance.
- P. **Municipality** means a legally incorporated or duly authorized association of inhabitants of a limited area limited to the following: city, town, county, village, township, parish, borough, hamlet, burgh, or state, and the special districts authorities and bureaus directly related to such entities.
- Q. **Non-owned aircraft** means any **aircraft** other than:
1. **Aircraft** owned in whole or in part by or registered in the name of the **Covered Party**;
 2. **Aircraft** having a seating capacity in excess of forty-five passenger seats; or
 3. **Aircraft** which are the subject of a lease or service agreement with the **Covered Party** for a period in excess of thirty days.
- R. **Nuclear material** means source material, special **nuclear material**, or byproduct material. Source material, special **nuclear material**, and byproduct material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- S. **Occurrence** means an accident, including injurious exposure to conditions, which results, during the Memorandum of Coverage period, in **bodily injury** or **property damage**, neither expected nor intended from **the** standpoint of the **Covered Party** unless the **bodily injury** or **property damage** results from the use of reasonable force to protect persons or property. All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**, which will be deemed to have taken place at the time of the first known **bodily injury** or **property damage**.
- T. **Personal injury** means injury, including consequential **bodily injury** or **property damage**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment or malicious prosecution;
 2. Publication or utterance of libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property, or publication or utterance in violation of rights of privacy;
 3. Wrongful entry or eviction, or other invasion of the right of private occupancy;

4. Assault and battery, not committed by, at the direction of or with the consent of the **Covered Party**, unless committed or directed for the purpose of protecting persons or property from injury or death; or
5. Discrimination on any basis, including but not limited to: race, religion, nationality, national origin, color, creed, sex, sexual orientation, age, nature of employment, or disability.

All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one offense, which will be deemed to have taken place at the time of the first known **personal injury**.

U. **Property damage** means

1. Physical injury to, or destruction of, tangible property which occurs during the Memorandum of Coverage period, 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 Memorandum of Coverage period.

V. **Public officials errors and omissions liability** means any claim or **suit** against a **Covered Party**, whether individually or collectively, arising out of any **wrongful act**, including misfeasance, malfeasance or nonfeasance, or solely by reason of being or having been **Covered Party's**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be considered as arising from a single **wrongful act**, which will be deemed to have taken place at the time of the first known actual or alleged act, error or omission.

W. **Retained limit** means the **Retained Limit** amount shown in the Declarations page. This amount applies to each and every **occurrence**, offense, and **wrongful act** whether or not **you** maintain any applicable insurance.

X. **Retaliation** means any act of any **Covered Party** relating to or alleged to be in response to any of the following activities:

1. The disclosure or threat of disclosure by the **Covered Party's** employee to a superior or to any governmental agency of any act by the **Covered Party** which is alleged to be a violation of any federal, state, local, or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
2. The actual or attempted exercise by the **Covered Party's** employee of any right that such employee has under law;
3. The filing of any claim or **suit** under the federal false claims act of any other federal, state, local, or foreign **whistle-blower** law; or
4. Strikes of the **Covered Party's** employees.

Y. **Subsidence** means settling, sinking, slipping, falling away, caving in, shifting, eroding, rising, tilting, or any other movement of land or earth.

Z. **Suit** means a civil or administrative proceeding, including arbitration and other alternative dispute resolution procedures, in which **damages**, because of **bodily injury, property**

damage, personal injury, public officials errors and omissions liability, or employment practices liability to which this coverage applies, are alleged.

- AA. **Ultimate net loss** means the total sum which the **Covered Party** becomes legally obligated to pay as **damages** by reason of judgments or by reason of settlements made, covered hereunder, with the written consent of the **Covered Party** and the **Authority**, plus **defense costs**.
- BB. **Whistle-blower** means an employee, who discloses or threatens to disclose to a superior or any governmental **agency**, or who gives testimony, mainly relating to any action by the **Covered Party**, which may be a violation of public Memorandum of Coverage as reflected in legislation administrative rules, regulations or decisions, judicial decisions, or professional codes of ethics.
- CC. **Wrongful act** means any actual or alleged act, error or omission arising out of the conduct or performance of the **Covered Party** in the performance of their duties for or on behalf of the **Member Agency**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**, which will be deemed to have taken place at the time of the first known known actual or alleged act, error or omission.

