

2020 - 2021 Memorandum of Coverage



California Joint Powers
Risk Management Authority

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CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE

PROGRAM YEAR: 2020 - 2021

This coverage document shall be in effect from July 1, 2020 through June 30, 2021.

In consideration of the payment of the deposit premium, the *Authority* agrees with the *covered parties* as follows:

SECTION I - COVERAGES

The *Authority* will pay up to the *limit of coverage* those sums for *ultimate net loss* in excess of the *retained limit* that the *covered parties* become legally obligated to pay as *damages* because of *bodily injury, property damage, personal injury, public officials errors and omissions or employment practices liability* as those terms are herein defined and to which this agreement applies, caused by an *occurrence* during the coverage period, except as otherwise excluded.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled self-insurance pursuant to California Government Code section 990.8. This Memorandum is a negotiated agreement among the *members* of the *Authority* and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles that require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the *members* of the *Authority*, acting through the Board of Directors in adopting this Memorandum. As the *Authority* is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide "Cumis" counsel to a *covered party* in disputed coverage situations under California Civil Code section 2860. Finally, failure to provide notice to a *covered party* of any coverage dispute shall not operate to waive any of the provisions of this Memorandum.

SECTION II - DEFINITIONS

- 1) **Aircraft** means a vehicle designed for the transport of persons or property principally in the air. Aircraft does not include Small Unmanned Aircraft as defined in 14 Code of Federal Regulations Section 107.3.
- 2) **Airport** means an area of land or water used or intended to be used for the landing and taking off of *aircraft*; including an appurtenant area used or

intended to be used for *airport* buildings or other *airport* facilities or right of way; and *airport* buildings and facilities located in any of these areas. “*Airport*” includes a heliport.

- 3) **Authority** shall mean the California Joint Powers Risk Management Authority created by the JPA Agreement.
- 4) **Automobile** means a land motor vehicle, trailer or semi-trailer.
- 5) **Bodily injury** means *bodily injury*, sickness, disease or emotional distress sustained by a person, including death resulting from any of these at any time. *Bodily injury* includes *damages* claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.
- 6) **Care, Custody or Control Hazard** includes all *property damage* to: (1) property that the *covered party* rents or occupies; (2) premises the *covered party* sells, gives away or abandons, if the *property damage* arises out of any part of those premises; (3) property loaned to the *covered party*; and (4) personal property in the care, custody or control of the *covered party*.
- 7) **Covered Indemnity Contract** means that part of any contract or agreement pertaining to the *covered party's* routine governmental operations under which the *covered party* assumes the tort liability of another party to pay for *bodily injury* or *property damage* to a third person or organization. This definition applies only to liability that would be imposed by law in the absence of any contract or agreement, arising out of an *occurrence* to which this Agreement applies. Routine governmental operations include the *Covered Party's* lease of premises, easement or license agreement, use of facilities or equipment, mutual aid agreement, or other agreement approved by Authority staff in advance of the loss.
- 8) **Covered party** means:
 - (a) A *member entity* of the California Joint Powers Risk Management Authority. This includes all entities named in its declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities coming under the entity's direction or control, or for which the entity's board members sit as the governing body, except a hospital board or commission, regardless of how such body is denominated.
 - (b) A member of a joint powers authority that is a *member entity* herein, which participates in said jpa's liability program. This includes all entities named in its declarations page, including any and all

commissions, agencies, districts, authorities, boards (including the governing board) or similar entities coming under the entity's direction or control, or for which the entity's board members sit as the governing body, except a hospital board or commission, regardless of how such body is denominated.

- (c) Any person or entity identified as a *covered party* holding a certificate of coverage duly issued by the *Authority*, for *occurrences* during the coverage period identified in the certificate of coverage; if a particular activity is identified in the certificate of coverage, the person or entity is a *covered party* only for *occurrences* arising out of the described activity. *Coverage will not be broader than what the Member Entity is required to provide by the contract or agreement, nor for higher limits than required by the contract, nor broader than the coverage provided under this Memorandum.*
- (d) Any person who is an official, *employee* or volunteer of a person or entity covered by (a), (b), or (c) herein, whether or not compensated, while acting in an official capacity for or on behalf of such person or entity, including while acting on any outside board at the direction of such person or entity, except a hospital board or commission, regardless of how such body is denominated. *Covered party* shall not include any person whose conduct is not within the course and scope of his or her employment or office with the *covered party* at the time of the act or acts that give rise to liability.
- (e) With respect to any *automobile* owned or leased by a *covered party* (described in (a), (b) or (c) above), or loaned to or hired for use by or on behalf of the *covered party*, any person while using such *automobile*, and any person or organization legally responsible for the use thereof, provided the actual use is with the express permission of the *covered party*, but this protection does not apply to:
 - 1) Any person or organization, or any agent or *employee* thereof, operating an *automobile* sales agency, repair shop, service station, storage garage or public parking place, with respect to an *occurrence* arising out of the operation thereof; or
 - 2) The owner or any lessee, other than the *covered party*, of any *automobile* hired by or loaned to the *covered party* or to any agent or *employee* of such owner or lessee.

This agreement does not provide uninsured or underinsured motorist coverage.

- (f) Notwithstanding sections (d) and (e) above, the defense and indemnity coverage afforded by this agreement to a past or present official, *employee* or volunteer of a *member entity* (described in (a) or (b) above) is not broader than the *member entity's* duty to defend and indemnify its official, *employee* or volunteer pursuant to California Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof. If the *member entity* which employs the official, *employee* or volunteer is not obligated under the Government Code to provide a defense, or to provide indemnity, for a claim, or if said *member entity* refuses to provide such defense and/or indemnity to said official, *employee* or volunteer, then this agreement shall not provide for any such defense or indemnity coverage to said official, *employee* or volunteer.

All immunities, defenses, rights and privileges afforded to a *member entity* under Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof, shall be afforded to the *Authority* to bar any defense or indemnity coverage under this agreement to that *member entity's* official, *employee* or volunteer.

- (g) No person or entity is a *covered party* with respect to the conduct of any current or past partnership, joint venture or joint powers authority unless all members are *covered parties* under (a) or (b) herein. However, for any person (1) who is an official, *employee*, or volunteer of an entity covered by (a) or (b) herein, (2) who participates in the activities of any partnership, joint venture or joint powers authority (or any separate agency or entity created under any joint powers agreement by the named entity), and (3) who is acting for or on behalf of an entity covered by (a) or (b) herein at the time of the *occurrence*, then coverage is afforded by this agreement. Such coverage will be in excess of and shall not contribute with any collectible insurance or other coverage provided to the other joint powers authority, agency or entity.
- (9) **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 floodwater, no railroad fill or structure, and no road or highway fill or structure, no circular tank constructed of steel or concrete or both, 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*.

No obstruction in the channel of a stream or watercourse which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground shall be considered a *dam*.

The levee of an island adjacent to tidal waters in the Sacramento-San Joaquin Delta, as defined in California Water Code section 12220, even when used to impound water, shall not be considered a dam and the impoundment shall not be considered a reservoir if the maximum possible water storage elevation of the impounded water does not exceed four feet above mean seal level, as established by the United States Geological Survey 1929 datum.

