



## AGENDA

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

**JPA:** ACCEL UNDERWRITING COMMITTEE MEETING

**DATE/TIME:** Tuesday, February 28, 2023 at 9:00 AM

**LOCATION:** Teleconference

Link: <https://alliantinsurance.zoom.us/j/94652512106?pwd=NXhoWWVRR0ltVlBLOGhTc2UxUmNRUT09>

Dial: (669) 900-6833

Meeting ID: 946 5251 2106

Passcode: 053979

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

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

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- MEMBER** • **City of Anaheim**, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805  
**LOCATIONS** • **City of Bakersfield**, 1600 Truxtun Ave., 4<sup>th</sup> Floor, Bakersfield, CA 93301  
**VIA TELE -** • **City of Salinas**, 200 Lincoln Avenue, Salinas, CA 93901  
**CONFERENCE** • **City of Santa Barbara**, 735 Anacapa St., Santa Barbara, CA 93101  
• **City of Santa Cruz**, 1200 Pacific Ave, Suite 290, Santa Cruz, CA 95060

### PAGE

#### A. CALL TO ORDER

#### B. CONSENT CALENDAR (A)

- 3-6 I 1. Approval of Minutes for the November 29, 2022 Underwriting Committee Meeting (A)  
*The Committee will review these minutes and will take action to approve or give direction.*

#### C. REPORTS

##### 1. UNDERWRITING COMMITTEE'S REPORT

- 7-11 I a) City of Bakersfield Park Ranger Electronic Control Device - New Exposure Questionnaire (A)  
*Members will review and discuss the new exposure questionnaire and may take action or provide direction.*
- 12-35 I b) Proposed Changes to ACCEL's Memorandum of Coverage (MOC): Unmanned Aerial Vehicles (UAVs) (A)  
*The Committee will review and discuss the proposed changes to the ACCEL MOC. Action may be taken or direction given.*
- 36-39 I c) New Proposed ACCEL Coverage/General Counsel Agreement (A)  
*Members will review the new proposed agreement and may take action or give direction.*

# ACCEL

**Authority for California Cities Excess Liability**  
c/o Alliant Insurance Services, Inc.  
Corporation Insurance License No. 0C36861  
560 Mission Street, 6<sup>th</sup> Floor, San Francisco, CA 94105



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## **D. PUBLIC COMMENTS**

(I)

4 *The public is invited at this point to address the Committee on issues of interest to them.*

## **ADJOURNMENT**



**MINUTES OF THE  
ACCEL UNDERWRITING COMMITTEE  
MEETING**

Item B.1  
Underwriting Committee  
February 28, 2023

**Tuesday, November 29, 2022 at 1:30 PM**

**LOCATION:  
Teleconference**

Link: <https://alliantinsurance.zoom.us/j/99706247753?pwd=UWhmdjFBendsdVFMSIF0U2JHOVlIZz09>

Dial: (669) 900-6833

Meeting ID: 997 0624 7753

Passcode: 864381

**MEMBERS PRESENT:**

Tracey Matthews, City of Anaheim  
Jena Covey, City of Bakersfield  
Rhonda Combs, City of Salinas  
Mark Howard, City of Santa Barbara  
Ross Brandon, City of Santa Cruz

**MEMBERS ABSENT:**

None

**GUESTS AND CONSULTANTS:**

Byrne Conley, Gibbons & Conley  
Kevin Albertson City of Bakersfield Fire Deputy Chief (*left at 2:10 PM*)  
Stephen Sparks, City of Salinas Police Sergeant (*left at 2:40 PM*)  
Conor Boughey, Alliant Insurance Services  
Lorissa Huey, Alliant Insurance Services

**A. CALL TO ORDER**

Mark Howard called the meeting to order at 1:32 PM.

**B. Consent Calendar**

**B1. Approval of Minutes for the March 30, 2022 Underwriting Committee Meeting**

A motion was made to approve the consent calendar.



**MOTION:** Jena Covey

**SECOND:** Rhonda Combs **MOTION CARRIED**

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

**C. REPORTS**

**C1. Underwriting Committee’s Report**

**C1ai. New Exposures: Completed Questionnaire - City of Bakersfield Tele911 Program**

Conor Boughey reported that the City of Bakersfield requested the Committee to review the New Exposure Questionnaire for the Tele911 Program.

Kevin Albertson, City of Bakersfield Fire Deputy Chief explained that the Fire Department will have iPads that are owned by Kern County when they respond to an emergency call where a patient needs to speak with a doctor. The patient will have an option of telemedicine services with a physician at the scene on the iPad.

Byrne Conley, ACCEL’s Legal Counsel advised that the City should not sign an indemnity agreement because ACCEL’s Memorandum of Coverage (MOC) does not cover medical malpractice. There is coverage for this program under the current language in the MOC. If ACCEL chooses to exclude this program, the City will need to purchase separate coverage and ACCEL would add an endorsement exclusion.

Jena Covey stated that the City will review after this meeting and put together a letter of agreement with Tele911. Also, the City will work with Byrne on language for the recitals that should be added to the waiver that will be signed by the patient if it does elect telemedicine services.

The Committee did not take any formal action.