SECTION VIII - CONDITIONS

A. ACTION AGAINST THE AUTHORITY

No action shall lie against the **Authority** with respect to any one **occurrence**, offense, or **wrongful act** unless, as a condition precedent thereto, the **Covered Party** shall have fully complied with all the terms of this Memorandum of Coverage, nor until the amount of the **Covered Party's** obligation to pay an amount of **ultimate net loss** in excess of the **retained limit** shall have been finally determined either by judgment against the **Covered Party** after actual trial, arbitration award, or by written agreement of the **Covered Party**, the claimant and the **Authority**. Any person or organization or the legal representative thereof who has secured such judgment or written agreement, shall thereafter be entitled to recover under this Memorandum of Coverage the extent of the coverage afforded by this Memorandum of Coverage. Nothing contained in this Memorandum of Coverage shall give any person or organization any right to join the **Authority** as a co-defendant in any action against the **Covered Party** to determine the **Covered Party's** liability.

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

B. APPEALS

When a **suit** has proceeded to trial court judgment and neither the **Covered Party** nor the **Authority** has invoked the provisions of Condition I.4. (a) or (b) below and the **Covered Party** elects not to appeal a judgment in excess of the **retained limit**, the **Authority** may elect to do so at its own expense, but in no event shall the liability of the **Authority** for **ultimate net loss** exceed the applicable amount specified in the limits of liability section of the Declarations inclusive of all **excess defense costs** necessary and incident to such appeal.

C. ASSIGNMENT

Assignment of interest under this Memorandum of Coverage shall not bind the **Authority** until its consent is endorsed hereon; if, however, the **Covered Party** shall die, such coverage as is afforded by this Memorandum of Coverage shall apply (a) to the **Covered Party's** legal representative, as the **Covered Party**, but only while acting within the scope of their duties as such, and (b) with respect to the property of the **Covered Party**, to the person having

proper temporary custody thereof, as the **Covered Party**, but only until the appointment and qualification of the legal representative.

D. BANKRUPTCY OR INSOLVENCY

This coverage will not drop down or replace the **retained limit** in the event of bankruptcy or insolvency of any **Covered Party**, or assume an obligation associated with the **retained limit**. This coverage will apply as if the **retained limit** were in full effect.

E. CANCELLATION AND NON-RENEWAL

1. If this Memorandum of Coverage has been in effect for more than 60 days, the **Authority** may not cancel the Memorandum of Coverage except for nonpayment of premium. If the **Authority** cancels the Memorandum of Coverage because the **Member Agency** has failed to pay a premium when due, the **Authority** may cancel this Memorandum of Coverage by mailing written notice of cancellation to the **Member Agency** at the address shown on the Declarations stating when, not less than 20 days thereafter, such cancellation shall be effective.

If this Memorandum of Coverage has been in effect for less than 60 days and is not a renewal, the **Authority** may cancel the Memorandum of Coverage by mailing or delivering to the **Member Agency** written notice of cancellation at least 90 days before the effective date of cancellation if there has been:

- (a) A material misstatement or misrepresentation; or
- (b) Failure to comply with underwriting requirements established by the **Authority**.

If the **Authority** cancels the Memorandum of Coverage, the final premium will be calculated pro rata based on the time the Memorandum of Coverage was in force.

2. The **Member Agency** may cancel the Memorandum of Coverage at any time by sending written notice to the **Authority** stating when thereafter the cancellation shall be effective.

F. CAPTIONS

The captions or headings used in this Memorandum of Coverage are for the purpose of reference only and shall not otherwise affect the meaning of this Memorandum of Coverage.

G. CHANGES

Notice to any broker or knowledge possessed by or any broker or by any other person shall not effect a waiver or change in any part of this Memorandum of Coverage or stop the **Authority** from asserting any right under the terms of this Memorandum of Coverage, nor shall the terms of this Memorandum of Coverage be waived or changed, except by endorsement issued to form a part of this Memorandum of Coverage.