No noncircular tank, constructed of steel or concrete, or both, that is constructed in a county of the third class by a public agency, under the supervision of a civil engineer registered in the state, that does not exceed 75 acre feet in capacity or 30 feet in height, and no barrier that is not across a stream channel, watercourse, or natural drainage area and that has the principal use as a sewage sludge drying facility shall be considered a *dam*.

Nor shall any impoundment constructed and utilized to hold treated water from a sewage treatment plant be considered a *dam*. Nor shall any wastewater treatment or storage pond exempted from state regulation and supervision by California Water Code section 6025.5 be considered a *dam*.

- 10) **Damages** means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a *covered party*. *Damages* include (1) attorney fees not based on contract awarded against the *covered party*, (2) interest on judgments, or (3) costs, for which the *covered party* is liable either by adjudication or by compromise with the written consent of the *Authority*, if the fees, interest or costs arise from an *occurrence* to 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

covered party in a *covered indemnity contract* where such attorney fees or costs are attributable to a claim for *damages* covered by this Memorandum.

Damages shall not include those sums owed by a *covered party* to any employee or former employee as contract *damages*, any wages, salary, or benefit owed for work actually performed, or (whether prospective or retrospective) resulting from promotion or reinstatement, or any *damages* owing under an express contract of employment or an express obligation to make severance payments in the event of termination of employment.

Damages with respect to *employment practices liability* also shall not include amounts awarded under a labor grievance or arbitration pursuant to a collective bargaining agreement, nor sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct, or any non-monetary relief.

- 11) **Defense costs** means all fees and expenses incurred by any *covered party*, caused by and relating to the adjustment, investigation, defense or litigation of a claim to which this coverage applies, including attorney fees. *Defense costs* shall include adjusting expenses of a third party claims administrator which are specifically identifiable with a claim subject to this coverage.

Defense costs shall not include:

- (a) the office expenses, salaries of *employees* or officials, or expenses of the *covered party* or the *Authority*;
 - (b) any fee or expense relating to coverage issues or disputes between the *Authority* and any *covered party*; or
 - (c) attorney fees, interest on judgments, or costs awarded to a prevailing plaintiff against the *covered party*.
- 12) **Discrimination** means an act or failure to act with respect to any present or former *employee* or applicant for employment with regard to compensation, terms, conditions, privileges or opportunities of employment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, or other protected category or characteristic established pursuant to any applicable federal, state or local statute or ordinance.
- 13) **Employee** means a person whose labor or services is engaged and directed by a *covered party* described in definition 8 (a), (b) or (c) above. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a

supervisory, managerial or confidential position. *Employee* shall not include an independent contractor, volunteer or agent, and shall not include any person performing work pursuant to a court order in lieu of a fine or jail sentence.

- 14) **Employment Practices Liability** means liability arising from *discrimination, sexual harassment, retaliation* and/or *wrongful termination* claimed by an *employee*, former *employee* or applicant for employment of a *covered party*.
- 15) **Limit of coverage** shall be the amount of coverage stated in the declaration page or certificate of coverage for each *covered party per occurrence*, subject to any lower sublimit stated in this Memorandum. For each *occurrence*, there shall be only one *limit of coverage* regardless of the number of claimants or *covered parties* against whom a claim is made. If the *covered parties* have different limits of coverage, the highest limit for any party found liable by a final judgment will apply.
- 16) **Marina** means facilities which include floating docks, boat berthing spaces, marine fueling operations, marine repair facilities, storage facilities for boats and other related marine materials, and other related facilities in which berthing spaces are leased or rented to members of the public for berthing of their private boats. *Marina* includes all of such facilities beyond locking gates, fences or barriers barring access to non-lessees and within waterways enclosed by any breakwater or similar structure, and any repair and storage facilities wherever located.
- 17) **Medical malpractice** means the rendering of or failure to render any of the following services:
 - (a) medical, surgical, dental, psychiatric, psychological counseling, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or any services provided by a health care provider as defined in section 6146 (c), (2), (3) of the California Business and Professions Code.
 - (b) furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

Medical malpractice does not include first aid administered by *employees*, nor does it include advice or services rendered by a 911 emergency dispatcher.

- 18) **Member Entity** means a signatory to the JPA Agreement creating the California Joint Powers Risk Management Authority.
- 19) **Nuclear material** means source material, special *nuclear material*, or byproduct material. "Source material", "special *nuclear material*", and "byproduct material"

have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

20) **Occurrence** means:

- (a) with respect to *bodily injury* or *property damage*: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in *bodily injury* or *property damage* neither expected nor intended from the standpoint of the *covered party*. *Property damage* that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the *occurrence* that caused it.
- (b) with respect to *personal injury, public officials errors and omissions liability* and *employment practices liability*, respectively: an offense described in the definitions of those terms in this coverage agreement.

21) **Personal injury** means injury, other than *bodily injury*, arising out of one or more of the following offenses:

- (a) false arrest, detention or imprisonment, or malicious prosecution;
- (b) wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
- (c) publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or oral or written publication of material that violates a person's right of privacy.
- (d) *discrimination* or violation of civil rights.
- (e) injury resulting from the use of reasonable force for the purpose of protecting persons or property.

22) **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, asbestos, lead and waste. Waste includes material to be recycled, reconditioned or reclaimed. The term *pollutants* as used herein does not mean potable water, agricultural water, water furnished to commercial users or water used for fire suppression.

23) **Property damage** means:

- (a) physical injury to tangible property, including all resulting loss of use of that property; or

- (b) loss of use of tangible property that is not physically injured or destroyed.
- 24) **Public officials errors and omissions** means any actual or alleged misstatement or misleading statement or act or omission by any *covered party* (individually or collectively) arising in the course and scope of their duties with the *covered party* or claimed against them solely by reason of their being or having been public officials or *employees*, and which results in damage neither expected nor intended from the standpoint of the *covered party*.
- 25) **Retained limit** means the amount, identified in the applicable declaration or certificate of coverage, of *ultimate net loss* which the *member entity* must incur or become liable for before the *Authority* is obligated to make any payment, subject to the following:
- (a) For each *occurrence*, there shall be only one *retained limit* regardless of the number of claimants or *covered parties* against whom a claim is made. If the *covered parties* have different *retained limits*, the lowest *retained limit* of any party found liable will apply. Payment of the *retained limit* shall be apportioned among the *covered parties* in accordance with their proportionate shares of liability.
 - (b) If the payment is for a settlement, the *retained limit* shall be apportioned among the *covered parties*, in accordance with the respective parties' agreed upon or court-determined share of liability. In the event that the apportionment requires arbitration the *covered parties* will pay all costs of the California Joint Powers Risk Management Authority in seeking such determination, including its attorney's fees in proportion to the court's determination of liability.
 - (c) In the event that a structured settlement, whether purchased from or through a third party or paid directly by the *covered party* in installments, is utilized in the resolution of a claim or suit, only the present value of the agreed-upon payments (the present value cost of the structured settlement) shall be considered in determining satisfaction of the *covered party's retained limit*.
 - (d) The amount which the *covered party* must "incur or become liable for" so that the *retained limit* is satisfied and this coverage attaches may include sums paid on behalf of the *covered party* by:
 - 1) A commercial insurance carrier because of a policy purchased by the *covered party*;
 - 2) A commercial insurance carrier because of an additional insured endorsement issued to the *covered party*;

- 3) A self-insurance pooling joint powers authority which provides coverage to the *covered party*; or
- 4) A party making payment because of a contractual indemnity agreement with the *covered party*.