**C1aai. New Exposures: Member Locations – Battery Farms**

Conor Boughey reported that Cities across the State are being asked to host battery systems and the ACCEL Members should consider the impacts to the entity and how ACCEL’s Memorandum of Coverage (MOC) will apply.



Mark Howard, City of Santa Barbara stated that the City is in the process of purchasing battery back-up components for use at the City’s water treatment plant.

No reportable action took place. Conor reminded the Committee Members that the ACCEL MOC has an exclusion that would apply to any failure to supply water, electricity or gas. Therefore, it’s important to be cognizant when entering into any agreement because the City does not want to be an energy provider, unless it has purchased separate coverage.

### **C1bi. Proposed Changes to ACCEL’s Memorandum of Coverage (MOC): Unmanned Aerial Vehicles (UAVs)**

Conor Boughey reported that in 2016, ACCEL took action to clarify the MOC language to explicitly state that the aircraft exclusion does not apply to UAVs (drones), and define UAVs as a small unmanned aircraft regulated by Part 107 of the Federal Aviation Administration (FAA). Now, the FAA has changed the guidelines to allow governmental entities to fly UAVs outside of Part 107.

The City of Salinas forwarded the Certificate of Waiver of Authorization (COA) from its Police Department and asked ACCEL if it is acceptable under the current MOC language.

Stephen Sparks, City of Salinas Police Sergeant was present at today’s meeting and was able to address questions from the Committee.

A motion was made to direct Byrne Conley, ACCEL’s Legal Counsel to draft language that keeps Part 107 in the UAV definition, and add language about the COA and similar federal regulations. This will be brought back to the Board at the January 19 and 20, 2023 Board Meeting for consideration to adopt and discuss when the changes will take into effect. The Committee also recommends to repeal the Unmanned Aerial Vehicle (UAV) Usage Guidelines Policy and Procedure.

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

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



### C1bii. Proposed Changes to ACCEL’s Memorandum of Coverage (MOC): Fines and Assessments Exclusion

Byrne Conley, ACCEL’s Legal Counsel suggested to incorporate some of the Excess Carrier’s Great American exclusion into ACCEL’s Fines and Assessment Exclusion, specifically injunctive, equitable or declaratory relief so that no one can argue ACCEL pays for non-monetary damages. The proposed language included in the agenda packet further clarifies the intent of the current exclusion.

A motion was made to recommend to the Board at the January 2023 Board Meeting to adopt the proposed changes to the Fines and Assessment Exclusion.

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

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

### C1c. Dates of Loss for Employment Practices Liability Claims

Conor Boughey reported that in the past, there were issues identifying the date of loss trigger on Employment Practices Liability (EPL) matters. Byrne Conley, ACCEL’s Legal Counsel pointed out in the ACCEL Memorandum of Coverage (MOC) the Occurrence definition and the Multiple Coverage Periods section to help with agreeing to a date of loss.

Members asked questions, which were addressed.

The Committee agreed to keep the current MOC language as is.

No reportable action took place.

**D. PUBLIC COMMENTS** - No public comments were made.

### ADJOURNMENT

Mark Howard adjourned the meeting at 3:16 PM.



**Item No. C.1.a**  
**Underwriting Committee**  
**February 28, 2023**

### CITY OF BAKERSFIELD PARK RANGER ELECTRONIC CONTROL DEVICE NEW EXPOSURE QUESTIONNAIRE

**ISSUE:** The City of Bakersfield has requested the Underwriting Committee review a new activity of the City, the Park Rangers will be carrying tasers while patrolling. The City has completed the New Exposure Questionnaire.

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

2. A new service within the Member Agency that would not be considered traditional for the majority of cities in California.
  
8. Any service agreement situation or arrangement that brings about an increased exposure to loss that is concerning, or reasonably should be concerning, to the risk management personnel/function of the Member Agency.

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

#### **Additional Consideration**

**In favor:** The MOC does not specifically exclude this type of activity of park rangers carrying tasers. Police officers carry tasers and that is considered common amongst Cities, and the MOC is silent. The Committee may want to clarify the intent of the MOC.

**Against:** This activity is not common amongst the membership. The Underwriting Committee may want to exclude coverage for this activity or recommend the City purchase separate coverage for this exposure.

**FISCAL IMPACT:** Cannot be determined at this time.

**BACKGROUND:** News article from Bakersfield.com: [https://www.bakersfield.com/news/city-staff-discuss-equipping-park-rangers-with-tasers-placing-gunfire-detection-tech-in-schools/article\\_05edfcc4-7a87-11ed-9047-dbf8dc0ca5a.amp.html](https://www.bakersfield.com/news/city-staff-discuss-equipping-park-rangers-with-tasers-placing-gunfire-detection-tech-in-schools/article_05edfcc4-7a87-11ed-9047-dbf8dc0ca5a.amp.html)

**City staff discuss equipping park rangers with tasers, placing gunfire detection tech in schools**

Dec 12, 2022



A Bakersfield city committee dedicated to public safety discussed Monday potentially arming park rangers with tasers and body-worn cameras while also proposing placing gunfire detection technology at local schools.