H. CLAIMS SERVICING ORGANIZATION

1. **You** shall designate the Retained Limit Claims Servicing Organization shown on the Memorandum of Coverage Declarations to perform the following services for claims or **suits** seeking **damages** against a **Covered Party** to which this Memorandum of Coverage may apply, regardless of the application of any **retained limit**.
 - (a) Defense and investigation of all claims or **suits**;
 - (b) Maintain accurate records of all details incident to claims payments; and

(c) Furnish monthly claims records to **you**.

2. Within forty-five (45) days after the end of the Memorandum of Coverage term, **you** must give the **Authority** a listing of all existing claims or **suits** within the **retained limit** amounts. Quarterly thereafter, **you** are required to provide the **Authority** with an updated listing of the status of all claims or **suits**, both paid and reserve, until all claims or **suits** for the reporting period are closed or settled. However, the failure of a Retained Limit Claims Servicing Organization to meet the time frame outlined in this paragraph shall not relieve the **Authority** of any obligations hereunder.
3. In the event of cancellation, expiration or revision of the servicing contract between **you** and the Retained Limits Claims Servicing Organization, **you** shall notify us within ten (10) days of the effective date of such cancellation, expiration or revision.
4. **You** must notify the **Authority** immediately of any change in the Retained Limit Claims Servicing Organization and we reserve the right to approve any new Claim Administrator. **You** (or **your** Retained Limit Claims Servicing Organization) must **provide us with** loss runs on a quarterly basis.

I. COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, WRONGFUL ACT, CLAIM OR SUIT

1. In the event of an **occurrence**, offense, or a **wrongful act** reasonably likely to involve the **Authority** or with respect to which the amount incurred has reached 50 percent or more of the **retained limit**, written notice containing particulars sufficient to identify the **Covered Party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **Covered Party** to the **Authority** as soon as practicable, after the **Member Agency** or any person authorized by the **Member Agency** to give or receive notice of a claim or **suit**, has knowledge of the **occurrence**, offense, or **wrongful act**.
2. If claim is made or **suit** is brought against the **Covered Party** which appears reasonably likely to involve the **Authority**, the **Covered Party** shall forward to the **Authority** every demand, notice, summons or other process received by themselves or their representative, immediately or within a reasonable amount of time after the **Member Agency** or any person authorized by the **Member Agency** to give notice of a claim or **suit** has knowledge of the claim or **suit**.

The **Covered Party** must also give the **Authority** written notice as soon as practicable for any **occurrence**, offense, **wrongful act**, claim or **suit** which the **Covered Party** becomes aware of that includes injury of the following types:

1. Paralysis, paraplegia, or quadriplegia;
2. Loss of eyes or limbs;
3. Spinal cord or brain injury;
4. Sensory organ or nerve injury or neurological deficit;
5. Serious burns;
6. Substantial disability or disfigurement;
7. Death;
8. Amputation or loss of use of a major extremity;
9. Any disability where it appears reasonably likely that there will be disability that lasts for more than one year;
10. Rape, sexual abuse offense/molestation of any individual; or