In the event that one of the sources listed above provides indemnity coverage to the *covered party* and other defendant(s) in the claim or suit, only those sums paid on behalf of the *covered party* shall be used to satisfy the *retained limit*. If payment is for a settlement, payment will be allocated between the *covered party* and the other defendant(s) in accordance with their court-determined shares of liability, or in an allocation according to liability as agreed upon by the *covered party* and the *Authority*. In the event that the *covered party* and the *Authority* are unable to agree upon an allocation, the matter will be submitted binding arbitration for a determination of the respective shares of liability. This determination will be according to the procedures set forth in the California Code of Civil Procedure, each side to bear its own costs.

26) **Fireworks Retained Limit**

For any fireworks display or demonstration sponsored or controlled by the covered party, if the covered party has not secured an additional insured endorsement in its favor from the fireworks vendor's insurance or coverage provider with limits in an amount of at least \$5 million dedicated, project specific aggregate limit, the Retained Limit will not be satisfied by any payment by the insurance or coverage provider for the vendor (see Definition 25(d)), and must instead be paid by the covered party; and the applicable Retained Limit will be increased by 50% (fifty percent) for any claim(s) arising out of the fireworks display or demonstration.

27) **Retaliation** means any adverse employment action taken against a present or former employee because the employee engaged in legally protected conduct.

28) **Sexual harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that: (1) are made a condition of employment; and/or (2) are used as a basis for employment decisions; and/or (3) create a work environment that is intimidating, hostile or offensive, or interfere with performance.

29) **Ultimate net loss** means the total of all *defense costs* incurred by the *covered parties* and all *damages* for which the *covered parties* are liable either by adjudication or by compromise with the written consent of the *Authority*, arising from an *occurrence* to which this coverage applies. However, *ultimate net loss* does not include defense expenses incurred by the *Authority* after the *Authority* assumes control of the negotiation, investigation, defense, appeal or settlement of any claim or proceeding. *Ultimate net loss* also does not include attorney's fees or costs

awarded to the prevailing party in a suit except where such attorney's fees or costs are attributable to a claim for compensatory damages covered by this Memorandum.

- 30) **Wrongful termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment.

SECTION III - DEFENSE AND SETTLEMENT

The *Authority* shall have no duty to assume charge of investigation or defense of any claim. However, the *Authority*, at its own expense, shall have the right to assume the control of the negotiation, investigation, defense, appeal or settlement of any claim which the *Authority* determines, in its sole discretion, to have a reasonable possibility of resulting in an *ultimate net loss* in excess of the applicable *retained limit*. The *covered party* shall fully cooperate in all matters pertaining to such claim or proceeding.

If the *Authority* assumes the control of the handling of a claim, the *covered parties* shall be obligated to pay at the direction of the *Authority* any sum necessary for the settlement of a claim, or to satisfy liability imposed by law, up to the applicable *retained limit*.

No claim shall be settled for an amount in excess of the *retained limit* without the prior written consent of the *Authority* and the *Authority* shall not be required to contribute to any settlement to which it has not consented.

In the alternative, if a settlement demand acceptable to the *Authority* 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.

SECTION IV - THE AUTHORITY'S LIMIT OF COVERAGE

The *limit of coverage* is the most the *Authority* will pay for *ultimate net loss* arising out of any *occurrence*, and the amount payable for *ultimate net loss* under this agreement shall be reduced by the amount of the *retained limit*. (For example, if the *covered party* has a \$40,000,000 *limit of coverage* and a \$500,000 *retained limit*, the *Authority* will pay not more than \$39,500,000 after exhaustion of the *retained limit*.) For each *occurrence*, there shall be only one *limit of coverage* regardless of the number of claimants or *covered parties* against whom a claim is made.

For any person or entity that is a covered party under Definition 8(c), or 8(c) and (d), pursuant to a certificate of coverage duly issued by the Authority, the limit of coverage will be the lower of: (1) the Limit stated in the Declarations page for the Member Entity; (2) any limit stated in the Additional Covered Party certificate or (3) the amount required to be provided by contract or agreement with the Member Entity.

Where this Agreement, or an endorsement or declaration, lists a “sublimit,” that sublimit operates as the *limit of coverage*. (For example, if the *covered party* has a \$2,000,000 sublimit and a \$1,000,000 *retained limit*, the *Authority* will pay not more than \$1,000,000 after exhaustion of the *retained limit*.)

Should it appear to the Board of Directors that the total exposure for all claims in a program year may exceed a general aggregate limit for Pool D, the aggregate limit will be prorated between the *member entities*, on the basis of the *member entities’* respective premium contributions for the program year at issue. For purposes of determining whether the aggregate limit has been exhausted, the Board retains full discretion regarding placement of reserves, and payment of claims in order to equitably allocate the general aggregate limit. Once the general aggregate limit for such claims occurring during a program year has been exhausted, the *Authority* will have no further obligation to pay for covered ultimate net loss for such claims within Pool D, but this will not limit coverage which may be available within Pools B or C.

EPL Sublimit

A sublimit applies to *employment practices liability*. For any *claims* arising out of *employment practices liability*, the *limit of coverage* will be \$10,000,000 per *occurrence* all allegations by an *employee* or former *employee* or applicant for employment in the same *claim* shall be considered as one *occurrence* for the purpose of the *limit of coverage*. All *claims* by all *employees* or former *employees* or applicants for employment arising from the same act, policy, or course of conduct by a *covered party* shall be considered as one *occurrence* for the purpose of the *limit of coverage*. All *claims* which allege *employment practices liability* for *occurrences* extending to a duration of more than one coverage period shall be treated as a single *occurrence* arising during the first coverage period when the *occurrence* begins.

The sublimit of coverage is \$5,000,000 per occurrence in Pool C and \$5,000,000 in Pool D subject to a \$5,000,000 annual aggregate collectively in Pool D only, for all covered parties; Limit of coverage is the most the Authority will pay for all ultimate net loss arising out of employment practices liability for any covered party (inclusive of its employees, commissions, agencies, districts, authorities or boards), as defined in Section II(8)(a) or (b) for any coverage year.

Subsidence Sublimit

For *bodily injury, property damage or personal injury* arising out of the subsidence of land or earth, the sublimit will be \$5,000,000 per *occurrence*. Subsidence means the movement of land or earth, including, but not limited to, sinking or settling of land, earth movement, earth expansion and/or contraction, *landslide*, slipping, falling away, caving in, eroding, earth sinking, and earth rising or shifting or tilting.

Fungal Pathogens Sublimit/Aggregate Limit

A sublimit applies to any loss, cost or expense directly or indirectly arising out of or related to exposure to “fungal pathogens,” whether or not there is another cause of loss that may have contributed concurrently or in any sequence to the loss. The sublimit will be \$10,000,000 per occurrence, subject also to a \$5,000,000 annual aggregate collectively in Pool D only, for all covered parties. The designated general aggregate limit of \$5,000,000 is the most the *Authority* will pay from Pool D because of such claims for all *covered parties*, combined, in any *program year*.

“Fungal pathogens” as used herein, shall mean any fungus or mycota or any byproduct or type of infestation produced by such fungus or mycota, including, but not limited to, mold, mildew, mycotoxins, spores, bacterial pathogens, or any biogenic aerosols.