Councilman Chris Parlier, who represents Ward 7, amended his previous request to city staff about developing policies for park rangers to use tasers to include code enforcement officers at the Safe Neighborhoods & Community Relations committee.

Bakersfield Police Department Assistant Chief Brent Stratton said the evolution for their ShotSpotter technology, equipment which senses in certain locations to pinpoint gunfire and alert police, could be to have discussions with local school districts about placing it on campuses as shootings and homicides decreased after historic highs in Bakersfield. "It's worse than what we thought," said city Parks Director Rick Anthony, of the problems plaguing local areas.

### THE PARK RANGER PROGRAM

Bakersfield City Manager Christian Clegg noted in Monday's meeting city staff are examining policies to give body-worn cameras and tasers to park rangers based on a previous referral by council members.

Michael Dobbs, the supervisor for the park rangers, noted tasers weren't an option when initially fleshing out this new department. But Parlier said tasers are a "critical" piece of equipment for park rangers and he has also referred city staff to re-examine if code enforcement officers should carry them.

Dobbs noted his staff focused on de-escalation methods and hopes they never have to use their baton or pepper spray. Rangers also learn crisis-intervention skills.

But, "in today's society, it happens," Dobbs noted.

City staff also discussed updates after the park ranger program was approved in March and Dobbs was hired in the summer.

"We are still kind of in a soft launch stage," Anthony said.

Sixteen park rangers and one supervisor have been hired. There are two vacancies that could be filled by either a park ranger or supervisor position, Anthony said. Administrative support staff could also be hired to this department.

Dobbs said the rangers hit every park every day, from 6 a.m. until midnight. But getting to 24-hour patrols wouldn't happen with this staff, he added when Parlier asked how it could be done.

Their presence has led to decreased encampments and loiterers, he noted, while adding Dobbs said they encountered their first dead body in Dr. Martin Luther King Jr. Park last week. Dobbs proposed rangers getting Narcan training, too.

Richard O'Neil, the president of the Kern River Parkway Foundation, noted he's hopeful park rangers will make a difference on vandalism and encampments eating away at public spaces, but added it's too soon to see if there's been a dent in clearing parks.

Encampments just move from one place to another, or simply come back, he said.

A solution is going to take awhile, and it will take all of us to solve it, he said.

### GUN VIOLENCE PROGRAMS

ShotSpotter has been used in Bakersfield since 2018, and schools may welcome the technology.

Assistant Chief Stratton said they've had "introductory meetings" with Bakersfield College about introducing ShotSpotter onto its campus. Police also requested Kern High School District and Kern County Superintendent of Schools consider placing the technology throughout their campuses.

The technology has been installed around 70 locations in Bakersfield. It detects gunfire and immediately tells police the location, according to previous reporting. Stratton said after the meeting the ShotSpotter's radius can range from a few feet to miles depending on the program.

"Seconds matter," Stratton said of responding to shootings.

Though local schools haven't experienced mass shootings recently, Stratton added this technology allows them to be prepared.



**Authority for California Cities Excess Liability**

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



ShotSpotter's effect shows through statistics.

Before ShotSpotter, only 8 percent to 9 percent of shootings police arrive at would someone have called for police. But the areas with ShotSpotter allow police to become aware of 100 percent of the shootings in that area. Now, people are calling in double digits to tell police of gunfire in areas monitored by the equipment, he added.

That builds trust between the community and police, he said.

City staff also discussed statistics regarding shootings and homicides in Bakersfield, which have dropped since skyrocketing two years ago.

	Non-fatal shootings	Gang-related shootings	
Year 2020	113	33 percent	
Year 2021	108	39 percent	
Jan. to Nov. 2022	91	32 percent	
	Homicides	Homicides by firearms	Gang-related homicides
Year 2020	45	67 percent	31 percent
Year 2021	60	70 percent	27 percent
Jan. to Nov. 2022	35	80 percent	22 percent

**ATTACHMENT:**

1. New Exposure Questionnaire Completed by the City

New Exposure Questionnaire

Amended Date: 10/17/19

Reviewed Date: 8/26/21

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Member Agency: Recreation & Parks Department      Date: 12/22/2022

New Exposure Proposal Name: Park Ranger Electronic Control Device

Expected Implementation Date: 07/01/2023

Ongoing Program/Service: Yes

If time-limited, end date: NA

Does current MOC address exposure proposal: Yes or No

If yes, please insert applicable language:

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

Park Rangers have regular interaction with the public and come across situations where animals are in the parks without a leash. If a situation were to escalate to a possible physical altercation, requiring the Park Rangers to defend themselves, their recourse is to use OC spray or a collapsible baton, which require a close proximity with the person or animal to be effective. This type of interaction can have an increased risk for the personal safety of the Park Rangers.

The City of Bakersfield Recreation and Parks, Park Ranger Program is proposing to implement the carrying and use of electronic control devices (ECD or tasers) to help with an increase in personal safety as well as a deterrent against aggressive action. The Park Ranger Program will adopt approved procedures for electronic control devices similar to the Bakersfield Police Department and the City of Santa Maria’s City Ranger Program.

