

**BAY CITIES JOINT POWERS INSURANCE
AUTHORITY (BCJPIA)**

POOLED WORKERS' COMPENSATION PROGRAM

MEMORANDUM OF COVERAGE

**FOR THE 2019-2020 PROGRAM YEAR
EFFECTIVE JULY 1, 2019**

FORM NO. BCJPIA 2019-20 WC

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

POOLED WORKERS' COMPENSATION COVERAGE

POLICY NUMBER BCJPIA 2019-20 WC

DECLARATIONS

NAMED COVERED PARTY: Bay Cities Joint Powers Insurance Authority,
et. al., as per Endorsement No. 1

1750 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

COVERAGE PERIOD: From 7-1-2019 to 7-1-2020
12:01 a.m. Pacific Time

LIMIT OF LIABILITY: \$1,000,000 Each Occurrence Less Member's
Retained Limit listed in Endorsement No. 1

FORM AND ENDORSEMENTS: Form No. BCJPIA 2019-20 WC,
FORMING PART OF THE MEMORANDUM AT INCEPTION Endorsement No. 1 and No. 2

ON BEHALF OF BAY CITIES JOINT POWERS INSURANCE AUTHORITY



AUTHORIZED REPRESENTATIVE

**POOLED WORKERS' COMPENSATION PROGRAM
MEMORANDUM OF COVERAGE**

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BAY CITIES JOINT POWERS INSURANCE AUTHORITY (BCJPIA)

POOLED WORKERS' COMPENSATION PROGRAM (PWCP)

MEMORANDUM OF COVERAGE

FORM NO. BCJPIA 2019-20 WC

2019-2020

This Memorandum of Coverage (MOC) sets forth the terms, conditions, and limitations of coverage provided under the Pooled Workers' Compensation Program (PWCP). The terms of this MOC may not be changed or waived except by amendment made a part of this MOC.

Throughout this MOC, words and phrases that appear in **bold** have special meaning. They are defined in General Section A, "Definitions" or in the Master Program Document.

GENERAL SECTION

A. DEFINITIONS

The terms in bold print are defined as follows:

1. **Authority** shall mean the Bay Cities Joint Powers Insurance Authority.
2. **Bodily injury** shall mean bodily injury by accident or disease, including death resulting therefrom, but shall not include **occupational disease**.
3. **Covered Party** shall mean a participant in this PWCP which has sustained a loss which is covered under this MOC of Coverage.
4. **Cumulative Injury or Illness** means occupational disease or cumulative injury caused by repeated events or repeated exposures at work, limited to the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first. The liability period for occupational disease or cumulative injury shall be limited to one year per California Labor Code 5500.5(a).
5. **Employee** shall mean any person performing work which renders the **Covered Party** legally liable as an employer under the Workers' Compensation Act of the State of California, or under the common law of the State of California.

6. **Loss** shall mean only such amounts as are actually paid by the **Covered Party** in payment or benefits under the applicable Workers' Compensation Law, in settlement of claims, or in satisfaction of awards or judgments for liabilities imposed by the Workers' Compensation Act or other law for **bodily injury** or **occupational disease** to an **employee**.
7. **Occupational Disease** shall include (1) death resulting therefrom and (2) cumulative injuries.
8. **Occurrence** means an injury or disease of an employee arising out of and in the course of employment. Bodily injury, illness, or disease sustained by one or more employees, as a result of a single accident, incident or exposure, shall be deemed to arise from a single occurrence. The occurrence shall be deemed to take place on the earlier of (a) the last day of the last exposure, in the employment of the **Covered Party**, to conditions causing or aggravating the disease, or (b) the date upon which the employee first suffered disability and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by employment with the **Covered Party**. All occupational disease sustained by one or more employees as a result of an outbreak of the same communicable disease shall be deemed to arise from a single occurrence. An outbreak of the same communicable disease that spans more than one coverage period shall be deemed to take place during the first such coverage period.
9. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the Bay Cities Joint Powers Insurance Authority, who has elected to participate in the PWCP.
10. **Retained limit** shall mean the amount stated on the Declarations page and all endorsements listed on the Declarations page, which will be paid by the **Covered Party** before the **Authority** is obligated to make any payment from the pooled funds.

B. THE MEMORANDUM OF COVERAGE

This MOC includes at its effective date the Declarations Page and all endorsements listed on the Declarations Page. This MOC is the coverage document between the **Covered Party** and the **Authority**. The terms of this MOC may not be changed or waived except by endorsement issued by the **Authority** to be part of this MOC.

