

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

POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE

**FOR THE 2023-2024 PROGRAM YEAR
EFFECTIVE JULY 1, 2023**

FORM NO. BCJPIA 2023-24 GL

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

POOLED LIABILITY COVERAGE

POLICY NO. BCJPIA 2023-24 GL

DECLARATIONS

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

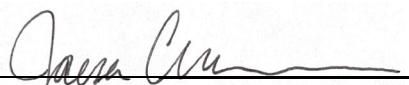
1750 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

POLICY PERIOD: From 7-1-2023 to 7-1-2024
12:01 A.M. Pacific Time

LIMITS OF COVERAGE: \$1,000,000 Each Occurrence Less Member's
Retained Limit listed in Endorsement No. 2

FORM AND ENDORSEMENTS: Form No. BCJPIA 2023-24 GL,
Forming Part of the Memorandum at Inception Endorsement No. 1, No. 2, No. 3, and No. 4

ON BEHALF OF BAY CITIES JOINT POWERS INSURANCE AUTHORITY



AUTHORIZED REPRESENTATIVE

**POOLED LIABILITY PROGRAM
MEMORANDUM OF COVERAGE**

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BAY CITIES JOINT POWERS INSURANCE AUTHORITY (BCJPIA)

POOLED LIABILITY PROGRAM (PLP)

MEMORANDUM OF COVERAGE

FORM NO. BCJPIA 202-24 GL

2023-2024

This Memorandum of Coverage (MOC) sets forth the terms, conditions, and limitations of coverage provided under the Pooled Liability Program (PLP). 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 Section II, “Definitions” or in the Master Program Document.

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

SECTION I - COVERAGE

The **Authority** will pay up to the **limit of coverage** those sums on behalf of the **covered parties** for the **ultimate net loss**, less 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 sudden and accidental pollution**, as those terms are herein defined and to which this MOC applies, caused by an **occurrence** during the coverage period, except as otherwise excluded.

The **Authority** shall have a duty to pay **defense costs** on behalf of a **covered party** only as long as the **claim** can be reasonably construed to seek **damages** covered by this MOC. Insurance law, including as set forth in *Gray v. Zurich Ins. Co.* (1966) 65 Cal. 2d 263 and related cases interpreting insurance policies or other adhesion contracts, shall not apply to assessing the **Authority’s** duty to pay **defense costs**. In considering the duty to pay **defense costs**, the **Authority** may consider facts outside the allegations of the **claim**.

This MOC does not provide insurance, but instead provides for pooled risk sharing. This MOC is a negotiated agreement amongst the members of the **Authority**, and none of the parties to the MOC are entitled to rely on any contract interpretation principles pertaining to contracts of adhesion and/or that require interpretation of ambiguous language against the drafter of such agreement. This MOC shall be applied according to the principles of contract law, as applied to joint powers authorities as discussed in case law interpreting memoranda of coverage, giving full effect to the intent of the members of the **Authority**, acting through its Board in adopting this MOC. Any citation or reference to insurance law in interpreting this MOC is only for purposes of illustration or comparison, and does not constitute a waiver by the parties of the position that this MOC is not an insurance policy and that insurance law does not govern its interpretation. Each **participant** and **covered party** specifically waives and rejects the argument that this MOC is an adhesion contract or is akin to or the functional equivalent of an insurance policy, or any similar arguments or positions. 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 Civil Code §2860. Failure to provide such notice to a **covered party** of any coverage dispute shall not operate to waive any of the provisions of this MOC.

SECTION II - DEFINITIONS

1. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
2. **Authority** means the Bay Cities Joint Powers Insurance Authority.
3. **Automobile** means a land motor vehicle, trailer, or semi-trailer.
4. **Bodily injury** means physical injury to the body, 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**.
5. **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 tort liability arising out of an **occurrence** to which this MOC applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
6. **Covered party** means:
 - (a) The **Participant**, including any and all councils, commissions, agencies, districts, authorities, boards, including the governing board or similar entities coming under such **Participant's** direction or control or for which such **Participant's** board members sit as the governing body. **Covered party** includes departments and constituent agencies of the **Participant**, except an airport or hospital board or commission, regardless of how such body is denominated.
 - (b) Persons who are past or present elected or appointed officials, employees, or volunteers of the **covered party**, whether or not compensated, while acting for or on behalf of the **covered party**, including while acting on outside boards at the direction of the **covered party**, except any airport or hospital board or commission, regardless of how such body is denominated, or any other joint powers authority, or any separate agency or entity, created by a joint powers agreement, subject to the provisions of subparagraph (e), provided, however, that an airport board or commission may be added to this MOC by endorsement on approval of the **Board**.
 - (c) Any person or entity identified as a **covered party** in 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.