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

If this proposal is approved, the City of Bakersfield Park Ranger Program would implement the carrying of ECDs by all trained Park Ranger staff. This would include up to 18 Park Rangers and one Park Ranger Supervisor, with future expansion available if the program grows. The Park Ranger Program requires frequent interaction with the public in the field. Interactions in the parks also lead to encounters with aggressive people as well as animals without a leash. Growing concern for the Parks Rangers safety has led to a proposed inclusion of ECDs for the need for self-defense. Since the

implementation of the Park Ranger Program, there have been several contacts with vicious dogs and dogs off leashes approaching Park Rangers rapidly.

Park Rangers have also contacted multiple homeless individuals that are possessing blade weapons that range from a three-inch pocketknife to a 30-inch machete and even homemade crude weapons designed to create major damage. Park Rangers are not supposed to engage individuals with weapons but having an ECD will give them one more tool to consider and retreat safely. ECDs will also allow a distance to be created if a Park Ranger is advanced on by someone with a bladed weapon.

There are hazards and risks that are assumed when using a Taser. Staff will be trained in the proper deployment and use of the device, however, there are situations where an injury could occur once an ECD is deployed. ECDs will only be deployed in self-defense; they will be used only to stop a physical attack by a person or animal or to prevent an attack by a person who has verbally and/or physically threatened violence or an animal that has displayed violence. The use of an ECD will result in fewer and less severe injuries than other tools like a baton, which is already issued.

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

The financial impact of the proposal to the City will be an approximate initial cost to purchase all capital expenditures is \$70,000. There will be an ongoing cost for replacing and updating equipment as well as annual training expected to be \$15,000 to \$20,000 a year.

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

If this proposal is approved, the City of Bakersfield Park Rangers will receive standardized training from the Bakersfield Police Department. The Park Ranger Program will compose a similar policy to that used by the Bakersfield Police Department. The Bakersfield Police Department already has staff utilizing ECDs and has implemented their use with the Animal Control Unit which is under their span of control. The Park Ranger Program will utilize ECDs in a similar fashion to what is already being used by Bakersfield Police employees.

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

The City of Bakersfield Park Ranger Program attempted to find comparable Park Ranger Programs utilizing ECDs. What we have found is that the City of Bakersfield Park Ranger Program is unique in its duties in working within the city park system and having a large interaction with homeless and homeless encampment abatements.

Similar organizations operate within a sworn peace officer capacity. The City of Bakersfield Park Rangers operates under the same authority as Code Enforcement, as an employee authorized by ordinance.



**Item No. C.1.b**  
**Underwriting Committee**  
**February 28, 2023**

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

**ISSUE:** The Board reviewed proposed language to the ACCEL MOC from Byrne Conley, ACCEL's Legal Counsel that keeps Part 107 in the UAV definition, and adds language about the Certificate of Waiver of Authorization (COA) and similar federal regulations. The Underwriting Committee directed Byrne to draft the language.

At the January 2023 Board Meeting, the Board did not adopt the language and gave direction back to the Underwriting Committee to review further. During the meeting, it was discussed to add to Byrne's proposed language, "including but not limited to" after it states, "governmental functions."

Dan Howell mentioned that United Educators has an endorsement that gives back on the aircraft exclusion and it is included in the attachments. Some key points are that:

1. It covers for liability arising from non-owned and hired (i.e. a student or a contractor etc. which ACCEL members need)
2. It doesn't require operation in compliance with the FAA Part 107 docs as non-compliance could easily happen by accident.

Proposed language from the United Educators' endorsement has been included in the ACCEL MOC using ACCEL's terms (changed "Insured" to "covered party").

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

#### **Additional Consideration**

**In favor of updating the MOC:** The Committee may consider to not mention the FAA regulations in the MOC because regulations have been changing rapidly over the years. This would allow the regulations to change without the need for ACCEL to amend language.

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

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

**BACKGROUND:** ACCEL's MOC was previously silent on UAV coverage but contained an aircraft exclusion which was not interpreted to apply to UAVs, so coverage for UAV operations was not



excluded. In 2016, ACCEL took action to clarify the MOC language to explicitly state the aircraft exclusion does not apply to UAVs, and define UAVs as a small unmanned aircraft regulated by Part 107 of the FAA. The Board also directed the Program Administrators to draft UAV Guidelines that could be shared with the member agencies to provide a simple framework for appropriate use of UAVs. The guidelines aimed to restate Part 107 in a more user friendly manner. Now, the FAA has changed their guidelines to allow governmental entities to fly UAVs outside of Part 107.

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

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

The City of Salinas' Police Department is looking to operate drones without having a Part 107 remote pilot airman certificate and use the instead. The City forwarded a COA from its Police Department to ask ACCEL if this is acceptable to ACCEL.

At the November 29, 2022 Underwriting Committee (UC) Meeting, direction was given to Byrne Conley, ACCEL's Legal Counsel to draft language that keeps Part 107 in the UAV definition, and add language about the COA and similar federal regulations. The Committee also recommended to repeal the UAV Usage Guidelines Policy and Procedure.

Byrne Conley's provided a short memo below and proposed changes to the UAV definition per the UC's direction.

"At the 11/29/2022 Underwriting Committee meeting, the Committee discussed the "aircraft" exclusion, specifically with respect to Exclusion C.