C. COVERAGE PERIOD

This MOC applies to **losses** occurring during the coverage period defined in the Declarations.

D. WHO IS COVERED

The **Covered Party** is a **Participant** in the **Authority's** PWCP. If a **Covered Party** loses its status as a **Member Entity**, the coverage under this MOC shall terminate immediately upon such change in status.

Volunteer workers are also afforded workers' compensation benefits for performing duties for or on behalf of the **Covered Party** while acting within the scope of their duties on behalf of the **Covered Party** provided that the **Covered Party** has first adopted a resolution as provided in Division 4, Part 1, Chapter 2, Article 2 of the California Labor Code declaring such volunteer workers to be **employees** of the **Covered Party** for purposes of Workers' Compensation Law.

E. WORKERS' COMPENSATION LAW

Workers' Compensation Law means the workers' or workmen's compensation law and **occupational disease** law of the State of California, or any similar law. It includes any amendments to that law that are in effect during the term of this MOC. It does not include any federal workers' or workmen's compensation law, any federal **occupational disease** law, or the provisions of any law that provide non-occupational disability benefits.

F. QUALIFIED SELF-INSURER

The **Covered Party** represents that it is a duly qualified self-insurer under the Workers' Compensation Law of the State of California and will continue to maintain such qualifications during the term this MOC is in effect. If the **Covered Party** should fail to qualify or fail to maintain such qualifications, the coverage provided under this MOC shall automatically terminate at the first date of such failure.

PART I – WORKERS' COMPENSATION COVERAGE

The **Authority** will provide coverage for workers' compensation **losses** up to the **Authority's** Limit of Liability stated in the Declarations Page.

This coverage applies to **bodily injury**.

1. **Bodily injury** by accident must occur during the coverage period.
2. **Bodily injury** by disease must be caused or aggravated by the conditions of employment by the **Covered Party**. The **employee's** last day of last exposure to the conditions causing or aggravating such **bodily injury** by disease must occur during the coverage period.

A. DEFENSE OF SERIOUS AND WILLFUL CLAIMS AND 132a ACTIONS:

The **Authority** will provide a defense for serious and willful claims and Labor Code Section 132a actions, as set forth below, brought before the Workers' Compensation Appeals Board (WCAB), but in no event shall the **Authority** provide any indemnity for any such claim or action:

Serious and willful misconduct by the **Covered Party** against an **employee** involved in a claim for workers' compensation benefits. (Labor Code §4553.).

Such defense will be provided only until such time as the underlying claim for workers' compensation has concluded. The **Authority** shall have the sole discretion to determine when and whether the underlying claim has "concluded." The **Authority** may, at any time, exercise its right to withdraw from the defense of these claims, and such decision shall be final.

B. PAYMENTS THE COVERED PARTY MUST MAKE

The **Authority** is not responsible for any payments in excess of benefits regularly provided by the Workers' Compensation Law including any payment based on the following conduct by the **Covered Party**:

1. Serious and willful misconduct;
2. Knowing employment of an **employee** in violation of law;
3. Knowing failure to comply with a health or safety law or regulation;
4. Discharge, coercion or otherwise discriminating against any **employee** in violation of the Workers' Compensation Law; or
5. Violation of or failure to comply with any Workers' Compensation Law.

If the **Authority** makes any payments in excess of the benefits regularly provided by the Workers' Compensation Law on the **Covered Party's** behalf, the **Covered Party** will reimburse the **Authority** promptly for such payment.

PART II – EMPLOYER’S LIABILITY COVERAGE

The **Authority** will provide coverage for employer’s liability **losses** up to the **Authority’s** Limit of Liability stated in the Declarations Page.

This coverage applies to **bodily injury**. This coverage will apply to amounts awarded against the **Covered Party** in excess of the **Covered Party’s Retained Limit** and subject to the Limit of Liability set forth herein, provided that those amounts awarded are the direct consequence of **bodily injury** that arises out of and in the course of the injured **employee’s** employment by the **Covered Party**, and are claimed against the **Covered Party** in a capacity other than as employer.

1. The **bodily injury** must arise out of and in the course of the injured **employee’s** employment by the **Covered Party**.
2. **Bodily injury** by accident must occur during the coverage period.
3. **Bodily injury** by disease must be caused or aggravated by the conditions of employment by the **Covered Party**. The **employee’s** last day of last exposure to the conditions causing or aggravating such **bodily injury** by disease must occur during the coverage period.