- (d) Any officer or director of the **Authority**, and the staff and employees of the **Authority** while in the course and scope of their duties for the **Authority**, with respect to **public officials errors and omissions** coverage.
- (e) **Covered party** does not include any person, organization, trust, or estate or any other entity for any risk, claim, or loss which is incurred or occurs under any other joint powers authority, or any joint powers agreement which creates a separate agency or entity, unless added hereto by endorsement. However, as to any person who is an official, employee, or volunteer of the **Participant** and is participating in the activities of any other joint powers authority or any separate agency or entity created under any joint powers agreement on behalf of that named entity, the coverage afforded by this MOC will apply in excess of and shall not contribute with any collectible insurance or other coverage provided to or through the other joint powers authority or joint powers agreement covering a loss also covered hereunder (whether on a primary, excess, or contingent basis).
- (f) With respect to any **automobile** owned by the **covered party** or leased 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 its actual use is with the permission of the **Participant**, except:
 - (i) 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, including road testing and delivery; or
 - (ii) The owner or any lessee, other than the **covered party**, of a leased or hired **automobile**, or any agent or employee of such owner or lessee.
 - (iii) This MOC does not provide uninsured or underinsured motorist coverage.
- (g) Notwithstanding sections (b), (e), and (f) above, the defense and indemnity coverage afforded by this MOC to a past or present official, employee, or volunteer of a **Participant** (including a **Participant** of a member joint powers authority) is not broader than the **Participant's** duty to defend and indemnify its official, employee, or volunteer pursuant to California Government Code Section §815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the **Participant** which employs the official, employee, or volunteer is not obligated under the California Government Code to provide a defense, or to provide indemnity for a claim, or if said **Participant** refuses to provide such defense and/or indemnity to said official, employee, or volunteer, then this MOC shall not provide any such defense or indemnity coverage to said official, employee, or volunteer. All immunities, defenses, rights and privileges afforded to a **Participant** under California Government Code Section §815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to the **Authority** to bar any defense or indemnity coverage under this MOC to that **Participant's** official, employee, or volunteer.

7. **Cyber liability** means any liability arising out of or related to the acquisition, storage, security, use, misuse, disclosure, or transmission of electronic data of any kind including, but not limited to, technology errors and omissions, information security and privacy, privacy notification costs, penalties for regulatory defense or penalties, website media content, disclosure or misuse of confidential information, failure to prevent unauthorized disclosure or misuse of confidential information, improper or inadequate storage or security of personal or confidential information, unauthorized access to computer systems containing confidential information, or transmission or failure to prevent transmission of a computer virus or other damaging material. The coverage provided herein for **cyber liability** shall be excess to, and shall not contribute with, any other insurance or pooled coverage which is available to the **covered party**.
8. **Dam** means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either (a) is 25 feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream, channel, or watercourse, to the maximum possible water storage elevation; or (b) has an impounding capacity of 50 acre-feet or more.

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

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, no road or highway fill or structure, no circular tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, no water or waste water treatment facility, 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 or storm water detention or water recharging or use as a sewage sludge drying facility shall be considered a **dam**. In addition, 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**. Nor shall any impoundment constructed and utilized to hold treated water from a sewage treatment plant be considered a **dam**. Nor shall any waste water treatment or storage pond exempted from state regulation and supervision by Water Code Section §6025.5 be considered a **dam**.

9. **Damages** means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a **covered party**, or for liability assumed by the **covered party** under a **covered indemnity contract**. If such compensation in money is recovered, then **damages** also includes (1) attorney fees not based on contract awarded against the **covered party**, (2) interest awarded on money **damages**, and (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 MOC applies. **Damages** does not include injunctive, equitable, or other non-monetary relief, or any monetary relief or expense associated with injunctive, equitable, or other

non-monetary relief, and does not include any money for the direct or indirect benefit to public improvements of a **participant** or **covered party**. If a **claim** does not allege or seek compensation in money, then the **Authority** has no duty to pay **defense costs** even if the **claim** alleges or seeks attorney fees and/or costs not based on contract.