There are four places in the MOC where "aircraft" show up. Exclusion C excludes liability arising out of ownership, maintenance, loading or unloading, use or operation of any "aircraft" but excepting any "Unmanned Aerial Vehicle." Exclusion G.3 also excludes liability for property damage to any "aircraft" in the care, custody or control of a covered party. The terms "aircraft" and "unmanned aerial vehicle" are each specifically defined.

The purpose of these exclusions is to exclude aviation liability, particularly for passenger planes, which is not a common risk and should be underwritten and covered separately. However, the recent rise in the use of drone aircraft necessitates added language. The use of drones has become common for police and fire agencies and public works. The goal is to apply coverage for such common use.

The current MOC defines UAVs as follows:

**Unmanned Aerial Vehicle (UAV)** means an aircraft (with its aerial system or control device) that is not controlled directly by a person from within or on the aircraft



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

There have been developments in the law relating to UAVs since the quoted language was adopted in December, 2016. Specifically, the law now allows operation under a Certificate of Waiver or Certificate of Authorization as an alternative provision authorizing use of a drone. Unfortunately, there are multiple cross references involved in identifying the authorizing language.

There had been some discussion about incorporating references to statutes in our MOC, and what happens if the statutes are amended or change. Will we have to amend the MOC each time? The language below attempts to address that by incorporating by reference any amendments in the law, and indicating that any subsequent changes in the law will be applicable. There is an option to have the Exclusion instead say “and is operated as authorized under federal law” which is all-encompassing, but this proposed language has the benefit of telling the reader more specifically what the governing law is, and alerting the reader to the types of uses contemplated in the statutes.

**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” such as firefighting, search and rescue, and law enforcement. In the event any of these provisions are amended, any successor statutes or regulations will apply.

A copy of the MOC with highlights for changes (including other ones approved by the Underwriting Committee) is attached.”

### ATTACHMENT:

1. ACCEL MOC proposed language – redlined
2. United Educators Limited UAV Coverage Endorsement

## 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**.

**(REVIEW NEXT PAGE)**

**OPTION 1 – ACCEL Existing Language**

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.

**OPTION 2 – UE Based Language Applied to ACCEL**

This exclusion does not apply to liability of a **Member Agency** arising out of an **Unmanned Aerial Vehicle (UAV)** which has a flight weight of 55 pounds or less (flight weight includes the weight of the aircraft itself, fuel and other fluids, and all payload) that is owned by, leased to, or operated by any **Member Agency**, or used by or on behalf of a **covered party**. However, this exception does not apply to any liability of others assumed by a **covered party** in any contract or agreement, except for liability that the **covered party** would have in the absence of the contract or agreement.

Unless required to be primary by contract by a **Member Agency**, the coverage provided by this exception is at all times excess over other available coverage, including specifically any liability coverage provided by any owner or lessor of any **Unmanned Aerial Vehicle (UAV)**.

- D. To liability arising out of the ownership or maintenance or loading or unloading or use or operation of any watercraft over 35 feet in length, unless added by specific endorsement.
- E. To any obligation for which the **covered party**, or any carrier as insurer therefor, may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.
- F. To liability for **Bodily Injury** to any employee of the **covered party** including the spouse, child, unborn child or fetus, parent, sibling or dependent of the employee, arising out of and in the course of his employment by the **covered party**, except with respect to liability of others assumed by the **covered party** under contract.
- G. To liability for **property damage** to:
  - (1) Property owned by the **covered party**;
  - (2) Property rented to or leased to the **covered party** where the **covered party** has assumed liability under contract for **damage** to or destruction of such property, unless the **covered party** would have been liable in the absence of such contract; and
  - (3) **Aircraft**, or watercraft, in the care, custody or control of the **covered party**.
- H. To liability arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:

- (1) At or from premises owned, leased or occupied by the **Member Agency**, except for public streets and roads when the discharge, dispersal, release or escape was not participated in by a **covered party**;
  - (2) At or from any site or location used by or for the **covered party** for the handling, storage, disposal, processing or treatment of **pollutants** or waste;
  - (3) Which are at any time transported, handled, stored, treated, disposed of or processed as **pollutants** or waste by or for the **Member Agency** or any person or organization for whom the **Member Agency** may be legally liable;
  - (4) At or from any site or location on which the **Member Agency** or any contractors or subcontractors working directly on the **Member Agency's** behalf are performing operations:
    - (a) If the **pollutants** are brought on or to the site or location in connection with such operations; or
    - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**.
- I. To liability arising out of any governmental direction or request that **pollutants** be tested for, monitored, cleaned up, removed, contained, treated, detoxified or neutralized.
  - J. To liability arising out of or contributed to by any complete or partial failure to supply water, electricity or gas.
  - K. To liability arising out of medical professional services provided by any doctor, nurse, or dentist employed by or contracted by the **Member Agency**, including:
    - (1) Rendering, or failure to render:
      - (a) Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of foods or beverages in connection therewith.
      - (b) Any service or treatment conducive to health or of a professional nature.
      - (c) Any cosmetic or tonsorial service or treatment.
    - (2) Furnishing of, or dispensing of, drugs or medical, dental, or surgical supplies or appliances.