PART III - POLICY EXCLUSIONS

This MOC shall not apply to:

- A. Liability imposed by the Workers' Compensation Laws because of **bodily injury** to prisoners or inmates who receive compensation from an entity, other than the **Covered Party**, for the work performed except for liability imposed by the Workers’ Compensation Laws because of **bodily injury** to participants of a work release program or other community service program established by a county of the State of California;
- B. Employer's Liability Coverage herein does not apply to any obligation imposed by a workers’ compensation, **occupational disease**, unemployment compensation, or disability benefits law, or any similar law.
- C. **Bodily injury** intentionally caused or aggravated by the **Covered Party**.
- D. **Bodily injury** to an **employee** while employed in violation of law with the actual knowledge of the **Covered Party**.
- E. Liability for additional compensation imposed on the **Covered Party** under Labor Code Section 4557 by reason of injury to an **employee** under sixteen years of age and illegally employed at the time of the injury.
- F. Liability imposed by Labor Code Section 4856.

G. **Bodily injury or occupational disease** sustained by a peace officer, as defined in Section 50920 of the California Government Code, when he or she was off-duty, not acting under the immediate direction of his or her employer, and outside the state of California. However, this exclusion shall not apply to **bodily injury or occupational disease** sustained by a peace officer under such circumstances if:

1. the peace officer at the time of the occurrence was engaging in the apprehension or attempted apprehension of law violators or suspected law violators, the protection or preservation of life or property, or the preservation of the peace; and
2. prior to the occurrence, the governing board of the Covered Member has adopted a resolution, as provided for in California Labor Code Section 3600.2, subdivision (b)(4), accepting liability for such bodily injury or occupational disease under the Workers' Compensation Act.

PART IV - THE COVERED PARTY'S RETENTION AND AUTHORITY'S LIMIT OF LIABILITY

A. LIMIT OF COVERAGE BY AUTHORITY

The **Authority** will indemnify the **Covered Party** for **loss** under Workers' Compensation Laws, but will not exceed the Limit of Liability stated in the Declarations Page on any one **loss**. Coverage will include all benefits required under Workers' Compensation Laws, including full salary benefits listed in Labor Code Section 4850. The **Authority** will pay on behalf of the **Covered Party** for Employer's Liability **losses** but will not exceed the Limits of Liability stated in the Declarations Page on any one **loss**.

B. HOW THE LIMIT OF COVERAGE APPLIES

The **Authority's** Limit of Coverage stated in the Declarations Page applies to claims covered under the Workers Compensation Coverage or Employer's Liability Coverage as follows:

1. To one or more **employees** for **bodily injury** or death in any one accident;
2. To any one **employee** for **bodily injury** or death by disease; and

If, an employee of two or more **Covered Parties** incurs a cumulative injury or illness as defined in General Section A(10) then the Retained Limits of the involved **Covered Parties** will be adjusted by applying the pro-rata percentage of exposure for the Cumulative Trauma period to each Member's SIR.

Nothing contained herein shall operate to increase the **Authority's** Limit of Coverage under this MOC.

PART V - CONDITIONS

A. NOTICE OF ACCIDENT OR CLAIM

1. The Covered Party shall give written notice within five days of the Covered Party's knowledge to the **Authority** if a claim for a **bodily injury** or disease occurs which appears to involve coverage by the **Authority**.
2. Notice of accident given to the **Authority** shall contain complete details on the **bodily injury**, disease, or death. If a suit, claim, or other proceeding is commenced which appears to involve coverage by the **Authority**, the **Covered Party** shall give the **Authority**:
 - a) All notices and legal papers related to the claim, proceeding, or suit, or copies of these notices and legal papers; and
 - b) Copies of reports on investigations made by the **Covered Party** on such claims, proceedings, or suits.
3. If written notice is not provided by the **Covered Party** to the **Authority** within thirty (30) days of knowledge of such claim, coverage may not be provided under this MOC. This requirement is a condition precedent to coverage under this MOC.

B. SUBROGATION - RECOVERY FROM OTHERS

The **Authority** has the **Covered Party's** rights, and the rights of persons entitled to compensation benefits from the **Covered Party**, to recover the **Authority's loss** from any third party liable for the **bodily injury**. The **Covered Party** will do everything necessary to protect those rights for the **Authority** and to assist in enforcing them. Any recovery, after deducting the **Authority's** recovery expenses, will first be used to reduce the **Authority's loss**. The balance, if any, will be returned to the **Covered Party**.