11. Any class action.
 12. Any Employment Practices Liability Claim/Suit that has entered civil litigation.
3. The **Covered Party** shall cooperate with the **Authority** and upon its request, assist in making settlements, in the conduct of **suits** and in enforcing any right to contribution, subrogation or indemnity against any person or organization who may be liable to the **Covered Party** because of liability with respect to which coverage is afforded under this Memorandum of Coverage, 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 its own costs, voluntarily make any payment, assume any obligation or incur any expense with respect to any claim or **suit** to which this coverage applies; however, in the event that the amount of **ultimate net loss** becomes certain either through trial court judgment, arbitration award, or agreement among the **Covered Party**, the claimant and the **Authority**, then the **Covered Party** may pay the amount of **ultimate net loss** to the claimant to effect settlement and, upon submission of due proof thereof, the **Authority**, subject to its limit of liability, shall indemnify the **Covered Party** for that part of such payment which is in excess of the **retained limit**, or shall, upon request of the **Covered Party**, timely make such payment to the claimant on behalf of the **Covered Party**.
 4. The **Authority**, at its option, shall have the right at its own expense to investigate any claim or **suit** and/or negotiate the settlement thereof, as it deems expedient, but the **Authority** shall not commit the **Covered Party** to any settlement without the **Covered Party's** consent. Should the claimant or plaintiff, as the case might be, tender a bona-fide, good faith, settlement demand which when added to the incurred **defense costs** is in excess of the **retained limit**, the payment of which would result in the full and final disposition of said claim or **suit**, then if such settlement demand is acceptable to either the **Covered Party**, or the **Authority** (but not both), then with regard to that settlement demand:
 - (a) If such settlement demand is not acceptable to the **Authority** and the **Covered Party** tenders to the **Authority** an amount equal to the **retained limit** less incurred **defense costs**, if any, the **Authority** shall then pay on behalf of the **Covered Party** all sums which the **Covered Party** shall be legally obligated to pay as **damages**, including without limitation, the **retained limit**, plus future investigation, adjustment, appraisal, appeal, post judgment interest and **defense costs**. However, in no event shall the **Authority's** agreement to pay on behalf of the **Covered Party** exceed the limit of liability as stated in the Declarations in addition to such investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs**. Should the full and final disposition of the claim, including judgments, settlements, investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs** be less than the amount tendered by the **Covered Party**, the unused portion of the tendered amount shall be returned to the **Covered Party** by the **Authority**.
 - (b) If such settlement demand is not acceptable to the **Covered Party** and the **Authority** tenders to the **Covered Party** an amount equal to the difference between the **retained limit**, less incurred **defense costs**, and said settlement demand, or the applicable amount specified in the limits of liability section of the Declarations, whichever is less, then the **Authority's** agreement 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.

J. INSPECTION

The **Authority** shall be permitted, but not obligated to, inspect the **Covered Party's** property and operations at any time. Neither the **Authority's** right to make inspections nor the making

thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Covered Party** or others, to determine or warrant that such property or operations are safe. The **Authority** may examine the **Covered Party's** books and records at any time during the Memorandum of Coverage period and extensions thereof and within three years after the final termination of this Memorandum of Coverage, as far as they relate to the subject matter of this coverage.

K. MEMBER AGENCY

The **Member Agency** named in the Declarations is authorized to act on behalf of all **Covered Party's** with respect to the giving and receiving of notice of cancellation and receiving any return premium that may become payable under this Memorandum of Coverage. The **Member Agency** named in the Declarations is responsible for the payment of all premiums but the other **Covered Party's** jointly and severally agree to make such premium payments in full if the **Member Agency** fails to pay the amount due within thirty days after the **Authority** gives a written demand for payment to the **Member Agency**.

L. OTHER COVERAGE

If other valid and collectible insurance or group coverage applies to a claim or **suit** that is also covered by this Memorandum of Coverage, this Memorandum of Coverage will apply excess of the other insurance, whether this other insurance is primary, excess, contingent, or issued on any other basis. This provision, however, will not apply if the other insurance is specifically written to be excess of this Memorandum of Coverage.

The **Authority** acknowledges that the **Covered Party** from time to time may purchase underlying insurance with limits of liability less than, equal to, or greater than the amount of the **retained limit** for certain operations, events or hazards for which this Memorandum of Coverage affords excess coverage.

It is agreed that this Memorandum of Coverage (subject to its declarations, schedule, terms, conditions, exclusions, and endorsements that complete this Memorandum of Coverage) shall provide coverage in excess of such underlying insurance subject to the following condition:

If the limits of liability of the underlying Memorandum of Coverage are less than the **retained limit**, the **Covered Party** shall bear the risk of the difference; however, if such limits are greater than the **retained limit**, this Memorandum of Coverage is in excess of the greater limit.

M. SEVERABILITY OF INTERESTS

The term **Covered Party** is used severally and not collectively, but the inclusion herein of more than one **Covered Party** shall not operate to increase the limits of the **Authority's** liability.

N. SUBROGATION

The **Authority** shall be subrogated to the extent of any payment hereunder to all the **Covered Party's** rights of recovery therefore; and the **Covered Party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any person or entity (including the **Covered Party**) having paid an amount in excess of the **retained limit** plus the limit of liability hereunder shall be reimbursed first to the extent of actual payment. The **Authority** shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **Covered Party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the **Authority**, it shall bear the expenses thereof.

**THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE
READ IT CAREFULLY.**

**BLANKET ADDITIONAL COVERED PARTY AND
PRIMARY/NON-CONTRIBUTORY**

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

1. The following is added to SECTION V. - WHO IS A COVERED PARTY, COVERED PERSONS OR ENTITIES:

Any person(s), entity(ies), or organization(s) to whom the **Member Agency** is obligated by virtue of a written contract to provide insurance solely with respect to **bodily injury** and **property damage** is an additional Covered Party.

2. The Limits of Liability afforded to such additional Covered Party will be limited to the limits of insurance required within the terms of the written contract or the limits of insurance of this Memorandum of Coverage, whichever is less. We will not be obligated for limits of insurance shown in the written contract that are greater than the limits of liability of this Memorandum of Coverage.

However, Paragraphs **1.** and **2.** above do not apply to such additional Covered Party unless the **Member Agency** had a specific written contract from that person entity(ies) or organization(s) that:

- a. They be an additional Covered Party on this Memorandum of Coverage; and
- b. The **Member Agency** received such request prior to the date that the **Member Agency's** operations for that person(s), entity(ies) or organization(s) commenced.

3. The following is added to Section VIII – CONDITIONS:

If any primary insurance is held by the additional Covered Party, this coverage is primary to that other insurance, but will apply in excess of the **Member Agency's retained limit** specified in the Declarations. We shall not seek contribution from the other insurance held by the additional Covered Party for amounts payable under this coverage.

This condition applies only with respect to liability for **bodily injury** and **property damage** arising solely out of the negligent acts of the **Member Agency**.

However, Paragraph **3.** above does not apply to an additional Covered Party unless the **Member Agency** had a specific written contract from that person entity(ies) or organization(s) that:

- a. They be an additional Covered Party on this Memorandum of Coverage; and
- b. The **Member Agency** received such request prior to the date that the **Member Agency's** operations for that person(s), entity(ies) or organization(s) commenced.
- c. This coverage be primary.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

DAM EXTENSION

This endorsement modifies coverage provided under the following:
 AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
 MEMORANDUM OF EXCESS LIABILITY COVERAGE

SCHEDULE

| COVERED PARTY | |
|---------------------------------------|-------------------------------|
| City of Santa Monica - Riviera Dam | Subject to a \$10,000,000 SIR |
| City of Santa Cruz - Newell Creek Dam | Subject to a \$10,000,000 SIR |
| City of Anaheim - Walnut Dam | Subject to a \$10,000,000 SIR |
| City of Mountain View - Graham Dam | Subject to a \$10,000,000 SIR |

SECTION VI – EXCLUSIONS, Paragraph J. DAMS is deleted for those **Covered Party(s)** described in the Schedule.

SECTION VI – EXCLUSIONS, Paragraph V. SUBSIDENCE is replaced by the following for those **Covered Party(s)** described in the Schedule:

To **property damage** arising out of **subsidence** for any reason whatsoever.

However, this exclusion does not apply to **subsidence** arising out of the rupture, bursting, overtopping, flooding, cracking, seepage, under-seepage, accidental discharge or partial or complete structural failure of a **dam**.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

DEFENSE COST

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

SECTION VII – DEFINITIONS, Paragraph I. **Defense Cost** is replaced with the following:

I **Defense costs** means reasonable fees charged by an attorney, including expenses of a claims servicing organization the **Covered Party** has engaged, and all other reasonable fees, costs, including third-party attorney's fees and costs as authorized by law or under contract, and expenses attributable to the investigation, defense, administration or appeal of a claim or **suit** within the scope of coverage afforded by this Memorandum of Coverage.