This exclusion does not apply to the activities of paramedics, emergency medical dispatchers, technicians or similar personnel.
  - L. To liability arising out of the ownership or operation of any hospital or medical clinic.

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

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

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

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

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

- (1) **Bodily Injury or Personal Injury;**
- (2) **Property damage;**
- (3) Refund of taxes, fees or assessments.
- (4) Liability of a **covered party** (a) arising in whole or in part out of a **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled or (b) arising out of the actual or alleged violation of the penal code, or a penal ordinance, committed by or with the knowledge or consent of any **covered party**, except that any act pertaining to any other **covered party** shall not be imputed to any other **covered party** for the purpose of determining application of these exclusions.

- (5) Liability arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
- (6) Failure to perform, or breach of, a contractual obligation.
- (7) Liability arising out of fiduciary activities as respects employee benefit plans, but however, this exclusion does not apply to administration of the Members employee benefits programs. Administration is defined as giving counsel to employees with respect the benefits; interpreting the benefits; handling of records in connection with benefits; and effecting enrollment, termination or cancellation of employees under the benefits, provided all such acts are authorized by the **Member Agency**.

Q. To liability:

- (1) With respect to which a **covered party** under the Memorandum is also a **covered party** under a nuclear energy liability policy issued by Mutual Atomic Energy Liability Underwriters, American Nuclear Insurers, or Nuclear Insurance Association of Canada, or any successor organizations, or would be a **covered party** under any such policy but for its termination upon exhaustion of its limit of liability; or,
- (2) Resulting from the “hazardous properties” of “nuclear material” and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **covered party** is, or had this Memorandum not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, with any person or organization, or,
- (3) Resulting from “hazardous properties” of “nuclear material,” if:
  - (a) The “nuclear material” (i) is at any “nuclear facility” owned by, or operated by or on behalf of, a **covered party**, or (ii) has been discharged or dispersed therefrom;
  - (b) The “nuclear material” is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a **covered party**; or
  - (c) The liability arising out of the furnishing by a **covered party** of services, materials, parts of equipment in connection with the planning, construction, maintenance, operation or use of any “nuclear facility,” but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (c) applies only to “**Property Damage**” to such “nuclear facility” and any property threat;

As used in this exclusion:

- (a) “Hazardous properties” include radioactive, toxic, or explosive properties;

- (b) “Nuclear facility” means: (i) any nuclear reactor; (ii) any equipment or device designed or used for (aa) separating the isotopes of uranium or plutonium, (bb) processing or utilizing spent fuel, or (cc) handling, processing, or packaging “waste”; (iii) any equipment or device used for the processing, fabricating or alloying of “special nuclear material” if at any time the total amount of such material in the custody of the **covered party** at the premises where such equipment or device is located consists of or contains more than 25 grams of uranium m235; (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and (v) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operation;
- (c) “Nuclear material” means “source material,” “special nuclear material,” or “byproduct material”;
- (d) “Nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (e) “**Property Damage**” includes all forms of radioactive contamination of property.
- (f) “Source material,” “special nuclear material,” and “byproduct material” have the meaning given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (g) “Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (h) “Waste” means any “waste” material (i) containing “byproduct material” and (ii) resulting from the operation by any person or organization of any “nuclear facility” included within the definition of “nuclear facility” under paragraph (b) (i) or (ii) thereof;

R. To liability arising out of past and future salary, wages, benefits and/or retirement proceeds alleged or claimed because of any adverse employment action including, but not limited to, unlawful **discrimination**, harassment, and/or retaliation against, violation of civil rights of, or wrongful termination of any employee or official of the **covered party**.

S. **ERISA, COBRA, UCERA, WARN Act, and FLSA Liability.** We do not cover any liability imposed on the **covered party** under:

(A) the Employee Retirement Income Security Act of 1974;

(B) the Comprehensive Omnibus Budget Reconciliation Act;

(C) the Worker Adjustment and Retraining Notification Act;

(D) the Fair Labor Standards Act, including but not limited to any wage and hour or other claim arising under the FLSA or any California Wage Orders or any similar federal or state law;

(E) any similar federal, state or local laws;

(F) any amendments to such laws; or

(G) any regulations promulgated under any such laws.

- T. To **ultimate net loss** arising out of relief, or redress, in any form other than money **damages**.
- U. To any liability arising out of any investment decision, including, but not limited to, investing, re-investing, purchasing, acquiring, exchanging, selling and/or managing public funds.

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

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

**OPTION 1 – ACCEL Existing Language:**

**Unmanned Aerial Vehicle (UAV)** means an aircraft (with its aerial system or control device) that is not controlled directly by a person from within, which has a flight weight of 55 pounds or less (flight weight includes the weight of the aircraft itself, fuel and other fluids, and all payload), can fly autonomously or be piloted remotely, and which contains or carries no explosive or weapon. or on the aircraft by the Federal Aviation Authority (FAA) Small Unmanned Aircraft Regulations (Part 107).