If the Covered Member waives its rights to subrogation on a claim, that claim shall be excluded from coverage if the amount of the claim exceeds the Covered Party's Retained Limit, and the Authority shall not be liable for any indemnity, reimbursement, payment or costs related to the claim in excess of the Retained Limit, unless the waiver was approved by the Authority's Workers' Compensation Program Manager prior to the date of the injury or illness resulting in the claim.

C. MEMORANDUM CONFORMS TO LAW

If any provision of this MOC is in conflict with Workers' Compensation Laws applicable to this MOC, the **Authority's Agreement**, the **Authority's** Bylaws, or the **Authority's** PWCP Master Program Document, this statement amends this MOC to conform to such law or document.

D. ALTERNATIVE DISPUTE RESOLUTION

THE PARTIES TO THIS MEMORANDUM UNDERSTAND THAT BY AGREEING TO THIS MEMORANDUM OF COVERAGE THEY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY AND TO CERTAIN TYPES OF DAMAGES FOR THE PURPOSE OF ADJUDICATING ANY DISPUTE OR DISAGREEMENT AS TO COVERAGE UNDER THIS MEMORANDUM.

Decisions by the **Authority** whether to assume control of the negotiation, investigation, defense, appeal, or settlement of a claim, or whether or not coverage exists for a particular claim or part of a claim shall be made by the **Board**. An appeal to the **Board** from a coverage decision or opinion by general counsel must be made in writing to the **Authority** by the **covered party** within one hundred and twenty (120) days of receipt of such opinion or decision.

The **Board** will take action on any appeal within sixty (60) days or the next scheduled **Board** of Directors meeting, whichever is later, unless an extension is agreed to by the parties. The action taken by the **Board** will include written notice to the **covered party** **Board's** final decision.

The **covered party** must exhaust the right to appeal, as set forth above, before pursuing either Option A - Arbitration or Option B - Declaratory Relief, as set forth below.

The **covered party** must submit to the Administrator of the **Authority** a written request for Arbitration to pursue Option A - Arbitration, or a written notice of intent to file an action for Declaratory Relief to pursue Option B – Declaratory Relief, within ninety (90) days of receipt of the **Board's** final written decision. If no such written request or notice is submitted to the Administrator of the **Authority**, the **covered party** shall be deemed to have waived any and all other forms of relief or appeal as to the coverage dispute.

Option A - Arbitration:

If both the **Board** and the **covered party** agree in writing, then the coverage dispute may be resolved by binding arbitration or by any other means mutually agreed between the **Authority** and the **covered party**.

Once the **covered party** submits to the Administrator of the **Authority** a written request for Arbitration, the **Authority** shall have 20 (twenty) days from the date of receipt of the written request to respond. If the **Authority** does not agree in writing to Arbitration by the expiration of that time period, it will be deemed to have denied the request. In the event the written request for Arbitration is denied, the **covered party** shall have 10 (ten) days from the date the request is denied or deemed to have been denied to submit to the Administrator of the **Authority** a written notice of intent to file an action for Declaratory Relief. If no such written notice is submitted to the Administrator of the **Authority**, the **covered party** shall be deemed to have waived any and all other forms of relief or appeal as to the coverage dispute.

In the event both the **Board** and the **covered party** agree to arbitrate, they shall be deemed to waive any rights to pursue any adjudication or relief as to the coverage dispute in any other forum or court, including any rights to appeal.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a single arbitrator. The arbitrator shall not be employed by or affiliated with the **Authority** or the **covered party** or any **covered parties**.

The parties shall select the arbitrator within twenty (20) calendar days from the date of the mutual agreement to arbitrate. If the parties are unable to agree upon an arbitrator within that time period, they may mutually agree to a reasonable extension of time not to exceed thirty (30) days. If the parties are unable to agree upon an arbitrator within that extended time period, the **Authority** shall file a petition with the Sacramento County Superior Court requesting appointment of a neutral arbitrator, and the procedures set forth in the California Code of Civil Procedure Sections 1281.6 shall be followed. Unless mutually agreed otherwise, the arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrator.

Each party shall pay one half the cost of the selected arbitrator. In addition, each party shall be responsible for its own attorneys' fees, costs and expenses of arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure Sections 1282 et seq. for the scheduling of hearing(s) and matters relating to the hearing, there shall be no communication between the parties and the arbitrator relating to the subject of the arbitration other than at oral hearings. The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph 9. Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280). The decision of the arbitrator shall be final and binding, and shall not be subject to appeal.