Sexual Abuse – Daycare Operations Sublimit/Aggregate Limit

A sublimit applies to “sexual abuse” arising out of daycare operations. The sublimit will be \$10,000,000 per occurrence, subject also to a \$5,000,000 annual aggregate collectively in Pool D only, for all covered parties. The designated general aggregate limit of \$5,000,000 is the most the *Authority* will pay from Pool D because of such claims for all *covered parties*, combined, in any *program year*. All claims based on or arising out of “sexual abuse” as respects daycare operations by the covered party’s employee and/or volunteer, or more than one of the covered party’s employees and/or volunteers acting in concert, will be considered as arising out of one occurrence regardless of:

- (1) the number of persons sexually abused;
- (2) the number of locations where the sexual abuse occurred;
- (3) the number of acts of sexual abuse; or
- (4) the period of time over which the sexual abuse took place.

An occurrence which extends to a duration of more than one coverage period shall be treated as a single occurrence arising during the first coverage period when the occurrence began.

As used herein, “sexual abuse” means any actual or alleged criminal sexual conduct of a person or persons acting in concert, which causes physical and/or mental injuries. “Sexual abuse” includes sexual molestation, sexual assault, sexual exploitation or sexual injury.

Terrorism Sublimit/Aggregate Limit

A sublimit applies to any loss, cost or expense directly or indirectly arising out of any act or multiple, related acts of *terrorism*, regardless of any other cause or event contributing concurrently or in sequence to the loss. The sublimit will be \$10,000,000 per occurrence, subject also to a \$5,000,000 annual aggregate collectively in Pool D, only, for all covered parties. The designated general aggregate limit of \$5,000,000 is the most the Authority will pay from Pool D because of such claims for all *covered parties*, combined, in any program year

As used in this sublimit, “terrorism” shall mean any activity that:

- (1) is declared by any authorized governmental official to be or to involve “terrorism,” terrorist activity or acts of terrorism; or,
- (2) includes, involves or is associated with the use or threatened use of force, violence or harm to human life, tangible or intangible property, the environment, natural resources, or the infrastructure or includes, involves or is associated with, in whole or in part, the use or threatened use of, or release or threatened release of, any biological, chemical, radioactive or nuclear agents, materials, devices or weapons, and
- (3) is intended, in whole or in part, to (i) intimidate, coerce, or frighten a civilian population; or (ii) disrupt or interfere with any segment of a local, national or global economy; or (iii) influence, disrupt or interfere with any government related operations, activities or policies; or (iv) promote, further or express opposition to any political, ideological, racial, ethnic, social or religious cause or objective.

Airports, Pollution, and Property of a Covered Party Sublimits/Aggregate Limits

Exclusions 2 (Airports), 27 (Pollution) and 29 (Property of a Covered Party) contain additional sublimits/aggregate limits.

SECTION V - COVERAGE PERIOD AND TERRITORY

This agreement applies to *bodily injury, personal injury, property damage, public officials errors and omissions* and *employment practices liability* which occurs anywhere in the world during the coverage period identified in the applicable declaration or certificate of coverage.

SECTION VI - EXCLUSIONS

(Captions provided for the exclusions are descriptive only and do not serve to either expand or limit coverage.)

This agreement does not apply to:

1) **Aircraft**

Claims arising out of the ownership, operation, use, maintenance or entrustment to others of any *aircraft* by a *covered party*. "Ownership, operation, use or maintenance" as used herein does not include static displays of *aircraft* in a park or museum setting.

2) **Airports**

Claims arising out of ownership, maintenance, management, supervision or the condition of any *airport*. However, this exclusion does not apply to *public officials errors and omissions* or *employment practices liability* coverage arising from the ownership, maintenance, management, supervision or the condition of any *airport*. Notwithstanding what is stated in the applicable declarations, *public officials errors and omissions* coverage described in this exception will be subject to a sublimit of \$5,000,000.

3) **Airshows**

Claims arising out of any air show sponsored or controlled by the *covered party*.

4) **Bid Specifications/Cost Overruns**

- (a) Claims arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
- (b) Mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided; this exclusion extends to such claims however denominated, including claims of breach of oral or written contract, third-party beneficiary claims, quantum meruit claims, and/or open account claims.

5) **Contractual Obligations**

Claims arising out of:

- (a) a failure to enter into a contract, or failure to perform or breach of a contractual obligation; or

(b) *bodily injury or property damage* for which the *covered party* is obligated to pay *damages* by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for *damages*:

- 1) assumed in a contract or agreement that is a *covered indemnity contract*, provided the *bodily injury or property damage* occurs subsequent to the execution of the contract or agreement; or
- 2) that the *covered party* would have in the absence of the contract or agreement.

Notwithstanding this exclusion, the General Manager (or Board President or Vice President, in the absence of the General Manager) is granted authority to approve settlements involving promises to indemnify a co-defendant as part of the settlement. Any funds recovered from a co-defendant under such an agreement must be applied to *ultimate net loss* in addition to the *retained limit* before CJPRMA coverage is triggered.

6) **Damages Other Than Money**

Ultimate net loss arising out of relief, or redress, in any form other than money *damages*.

7) **Dams**

Claims arising out of partial or complete structural failure of a *dam* owned or operated by a *covered party*.

8) **Defamation**

Claims arising out of oral or written publication of material, if done by or at the direction of the *covered party* with knowledge of its falsity.

9) **Employment Liability**

Bodily injury to:

- (a) an *employee* of the *covered party* arising out of and in the course of:
 - 1) employment by the *covered party*; or
 - 2) performing duties related to the conduct of the *covered party's* business.
- (b) the spouse, child, unborn child or fetus, parent, brother or sister of the *employee* as a consequence of paragraph (a) above.

This exclusion applies to any obligation to share *damages* with or repay someone else who must pay *damages* because of the injury except under a *covered indemnity contract*.

This exclusion applies whether the *covered party* may be liable as an employer or in any other capacity.

10) **Employment Practices – Labor Disputes**

Under *employment practices liability*, to any potential or actual liability arising out of a lockout, strike, picket line, replacement or other similar action in connection with labor disputes or labor negotiations; or any liability arising from the failure to pay wages earned by an employee of a Covered Party, including but not limited to any claim or suit brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation or minimum wage.

11) **Employment Practices – Workers' Adjustment and Retraining**

Under *employment practices liability*, to any liability arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law.

12) **Elected Officials – Employees - Restitution**

Claims by any *covered party* against its own past or present elected or appointed officials, *employees* or volunteers, where such claim seeks *damages* or restitution payable to the *covered party*.

13) **Employee Benefit Plans**

Benefits payable under any *employee* benefit plan (whether the plan is voluntarily established by the *covered party* or mandated by statute) because of unlawful *discrimination*.

This exclusion applies whether the *covered party* may be liable as an employer or in any other capacity.

14) **Employment Benefits**

Any obligation under any workers' compensation, unemployment compensation or disability benefits law or any similar law.

This exclusion applies whether the *covered party* may be liable as an employer or in any other capacity.

15) **ERISA**

Claims arising out of the Employee Retirement Income Security Act of 1974 or any law amendatory thereof, or any similar law or liability arising out of fiduciary activities as respects *employee* benefits plans.