Defense costs shall also include any allocated claims expenses incurred by attorneys, on covered claims, who are employees of the **Covered Party**. The billed rate for the employed attorneys shall be limited to the actual hourly cost.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

LIMITED LEAD IN POTABLE WATER LIABILITY COVERAGE

This endorsement modifies coverage provided under the following:
**AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
 MEMORANDUM OF EXCESS LIABILITY COVERAGE**

SCHEDULE

| | |
|--|----------------------------------------------------------------------------------------------------------|
| | Limit of Coverage for Damages Because of Lead in Potable Water |
| | \$5,000,000 per Occurrence , offense or Wrongful Act |
| | \$5,000,000 aggregate, regardless of the number of Occurrences , offenses or Wrongful Acts |

The following is added to **SECTION III – RETAINED LIMIT–THE COMPANY’S LIMIT OF LIABILITY:**

- A. With respect to damages because of lead in potable water under Coverage A, Coverage C, or Coverage A and Coverage C, the **Company’s** liability shall be limited to the **ultimate net loss** in excess of the **retained limit** as the result of any one **occurrence**, offense, or **wrongful act**, and then for an amount not exceeding the **Company’s** limit of liability specified in the Schedule above as the result of any one **occurrence**, offense, or wrongful act.
- B. The aggregate shown in the Schedule above is the most that the **Company** will pay because of lead in potable water under Coverage A, Coverage C, or Coverage A and Coverage C, regardless of the number of **occurrences**, offenses, or **wrongful** acts.

With respect to the limits above, this coverage applies as if each **Member Agency** were the only **Member Agency**.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

The following is added to **SECTION VI. – EXCLUSIONS:**

A. This coverage does not apply to:

Terrorism

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "loss", "injury" or "environmental damage" as may be defined in any applicable Coverage Part or "underlying insurance".
2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. the act resulted in covered losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. the act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the Memorandum of Coverage or affect the conduct of the United States Government by coercion.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

TRANSIT COVERAGE - SCHEDULED COVERED PARTY

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

| COVERED PARTY |
|----------------------------------------|
| City of Santa Monica Big Blue Bus Line |
| |
| |
| |
| |
| |

SCHEDULE

SECTION VI – EXCLUSION, Paragraph W. TRANSIT is deleted for those Covered Party(s) described in the Schedule.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

WAR EXCLUSION

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

The following is added to **SECTION VI – EXCLUSIONS:**

WAR

Any liability arising out of:

1. War, including undeclared or civil war;
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

All other Memorandum of Coverage terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

The following is added to Paragraph N. SUBROGATION under **SECTION VIII. CONDITIONS:**

The **Authority** waives any right of recovery the **Authority** may have against a person or organization, with whom you have a written contract, because of payments the **Authority** makes for **bodily injury** or **property damage** arising out of the **Member Agency's** operations done under that written contract with that person or organization.

All other Memorandum of Coverage terms and conditions remain unchanged.

**THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE.
PLEASE READ IT CAREFULLY.**

**EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL
INFORMATION ATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY
EXCEPTION**

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

The following is added to **SECTION VI. – EXCLUSIONS:**

Access or Disclosure of Confidential or Personal Information and Data-related Liability

Liability arising out of:

1. any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
2. the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if **damages** are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other **ultimate net loss**, cost or expense incurred by **you** or others arising out of that which is described in paragraph 1. or 2. above.

However, unless paragraph 1. above applies, this exclusion does not apply to **damages** because of **bodily injury**.

All other Memorandum of Coverage terms and conditions remain unchanged.

**THIS ENDORSEMENT CHANGES THE MEMORANDUM OF COVERAGE.
PLEASE READ IT CAREFULLY.**

EXCLUSION - ORGANIC PATHOGENS

This endorsement modifies coverage provided under the following:
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY
MEMORANDUM OF EXCESS LIABILITY COVERAGE

The following is added to **SECTION VI. – EXCLUSIONS:**

Organic Pathogens

1. Liability arising out of the actual, alleged or threatened infectious, pathogenic, toxic or other harmful properties of any **organic pathogen**.
2. Any **ultimate net loss**, cost or expense arising out of any:
 - (a) request, demand, order or statutory or regulatory requirement that any **Covered Party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of any **organic pathogen**, or
 - (b) claim or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any **organic pathogen**.

As used herein, "Organic Pathogen" means any:

1. bacteria; mildew, mold or other fungi; other microorganisms; or mycotoxins, spores or other byproducts of any of the foregoing;
2. viruses or other pathogens (whether or not a microorganism); or
3. colony or group of any of the foregoing.

This endorsement does not change any other provision of the Memorandum of Coverage.