Option B – Declaratory Relief:

If the **covered party** chooses Declaratory Relief or if the parties are unable to agree to Arbitration an action for Declaratory Relief seeking to resolve the coverage dispute must be filed within 90 days of submittal of the written notice of intent to file an action for Declaratory Relief, and any unexpired statute of limitations shall be tolled until expiration of that 90 day period. If an action for Declaratory Relief is not filed in the Superior Court within the time limitations of this paragraph, then notwithstanding any statute of limitations provided in the California Code of Civil Procedure or otherwise, the **covered party** shall be deemed to have waived and be barred from pursuing any further relief, adjudication, action, arbitration or appeal regarding the coverage dispute.

The scope of the action for Declaratory Relief shall be limited to seeking a judicial interpretation of this Memorandum, and, as appropriate, determination and declaration of the amount, if any, to be paid by the **Authority** for indemnity or defense owed under this

Memorandum, plus interest as provided herein. No other legal theories or causes of action relating to or arising out of a coverage disagreement under this Memorandum shall be allowed, and such are expressly waived, including but not limited to causes of action for breach of contract or breach of the covenant of good faith and fair dealing. Neither the **Authority** nor the **covered party** shall be entitled to a trial by jury. Neither the **Authority** nor the **covered party** shall be entitled to any damages or relief other than as provided in this paragraph, plus simple interest at the rate of 1% per year on any amounts adjudicated to be owed. Interest on any amounts adjudicated to be owed shall run from the time any invoices for defense fees and costs are actually submitted to the **Authority** (in the event it is adjudicated that the **Authority** had a duty to defend the **covered party** and did not defend the **covered party**), and/or from the time the **Authority** is provided written confirmation of the amount of actual payment by the **covered party** of any judgment or settlement (in the event it is adjudicated that the **Authority** had a duty to pay for any settlement or judgment on behalf of the **covered party** and did not pay for any settlement or judgment on behalf of the **covered party**). Notwithstanding anything in this paragraph, any party to the Declaratory Relief action preserves the right to appeal any judicial decision to the appropriate appellate court, as provided by California law.

Provisions Applicable to Both Option A – Arbitration and Option B – Declaratory Relief:

Regardless of the existence or outcome of a coverage dispute, a Declaratory Relief action or any arbitration proceeding, the maximum amount or limit of coverage owed under this Memorandum by the **Authority** shall remain unchanged. Further, the **Authority** shall owe defense costs only to the extent they are incurred in compliance with all guidelines for billing and case handling applicable to any defense counsel retained to defend covered claims.

If any coverage dispute results in a settlement, or in a judgment or arbitration award, the amount paid by the **Authority** shall be deemed to be **ultimate net loss** under this Memorandum, and shall be considered and treated as any other payment of **ultimate net loss** by the **Authority** as if there had been no coverage dispute.

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

WORKERS' COMPENSATION COVERAGE

ENDORSEMENT NO. 1

It is understood that the named Covered Party of the Declarations is completed as follows:

Bay Cities Joint Powers Insurance Authority (BCJPIA),
City of Albany,
City of Brisbane,
Central Marin Fire Authority,
Central Marin Police Authority,
Town of Corte Madera,
City of Emeryville,
Town of Fairfax,
City of Larkspur,
City of Menlo Park,
City of Mill Valley,
City of Novato,
City of Piedmont,
Town of San Anselmo,
City of Sausalito,
Town of Tiburon, and
City of Union City

Attached to and forming part of Memorandum No. BCJPIA 2019-20 WC

Effective Date: July 1, 2019

AUTHORIZED REPRESENTATIVE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

WORKERS' COMPENSATION COVERAGE

ENDORSEMENT NO. 2

Retained Limits applicable to each Participant are as follows:

<u>Member</u>	<u>Retained Limit</u>
City of Albany	\$ 150,000
City of Brisbane	\$ 150,000
Central Marin Fire Authority	\$ 250,000
Central Marin Police Authority	\$ 150,000
Town of Corte Madera	\$ 250,000
City of Emeryville	\$ 350,000
Town of Fairfax	\$ 150,000
City of Larkspur	\$ 150,000
City of Menlo Park	\$ 350,000
City of Mill Valley	\$ 150,000
City of Novato	\$ 150,000
City of Piedmont	\$ 150,000
Town of San Anselmo	\$ 150,000
City of Sausalito	\$ 150,000
Town of Tiburon	\$ 150,000
City of Union City	\$ 250,000

Attached to and forming part of Policy No. BCJPIA 2019-20 WC

Effective Date: July 1, 2019



AUTHORIZED REPRESENTATIVE