**OPTION 1A – ACCEL Existing Language w/ Byrne:**

**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.

**OPTION 2 – UE Based Language Applied to ACCEL**

**Unmanned Aerial Vehicle (UAV)** means a powered unmanned (and not capable of carrying a human operator) aerial vehicle that uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and which contains or carries no explosive or weapon. Unmanned Aerial Vehicle does not include any rocket or missile.

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

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

## **VI. CONDITIONS**

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

In the event of:

- (1) **Member Agencies** will report to the Authority's Claims Administrator as soon as possible all events meeting any of the criteria identified below, without regard to liability:
- a. Claims in which the **ultimate net loss** is estimated to exceed twenty-five percent (25%) of the **covered party's retained limit**.
  - b. Claims falling within any of the following classifications:
    - i. one or more fatalities;
    - ii. spinal cord injuries (paraplegic or quadriplegic);
    - iii. amputations;
    - iv. loss of sight or hearing;
    - v. severe burns or disfigurement;
    - vi. serious head injuries;
    - vii. serious loss of use of any body part or function;
    - viii. allegations of sexual misconduct, molestation or similar;
    - ix. long term hospitalization (30 days or more); or
    - x. multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.
  - c. Lawsuits or writs involving employment practices liability.
  - d. Any class action lawsuits.
  - e. Demands in excess of \$250,000 arising out of any of the following settings:

- i. Statutory demand;
- ii. Post closed discovery (not expert) demand;
- iii. Mandatory Settlement Conference demand;
- iv. Mediation demand; or
- v. Arbitration demand.

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

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

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

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

- D. Action against Authority. No action shall lie against the **Authority** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay shall have been finally determined either by judgment against the **covered party** after actual trial or by written agreement of the **covered party**, the claimant and the **Authority**.

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

- E. Multiple Coverage Periods. An **occurrence** with a duration of more than one coverage period shall be treated as a single **occurrence** arising during the coverage period to which Excess Insurance, if any, applies. If no Excess Insurance applies, then the **occurrence** shall be treated as arising when the **occurrence** begins.

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

## VII. ARBITRATION

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

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

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

### A. Requesting arbitration:

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

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

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

B. Arbitration procedures:

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

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

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

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

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

C. Discovery:

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

D. Testimony under oath:

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

E. Hearing decision:

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

F. Certified court reporter:

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

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

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

H. Effect of arbitration decisions:

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

I. Costs of arbitration:

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

J. Interpretation and application of rules:

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

K. Not applicable to excess carriers:

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

Issued by the Authority for California Cities Excess Liability.

By: \_\_\_\_\_  
Secretary

### LIMITED UAV COVERAGE

In consideration of the premium charged, and subject to all other provisions of this Policy, **we** agree with the **Educational Organization** that:

1. The following Definition is added to this Policy:

**Unmanned Aerial Vehicle** means a powered unmanned (and not capable of carrying a human operator) aerial vehicle that uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and which contains or carries no explosive or weapon.

**Unmanned Aerial Vehicle** does not include any rocket or missile.

2. Exclusion 10.j. of this Policy does not apply to:
  - a. the liability of an **Included Entity** arising from an **Unmanned Aerial Vehicle** that is not owned by, leased to, or operated by any **Insured**; or
  - b. the liability of an **Included Entity** and its employed, volunteer and student **Insureds** arising out of an **Unmanned Aerial Vehicle** which has a flight weight of 55 pounds or less (flight weight includes the weight of the aircraft itself, fuel and other fluids, and all payload) used by or on behalf of an **Insured** for purposes other than research or education, however, this **Exception** does not apply to:
    - (i) use for which an **Insured** is compensated by any party other than an **Included Entity**;
    - (ii) any liability of others assumed by an **Insured** in any contract or agreement, except for liability that the **Insured** would have in the absence of the contract or agreement; or
    - (iii) any additional **Insured**, the provisions of Paragraph d. of the Definition of **Insured** notwithstanding.
3. Unless required to be primary by contract with an **Included Entity**, the coverage provided by this Endorsement is at all times excess over other available coverage, including specifically any liability coverage provided by any owner or lessor of any **Unmanned Aerial Vehicle**.

All other Policy provisions remain the same.

  
Authorized Representative



**Item No. C.1.c**  
**Underwriting Committee**  
**February 28, 2023**

### NEW PROPOSED ACCEL COVERAGE/GENERAL COUNSEL AGREEMENT

**ISSUE:** The Service Provider, Legal Counsel (includes Coverage and General Counsel) falls under the Underwriting Committee’s purview. Byrne Conley, ACCEL’s Coverage Counsel and General Counsel reviewed the current agreement with the ACCEL and is proposing increasing the rates as outlined in the fiscal impact section.

**RECOMMENDATION:** It is recommended that the Committee review the proposal by Byrne Conley and take action to recommend to the Board to accept the new proposed agreement or provide direction.

#### Additional Consideration

**In favor:** The proposed action would accept the new proposed fees. Many service providers have been looking to increase fees due to inflationary pressures. Approving this may offer a financial benefit to ACCEL. The Service Provider Surveys that were conducted in FY 21-22 indicated that the Board was satisfied with Byrne’s services.

**Against:** If the higher fees are not accepted, ACCEL may engage in a RFP process to obtain services from another attorney firm that could lead to higher fees.