16) **Failure to Supply**

Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, storm drainage or sewage capacity when such failure is a result of the inadequacy of the *covered party's* facilities to supply or produce sufficient gas, water, electricity, storm drainage or sewage capacity to meet the demand. This exclusion does not apply if the failure to supply results from direct and immediate accidental damage to tangible property owned or used by any *covered party* to procure, produce, process or transmit the gas, water, electricity, storm drainage or sewage.

17) **Fines, Penalties, Punitive Damages**

Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive *damages*. This exclusion applies whether the fine, assessment, penalty, 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 specific item of property or a specific sum of money, because such item of property or sum of money was not lawfully or rightfully acquired by the *covered party*.

18) **Firing Ranges**

Claims arising out of the private use of a firing range owned, operated or maintained by a *covered party* where such private use is sanctioned by the *covered party*, except where such use is by a covered individual as defined in definition (8) (d). This exclusion does not apply to such private use where all of the following conditions are met:

- (a) A qualified range master is present at all times while the firing range is being utilized;
- (b) The firing range is only provided for the additional use of law enforcement divisions of other public agencies, and police academies, herein defined as California P.O.S.T. (Peace Officers Standards & Training) Certified Basic Academies;
- (c) Any agency using the firing range has provided an indemnification agreement which assumes full responsibility by the user agency for all liability arising out of their activities; and
- (d) The user agency has provided liability coverage in an amount of not less than \$1,000,000 and has also provided a certificate of coverage which names the CJPRMA member as an additional covered party.

19) **Hospitals**

Claims arising out of ownership, maintenance, management, supervision or the condition of any hospital.

20) **Intentional Conduct**

Claims for injury or *damages* caused by intentional or criminal conduct done by the *covered party* with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *covered party* did not authorize, ratify, participate in, consent to, or have knowledge of such conduct by its past or present *employee*, elected or appointed official, or volunteer, and the claim against the *covered party* is based solely on its vicarious liability arising from its relationship with such *employee*, official or volunteer, this exclusion does not apply to said *covered party*.

21) **Jumping/Propelling Activities**

Claims arising out of bungee jumping or propelling activities sponsored, controlled or authorized by a *covered party*.

22) **Land Use**

Claims arising out of or in connection with land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called, and whether or not liability accrues directly against any *covered party* by virtue of any agreement entered into by or on behalf of any *covered party*. Land use planning and land use regulation include the approval or disapproval of any land-use entitlement including but not limited to general plan amendments, zoning amendments, variances, permits, tract maps, development agreements, owner-participation agreements, or disposition-and-development agreements; the approval or disapproval of any rent control ordinance, outdoor advertising ordinance, or adult bookstore ordinance, taxi ordinance; or the approval or disapproval of the operation of a marijuana dispensary whether medical, recreational or otherwise, any ordinances governing that activity, and any and all enforcement efforts.

23) **Marinas**

Claims arising out of:

- (a) or connected with *property damage* to private vessels or craft while present at or in a *marina* owned, operated or controlled by a *covered party* whether or not the vessel or craft is docked, moored or underway; or
- (b) *bodily injury* or *property damage* occurring on, in or about any boat owned or operated by the *covered party* (whether such vessel is being operated or has broken away from any dock or mooring) while present at or in a *marina* owned, operated or controlled by a *covered party*.

24) **Medical Malpractice**

Claims arising out of any professional *medical malpractice* (1) committed by a doctor, osteopath, chiropractor, dentist or veterinarian, or (2) committed

by any health care provider (as defined in Business & Professions Code Section 6146(c) (2)) working for any hospital or hospital operated out-patient, in-patient or other clinic at the time of the *occurrence* giving rise to the loss. This exclusion shall not apply, however, to any injury arising out of emergency medical services rendered or which should have been rendered to any person or persons during the coverage period by any duly certified emergency medical technician, paramedic, or nurse who is employed by or acting on behalf of any *member entity* to provide such services, but is not employed at a hospital, clinic or nursing home facility.

25) **Multi Passenger Vehicles**

Claims arising out of the ownership, operation, maintenance or use of any vehicle (1) with over 30 passenger seats or carrying over 30 passengers and (2) which is owned, operated, maintained or used by any transit authority, transit system or public transportation system owned or operated by or on behalf of the *covered party*.

26) **Nuclear Material**

Claims arising out of the hazardous properties of *nuclear material*.

27) **Pollution**

Claims which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants* at any time.

- (a) This exclusion does not apply to firefighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or the discharge of *pollutants* for the purpose of controlling a fire; or to police use of mace, oleoresin capsicum (O.C.), pepper gas or tear gas; or to weed abatement or tree spraying.
- (b) This exclusion does not apply to claims arising from sudden and accidental sewer backups into a home or business, but this extension of coverage does not apply to backups, overflow or runoff into public waterways. Notwithstanding what is stated in the applicable declarations, the *limit of coverage* for claims described in this exception will be subject to a sublimit of \$5,000,000.
- (c) This exclusion does not apply to claims arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine and other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or wastewater treatment or in water used in swimming pools, wading pools or decorative fountains.

Notwithstanding what is stated in the applicable declarations, the *limit of coverage* for claims described in this exception will be subject to a sublimit of \$5,000,000.

- (d) This exclusion does not apply to claims arising from materials being collected as part of any drop-off or curbside recycling program implemented and operated by the *covered party*; if the materials have not been stored by the *covered party* or *parties* for a continuous period exceeding ninety (90)

days. Notwithstanding what is stated in the applicable declarations, the *limit of coverage* for claims described in this exception will be subject to a sublimit of \$5,000,000.

- (e) This exclusion does not apply to sudden and accidental discharges of *pollutants* occurring during the transportation or deposit of materials as part of garbage collection activities. However, the exclusion does apply after *pollutants* have been deposited at a landfill or garbage dump.
- (f) This exclusion does not apply to *bodily injury or property damage* arising from activities of the *covered party* to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*, but this exception will not apply to *bodily injury or property damage* caused by *pollutants* on or arising from premises, equipment or locations under the control of the *covered party*.
- (g) This exclusion does not apply to sudden and accidental discharges of *pollutants* from premises owned or controlled by a *Covered Party* as described in Definition 8(a) or (b) if the discharge is discovered within ten (10) days of the *occurrence* and reported to the *Authority* within thirty (30) days of discovery. Notwithstanding what is stated in the applicable declarations, the *limit of coverage* for claims described in this exception will be subject to a sublimit of \$5,000,000.

As used in paragraphs (b), (c), (e) and (g) above, “sudden” means abrupt or immediate, and occurring within a period not exceeding twenty-four (24) hours; “accidental” means causing harm neither expected nor intended by a *covered party*.

Notwithstanding what is stated in the applicable declarations, any liability arising out of the actual, alleged or threatened exposure to asbestos or lead, which is covered by an exception within this exclusion, shall be subject to a sublimit of \$5,000,000.

28) **Pollution Clean Up**

Any loss, cost or expense, including *defense costs*, arising out of any:

- (a) request, demand or order 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 *pollutants*; 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 *pollutants*; or

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

29) **Property of a Covered Party**

Property damage to:

- (a) property owned by the *covered party*;
- (b) property rented to or leased to the *covered party* where it has assumed liability for damage to or destruction of such property, unless the *covered party* would have been liable in the absence of such assumption of liability;
or
- (c) *aircraft* or *watercraft* in the *covered party's* care, custody or control.