**FISCAL IMPACT:** The current agreement’s rates are \$185/hour for attorney time and \$98/hour for paralegal time. The new proposed rates are \$225/hour for attorney time and \$102/hour for paralegal time. ACCEL budgeted \$150,000 for legal services for FY 22-23.

**BACKGROUND:** Prior to 2015, David Garthe was ACCEL’s Coverage Counsel and has retired. As such, ACCEL has given direction to the Program Administrators to approach potential new Coverage Counsel.

In 2015, The Administrators approached several potential Coverage Counsels for ACCEL. Byrne Conley shown interest in the position. Byrne works with several other Municipal Insurance Pools in the State and is known to the Administrators to be a competent Coverage Counsel.

Back then, ACCEL did not ‘officially’ have General Counsel either. We were able to combine these roles and Byrne Conley has been ACCEL’s General Counsel and Coverage Counsel since 2015.

**ATTACHMENT:** Byrne Conley Letter of Engagement – New Proposed

**ACCEL  
AGREEMENT FOR LEGAL SERVICES**

By this Agreement dated January 9, 2023, Authority for California Cities Excess Liability ("ACCEL") and the Law Firm of Gibbons and Conley ("Firm") mutually agree:

**1. PURPOSE**

The ACCEL is in need of services of Firm for legal advice and counsel.

**2. FIRM'S OBLIGATIONS**

Firm shall perform legal services and legal representation on behalf of ACCEL on a case-by-case basis and as requested by the ACCEL Board of Directors, Executive Committee, Board President and/or designee(s). Firm shall assign to such matters, members of its staff who are qualified and competent to provide professional legal service and legal representation. No major decisions concerning the handling of a case, commitments for substantial expenditures concerning retention of expert witnesses, medical testimony or settlement offers are to be made without prior approval of the ACCEL Board of Directors, Executive Committee, Board President and/or designee(s).

A. Byrne Conley is designated as the contact person with the Firm for ACCEL and will be the person primarily responsible for providing services under this agreement.

**3. PASIS'S OBLIGATIONS**

In consideration for providing legal services, including all of the time devoted to a lawsuit commencing with the first time received by Firm, ACCEL shall pay Firm upon receipt of detailed invoice at rate of \$225 per hour for attorney time, and \$102 per hour for paralegal time. Telephone, telephone facsimile, routine copying and auto mileage shall be included as a 2.5% overhead charge. In addition, Firm also shall be paid for actual costs of deposition and court reporter fees, expert witness fees, accident analysis, medical examination, jury fees, and other items as may be necessary in representation. Invoices for aforesaid fees and expenses under normal conditions will be forwarded to ACCEL's accountant for direct payment at:

ACCEL  
c/o Alliant Insurance Services  
Conor Boughey [cboughey@alliant.com](mailto:cboughey@alliant.com)  
Lorissa Huey [Lorissa.Huey@alliant.com](mailto:Lorissa.Huey@alliant.com)

ACCEL and its members shall cooperate fully with the Firm by providing at no expense to Firm such reports, investigations, records, maps and other documents as may be reasonably necessary for legal representation.

**4. TERM**

The term of this Agreement shall be from the date of mutual execution, onward, to be terminated by either party upon written notice. Firm shall be paid for all fees and costs that have accrued up to the time of termination. Firm and ACCEL each agree to sign any documents reasonably necessary to complete Firm's discharge or withdrawal.

**5. INDEPENDENT CONTRACTOR STATUS**

In performing the legal services herein agreed upon, Firm shall have the status of an independent contractor and shall not be deemed to be an officer, employee or agent of ACCEL or its member cities.

**6. SUBCONTRACT AND ASSIGNMENT**

Firm shall not subcontract any of the work or assign any of the rights or obligations without the prior written consent of the ACCEL.

**7. RECORDS**

Firm shall at all times keep a complete and thorough record of the time expended in performing services on behalf of the ACCEL as herein agreed upon and Firm shall also make available to ACCEL for audit all of such records so maintained.

**8. INSURANCE**

During the entire term of this contract and any extension or modification thereof, the Firm shall keep in effect insurance policies providing coverage for commercial general liability, professional liability, and workers' compensation and employers' liability exposure at limits described below, or as acceptable by ACCEL, and shall provide certificates of insurance evidencing the above-required insurance coverage annually.

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**Minimum Limits of Insurance**

**General and Auto Liability:** \$1,000,000 per occurrence combined for bodily injury, property damage and personal injury. \$1,000,000 per occurrence for Business Auto Liability.

**Employer's Liability:** \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.

**Errors and Omissions:** \$1,000,000 per occurrence/aggregate on a claims made basis.

**9. CONFLICTS OF INTEREST**

Firm promises and agrees that it and members of its staff shall avoid any actual or potential conflicts of interest. Firm agrees to immediately notify ACCEL or its designee, of any matter that may involve an actual or potential conflict of interest.

**10. SIGNATURE**

THESE SIGNATURES ATTEST THE PARTIES AGREEMENT HERETO:

ACCEL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
ACCEL Board President or Program Manager

Gibbons & Conley

By: A. Byrne Conley Date: 9 Jan 2023  
A. Byrne Conley, Partner