Notwithstanding what is stated in the applicable declarations, the *limit of coverage* for any *property damage* not excluded by the language of this exclusion, but which is described in the *care, custody or control hazard*, shall be subject to a general aggregate limit within Pool D only. The designated general aggregate limit of \$5,000,000 is the most the *Authority* will pay from Pool D for all *ultimate net loss* described in the *care, custody or control hazard* for all *covered parties*, combined, in any program year.

30) **Public Officials Errors & Omissions – Fiduciary Liability**

Under *public officials errors and omissions* coverage, claims (including emotional distress claims) arising from the *covered party's* activities in a fiduciary capacity including but not limited to those with respect to: (a) property, including related operations, in which the *covered party* is acting in a fiduciary or representative capacity; (b) a pension, welfare, profit sharing, mutual or investment trust fund or trust, benefit plan or similar activity in a fiduciary capacity; (c) the issuance, management of proceeds or repayment of bonds, notes or other debt instruments by any insured or any agent acting on behalf of such insured; or (d) the purchase, transfer or sale of any securities by any insured or agent acting on behalf of such insured.

31) **Public Officials Errors & Omissions – Bodily Injury or Property Damage**

Under *public officials errors and omissions* coverage, *bodily injury, personal injury*, or physical injury to tangible property, including all resulting loss of use of that property.

32) **Racing Contests**

Claims arising out of *automobile* or motorcycle drag racing, speed racing, or similar speed contests sponsored, controlled or participated in by a *covered party*.

33) **Reasonable Accommodation**

Any expense or cost incurred by a *covered party* arising from reasonable accommodation of any disabled person, including any *employee*.

34) **Refunds/Restitution**

Refund or restitution of taxes, fees or assessments.

35) **Reimbursement of Money**

Claims for refund, reimbursement or repayment of any monies to which a *covered party* was not legally entitled.

36) **Transit Authorities**

Claims arising out of the operation of vehicles by or on behalf of any transit authority, transit system, or public transportation system owned or operated by a *covered party*, unless the vehicles are owned or leased by the *covered party* and driven, maintained, and supervised by *employees* of the *covered party*. However, this exclusion does not apply to *public officials' errors and omissions* coverage arising from the operation of any transit authority, transit system, or public transportation system.

37) **Tumbling Devices**

Claims arising out of the ownership, maintenance or use of any trampoline or any other rebound tumbling device.

38) **Uninsured/Underinsured Motorists**

Uninsured or underinsured motorist coverage.

39) **Watercraft**

For any motorized watercraft owned, operated, rented, or loaned to a *covered party*, to (1) *bodily injury or property damage* arising out of the use of watercraft unless such use is by an entity *employee* acting within the course and scope of employment; and (2) to watercraft being used to carry persons or property for a charge. Charge, as used herein, includes any payment or fee, including a donation. Use includes operation and loading or unloading. Use does not include static displays of watercraft.

40) **Willful Violation of Statute**

Claims arising out of the willful violation of a statute or ordinance committed by the *covered party* or with its consent.

SECTION VII - CONDITIONS

1) **Covered party's Duties in the Event of Occurrence, Claim or Suit**

(a) The *covered party* shall notify the *Authority* within 30 days upon receipt of notice of a claim, or the setting of a reserve on any claim or suit including multiple claims or suits arising out of one *occurrence*, such claim or reserve amounting to fifty percent or more of the *retained limit*; Title 42 USC 1983 cases in which a complaint has been served and the plaintiff is represented by legal counsel or with reserves of fifty percent or more of the *retained limit*; or regardless of reserve, any claim involving:

- 1) one or more fatalities;
- 2) loss of a limb;
- 3) loss of use of any sensory organ;
- 4) quadriplegia or paraplegia;
- 5) third degree burns involving ten percent or more of the body;
- 6) serious facial disfigurement;
- 7) paralysis; or
- 8) closed head injuries.

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 *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 possible.

(b) The *covered party* shall notify the *Authority* within 30 days upon receipt of lawsuit containing allegations involving *employment practices liability*.

Where any lawsuit is reported after the 30 day period as required by this provision, all *defense costs* incurred prior to the date of late reporting will not constitute covered *ultimate net loss* eroding the *self-insurance retention*. The *covered parties* shall cooperate in an early review of *employment practices liability* claims or suits with counsel appointed by the *Authority* at the expense of the *Authority*.

- (c) If claim is made or suit is brought against the *covered party* and such claim or suit falls within the description in paragraph (a) above, the *covered party* shall be obligated to forward to the *Authority* every demand, notice, summons or other process received by it or its representative.
- (d) 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 of contribution or indemnity against any person or organization who may be liable to the *covered party* because of *bodily injury, personal injury, property damage or public officials errors and omissions* with respect to which coverage is afforded under this Agreement; and the *covered party* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (e) The *Authority* shall be entitled to complete access to the *covered party's* claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The *covered party* shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the *Authority*, and to provide the *Authority* with simultaneous copies of all correspondence provided to the *covered party* by its defense attorneys and/or agents.

2) **Action Against Authority/Subrogation**

- (a) No action shall lie against the *Authority* with respect to the coverages and related provisions defined in the Memorandum of Coverage (Memorandum) for the *Automobile/General Liability* Program unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the 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*. Any person or organization or the representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under said Memorandum to the extent of the coverage afforded by said Memorandum. No person or entity shall have any right under said 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 its legal representative.

(b) The *Authority* shall be subrogated to the extent of any payment hereunder (including all *ultimate net loss* incurred) to all the *covered party's* rights of recovery thereof, and the *covered party* shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amount so recovered shall be apportioned as follows:

- 1) The *Authority* shall be reimbursed first to the extent of its actual payment thereunder. If any balance then remains unpaid, it shall be applied to reimburse the *covered party*.
- 2) The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted by the *Authority*, it shall bear the expenses thereof.

3) **Bankruptcy or Insolvency**

Bankruptcy or insolvency of the *covered party* shall not relieve the *Authority* of any of its obligations hereunder.

4) **Other Coverage**

If insurance or any other coverage with any insurer, joint powers authority or other source respectively is available to the *covered party* covering a loss also covered hereunder (whether on primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance or coverage. This coverage shall be in excess of, and shall not contribute with, any insurance or coverage designed to cover the operator of an *automobile* or watercraft. This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a *covered party* herein as an additional *covered party* or additional insured party, where coverage is extended to a loss also covered hereunder.

This "other coverage" paragraph shall not operate to increase the *covered party's retained limit* or the *Authority's limit of coverage* under this Memorandum because of any coverage afforded to the *covered party* by the Employment Risk Management Authority.

5) **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 or the *retained limit* applicable per *occurrence*.

6) **Accumulation of Limits**

An *occurrence* which extends to a duration of more than one coverage period shall be treated as a single *occurrence* arising during the first coverage period when the *occurrence* begins.

7) **Termination**

This Agreement may be terminated at any time in accordance with the Bylaws of the *Authority*.

8) **Changes**

Notice to any agent or knowledge possessed by any agent of the *Authority* or by any other person shall not affect a waiver or a change in any part 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.

9) **Reduction of Limits**

In the event of reduction or exhaustion of the *retained limit* applicable to the *covered party* by reason of losses paid thereunder, this coverage shall (a) in the event of reduction pay the excess of the reduced underlying *retained limit*, or (b) in the event of exhaustion continue in force as underlying coverage. In no event shall the coverage apply until the *retained limit* is exhausted through the payment of *defense costs*, judgments and/or settlements to which the *Authority* has agreed.

10) **Coverage Disputes**

The General Manager shall make the initial determination whether to deny coverage on all or part of a claim, or to reserve the *Authority's* right to deny coverage on all or part of a claim, if a loss subsequently exceeds the *retained limit*.

A decision by the General Manager to deny coverage can be appealed to the Board of Directors. Notice of such appeal shall be submitted in writing within thirty (30) calendar days of the date of the General Manager's written notice of decision.

The appeal shall be considered by the Board of Directors at the next regular or special meeting following receipt of the written appeal; if the appeal is received too late

for inclusion in the agenda packet, it can be postponed to the next following Board meeting. The General Manger and the *covered party* will have the right to submit written materials and present oral argument to the Board, subject to reasonable time constraints.

Within sixty (60) days following any denial of coverage by the Board, the *covered party* may request, in writing, that the *Authority* initiate a declaratory relief action in Superior Court for a determination of the coverage matter. The declaratory relief action shall be initiated in the County of the *Authority's* home office, unless the *Authority* and *covered party* agree on a different venue.

Any determination by the Executive Committee, and by the Board of Directors if the matter is appealed to the Board of Directors, whether a Covered Party has breached parts (1) (a) or (b) of these Conditions concerning notice of a claim, and any determination whether the *Authority* has been prejudiced by that breach, so that this coverage does not apply, comes within the sole discretion of the Executive Committee and Board of Directors, respectively. Such determinations shall be conclusive, final and binding and shall not be the subject of any further review, whether by declaratory relief action or otherwise.

Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Section I – Coverages, plus interest at the same rate as the Authority earned on investments for the time period involved.

11) **Arbitration of Coverage Disputes**

(a) **Coverage Determinations**

Determinations regarding allocation of funds spent in settlement or defense of claims, for purposes of determining satisfaction of the Retained Limit under Definition 25, shall be subject to binding arbitration as set forth below. Additionally, the *Authority* and *covered parties* by mutual agreement may agree to submit any other coverage dispute to binding arbitration in the alternative to the procedure set forth in Section VII (10) above.

1) **Selection of Arbitrators**

If an appeal of a Board decision is submitted to arbitration, each side shall, within ten (10) calendar days, select one (1) arbitrator and submit his or her name in writing to the other side. Within ten (10) calendar days after their selection, these two arbitrators shall select a third independent arbitrator. If the two sides cannot agree on the selection of the third arbitrator within ten (10) calendar days, either side may petition the Alameda County Superior Court for the appointment of the third arbitrator

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pursuant to the provisions of section 1281.6 of the California Code of Civil Procedure. The third arbitrator shall be an attorney and preside as the Chairperson of the arbitration panel. No arbitrator shall be employed or affiliated with the *Authority* or the *covered party* or *parties*.

The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the Chairperson, unless both sides agree to an extension.

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

Except for notification of appointment and as provided 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 oral hearings.

2) **Discovery**

The procedures set forth in Code of Civil Procedure section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph (b).

3) **Testimony Under Oath**

The testimony of witnesses shall be given under oath.

4) **Length of Hearing**

The panel will endeavor to confine the length of the hearing to two (2) days. A decision of the panel shall be reported in writing. The written decision of the panel shall be given to both sides within thirty (30) calendar days of the close of the hearing.

5) **Certified Shorthand Reporter**

Either side wishing a certified shorthand reporter record shall make arrangements directly with a certified shorthand reporter and notify the other side of such arrangements in advance of the hearing. The requesting side shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

(b) **Funding of Defense and Payment of Claims Pending Resolution of Dispute**

During the course of the arbitration proceedings provided herein, the *covered party* will be responsible for all fees and expenses for investigation, defense or litigation of a claim or lawsuit. In the event the arbitration panel determines that coverage applies for such *defense costs*, the *Authority* will reimburse the *covered party* as directed by the panel.

(c) **Effects of Arbitration Decisions**

All decisions on appeals, whether by the Board of Directors (after the time to request arbitration has expired) or by the arbitration panel, shall be final and binding upon the parties and shall not be subject to any further appeal or court action, except as provided in Code of Civil Procedures sections 1286.2 and 1286.4 (relating to fraud or corruption, etc.).

(d) **General Law**

Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with section 1280).

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 1

Exclusions number 25 (Multi-Passenger Vehicles) and 36 (Transit Authorities), set forth in Section VI of the Memorandum of Coverage, are hereby modified by exempting therefrom the *member entity* listed below:

The school bus system operated by the Esparto Unified School District (YCPARMIA).

This endorsement is issued to:

1. **The Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA)**

This endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 2

Exclusion number 39 (Watercraft), set forth in Section VI of the Memorandum of Coverage, is hereby modified by exempting therefrom **The City of Lodi**, subject to the following conditions:

- 1) The exemption is applicable to the pontoon boats utilized for the City's camera safari tours.
- 2) Everyone on the boats is required to wear Coast Guard approved floatation devices.
- 3) A Coast Guard "Masters Limited" certification must be completed.

This endorsement is issued to: **The City of Lodi**

This endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 3

With respect to any claims arising out of the ownership, maintenance, management, supervision or the condition of port facilities owned or controlled by the parties named below, there shall be no coverage in "Pool C" or "Pool D." Coverage in "Pool B" shall be excess of, and shall not contribute with, any insurance or coverage provided to the parties listed below by the insurer/coverage provider for any contractor (whether public or private) under contract to operate or service the port facilities. But coverage in "Pool B" shall not be excess of any insurance or coverage provided by or through the California Association of Port Authorities, the U.S. Ports & Terminal Operators Risk Purchasing Group, and shall instead apply (in excess of YCPARMIA's coverage) to satisfy part of the \$1 million Self Insured Retention under CAPA coverage.

This endorsement is issued to: **The Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA), and its member, the City of West Sacramento.**

This endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 4

With respect to *bodily injury or property damage* arising out of, and caused by, a “Special Event,” the *Retained Limit* stated in the Declarations Page is amended to \$25,000.

For purposes of this Endorsement, “Special Event” means an event described below for which a third party (“Event Sponsor”), by written contract (including by permit agreement executed by the Event Sponsor), agrees to use facilities of the Covered Party for a specified period of time and activity, and agrees by the contract to indemnify and hold harmless the Covered Party from risk of loss arising from the event.

The indemnity and hold harmless agreement must provide that the Event Sponsor “agrees to indemnify and hold harmless [covered party] and its agents and employees from and against any injury, damage, claims, actions or suits arising out of the [Special Event], including those caused by negligence of the parties being indemnified and/or any dangerous condition of property of the parties being indemnified, and further agrees to defend and indemnify [covered party] from and against any injury, damage, claims, actions or suits arising out of or connected with the [special event].”

“Special event” includes:

1. Aerobics – Jazzercise demonstrations
2. Animal Acts/Shows (not Zoos or Circuses)
3. Antique Shows
4. Art Festivals
5. Art Shows
6. Auctions
7. Automobile Shows
8. Awards Presentations
9. Ballets
10. Banquets
11. Bazaars
12. Beauty Pageants
13. Bingo/Casino games
14. Block Parties, including those with Street Closures
15. Boat Shows
16. Body Building Contests
17. Business Meetings

18. Business Shows
19. Carnivals (not including mechanized rides)
20. Casino and Lounge Shows
21. Charity benefits, auctions and sales; fund raisers
22. Civic clubs and group meetings
23. Community Fairs
24. Concerts with total attendance of less than 1500
25. Consumer Shows
26. Conventions in Buildings
27. Craft Shows
28. Dance Shows/Recitals
29. Dances and Parties (except with Rap or Heavy Metal)
30. Debutante Balls
31. Dinner Theater
32. Dog Shows
33. Drill Team exhibitions
34. Educational exhibitions
35. Electronics Conventions
36. Ethnic Fairs or Celebrations
37. Evangelistic meetings
38. Expositions
39. Farmers' Markets
40. Fashion Shows
41. Fishing Shows or contests
42. Flea Markets
43. Flower Shows
44. Food concessions
45. Garden Shows
46. Graduations
47. Harvest Festivals
48. Holiday Shows
49. Home Shows
50. Horse Shows
51. Housing Shows
52. Instructional Classes
53. Job Fairs
54. Ladies Club events
55. Lectures
56. Livestock Shows
57. Luncheon Meetings
58. Mobile Home Shows
59. Musicals
60. Night Club Shows
61. Operas

62. Organized Sight Seeing Tours
63. Pageants
64. Parties with total attendance of less than 500
65. Picnics
66. Plays
67. Political Rallies
68. Proms
69. Quinceaneras
70. RV Shows
71. Religious Assemblies
72. Reunions
73. Rummage Sales
74. Scavenger Hunts
75. Scouting Jamborees
76. Seminars
77. Sidewalk Sales
78. Soap Box Derbies
79. Social Receptions or Gatherings
80. Speaking Engagements
81. Sporting events if non-professional, non-league, non-contact (bicycle races/rallies, equestrian events, golf, gymnastics, tennis, handball or racquetball, roller skating, handball, marathons, fun runs, 10K races, gymnastic competitions, ice skating shows, ski events)
82. Sporting events if non-professional, non-league, limited contact (baseball or softball, soccer, roller hockey, basketball)
83. Street Fairs
84. Swap Meets
85. Symphony Concerts
86. Teleconferences
87. Telethons
88. Theatrical Stage Performances
89. Trade Shows
90. Union Meetings
91. Vacation Shows
92. Voter Registration
93. Walk a Thons
94. Weddings and Receptions

“Special Event” does not include:

1. Aircraft/aviation events (static displays are not excluded)
2. All terrain boarding
3. Ballooning or balloon rides
4. Base jumping

5. Bouldering
6. Bungee Jumping
7. Carnival rides
8. Circuses
9. Concerts over 6 hours
10. Diving
11. Football (except passing camps with no contact drills)
12. Hang gliding/ parachuting/ parasailing
13. Jousting
14. Kayaking, rafting or canoeing in greater than Class 3 rapids
15. Lacrosse and Rugby
16. Mechanical amusement rides or services
17. Motorized sporting equipment including speed or demolition events
18. Mosh Pits
19. Mountain Biking
20. Parades
21. Power Boat Racing
22. Professional Sporting Activities: games, racing, or contest of a professional nature
23. Pyrotechnics or explosives
24. Rap or Heavy Metal concerts
25. Raves
26. Rock Climbing
27. Rodeo or Roping Events
28. Scuba Diving
29. Sporting events if part of a league
30. Sporting events if non-professional, full contact (football, ice hockey, rugby, boxing, wrestling, contact karate, contact martial arts)
31. Tractor or Truck Pulls
32. Trampolines
33. Zoos

Exclusion for participants. This endorsement does not apply to “bodily injury” or “property damage” to any person while practicing for or participating in any sports or athletic contest or exhibition, or while performing in any concert, show, or theatrical event.

Exclusion for sale alcohol. This endorsement does not apply to “bodily injury” or “property damage” arising from or caused, in whole or in part, by the Covered Party or Event Sponsor furnishing alcoholic beverages for which consumers are specifically charged by a third party vendor or caterer.

This Endorsement does not apply to liability arising from *Public Officials Errors and Omissions*.

This Endorsement does not eliminate the operation of any Exclusion in the Memorandum of Coverage.

This endorsement does not provide drop down coverage or reduce the retained limit under the reinsurance program.

This Endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 5

With respect to any claims arising out of the ownership, maintenance, management, supervision or the condition of port facilities owned or controlled by the party named below, there shall be no coverage.

This endorsement is issued to: **The City of Richmond**

This Endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 6

Scheduled Unmanned Aerial Vehicle, with Sublimit

Unmanned Aerial Vehicle (UAV) or “drone” means an *Aircraft* (including its aerial system or control device) that is not controlled directly by a person from within or on the aircraft, and falls within the definition of Small Unmanned Aircraft under 14 Code of Federal Regulations section 107.3.

For UAVs owned or operated by a *Covered Party* that are scheduled for coverage pursuant to this endorsement, Exclusion 1 (Aircraft) is deleted, for *Bodily Injury* and *Property Damage* coverage, only, but subject to the *Retained Limit* and *Limit of Coverage* sublimit stated herein.

With respect to *bodily injury* or *property damage* arising out of, and caused by, the use of a scheduled UAV, the *Retained Limit* shall be as stated in this endorsement.

With respect to *bodily injury* or *property damage* arising out of, and caused by, the use of a scheduled UAV, the Limit of Coverage shall be subject to a Sublimit of \$7,000,000 per *Occurrence*, and further subject to a \$2,000,000 annual aggregate limit collectively in Pool D only, for all *Covered Parties*.

In order to be a scheduled UAV for purposes of this Endorsement, the *Member* must report to CJPRMA the size, weight, type, manufacturer, and value of the UAV, and it must be endorsed for coverage. In the event of a loss involving a UAV not scheduled and endorsed for coverage, there will be no coverage under this Endorsement.

In order for coverage to apply, the UAV must be operated by a remote pilot certified with a small UAS rating, pursuant to FAA regulations. Unlicensed operation of a UAV is not covered under this Endorsement.

This Endorsement forms a part of the Memorandum of Coverage for the Program Year indicated above.

Retained Limit: \$500

Effective date: July 1, 2020

July 1, 2020

Date



Tony Giles, General Manager

CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

PROGRAM YEAR 2020 - 2021

ENDORSEMENT NO. 7

Exclusion number 23 (Marinas), set forth in Section VI of the Memorandum of Coverage, is hereby modified by exempting therefrom the *member entity* listed below and applying a sublimit of \$1,000,000 to any claims arising out of:

- (a) or connected with property damage to private vessels or craft while present at or in a marina owned, operated or controlled by the City of West Sacramento whether or not the vessel or craft is docked, moored or underway; or
- (b) bodily injury or property damage occurring on, in or about any boat owned or operated by the City of West Sacramento (whether such vessel is being operated or has broken away from any dock or mooring) while present at or in a marina owned, operated or controlled by the City of West Sacramento.

This endorsement is issued to:

- 2. **The Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA)**

This endorsement forms a part of the Memorandum of Coverage for the program year indicated above.

Effective date: December 10, 2020

December 10, 2020

Date



Tony Giles, General Manager