10. **Defense costs** means all fees and expenses incurred by any **covered party** caused by and relating to the defense or litigation of a claim including attorney's fees, litigation costs, court costs, and interest on judgments accruing after entry of judgment. **Defense costs** shall 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 MOC. **Defense costs** shall not include the office expenses of the **Authority** or the **covered party**, the salaries of employees, contract or elected city attorneys for the **covered party** or officials of the **Authority** or any **covered party**, or attorney fees or costs awarded to a prevailing plaintiff against the **covered party**, but shall include fees and expenses relating to coverage issues or disputes which arise after a written denial of coverage, between any **Participant** and the **Authority**, if the **Participant** prevails in such dispute.
11. **Limit of coverage** means the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein for each **covered party** per **occurrence**, subject to any lower sublimit stated in this MOC. 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, the **Authority** will pay only up to the amount stated in the Declarations or certificate of coverage, in present value of the claim as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.
12. **Housing authority** means a public corporation created pursuant to California Health & Safety Code Sections §34200 et. seq.
13. **Inverse condemnation** means any claim for damage to real or personal property arising from, related to, or connected with the taking or alleged taking of private property, by whatever name called and no matter how or under what theory such claims are alleged or could be alleged, including (but not limited to) inverse condemnation, nuisance, trespass, negligence, dangerous condition of public property, removal of subjacent or lateral support, and/or diversion of surface waters or drainage. **Inverse Condemnation** also includes but is not limited to alleged takings caused by any of the following: construction of a public work or public improvement; land use regulation or planning; annexation; eminent domain; or other condemnation proceedings.
14. **Land use regulation or planning** means decisions by a **covered party** that affect the use or development of land, including structures, improvements, or activities on land. **Land use regulation or planning** includes any action taken under or in connection with any federal, state, or local law, rule, code, regulation, ordinance, resolution, policy or plan relating to or governing the use or development of land, including but not limited to any action relating to building, environmental, health and safety, nuisance, or zoning.

15. **Medical malpractice** means the rendering of or failure to render, during the policy period, 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 emergency medical services or first aid administered by employees of a **covered party**, nor does it include advice or services rendered by a 911 emergency dispatcher.

16. **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.

17. **Occurrence** means:

- (a) With respect to **bodily injury, property damage, or sudden and accidental pollution**: 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 the loss of use of tangible property not physically injured shall be deemed to occur at the time of the **occurrence** that caused it.
- (b) With respect to **personal injury and public officials errors and omissions** respectively: an offense described in the definition of those terms in this MOC.

In the event of allegations of **sexual abuse**, regardless of the number of alleged victims, regardless of the number of alleged acts of **sexual abuse**, and regardless of the number of locations where the alleged acts of **sexual abuse** took place, all instances of **sexual abuse** by the same alleged perpetrator or perpetrators shall be deemed to be one **occurrence** taking place at the time of the first alleged act of **sexual abuse**. Coverage in effect at the time the **occurrence** takes place shall be the only coverage that may apply, regardless of whether other instances of **sexual abuse** by the same alleged perpetrator or perpetrators took place during other MOC periods. In the event subsequent allegations of **sexual abuse** are made by different alleged victims involving the same alleged perpetrator or perpetrators, they shall be deemed to be part of the same **occurrence** taking place at the time of the first reported **occurrence** involving the same alleged perpetrator or perpetrators, and coverage in effect at the time of the first reported **occurrence** shall be the only coverage that may apply.

18. **Participant** means each of the entities listed in Endorsement No. 2.

19. **Personal injury** means injury, other than physical injury to the body, sickness, or disease, arising out of one or more of the following offenses:
- (a) False arrest, detention or imprisonment, abuse of process, 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; and
 - (e) Injury resulting from the use of reasonable force for the purpose of protecting persons or property.
20. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, molds and/or fungus, and waste. Waste includes materials to be discarded or 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.
21. **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.
22. **Public officials errors and omissions** means any actual or alleged misstatement or misleading statement or error or omission by any individual **covered party**, individually or collectively, arising in the course and scope of the individual's duties with the **covered party** or claimed against the individual solely by reason of the individual being or having been a public official or employee, and which results in damage neither expected nor intended from the standpoint of the **covered party**. In the event a claim is made against an individual **covered party** which falls within this definition, then the coverage afforded by this definition shall also apply to the **Participant**, subject to all terms, conditions and exclusions in this MOC. All claims involving the same misstatement or misleading statement or error or omission or a series of continuous or repeated misstatements or misleading statements or acts or omissions will be considered as arising out of one **occurrence**.
23. **Retained limit** means the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **covered party** before the **Authority** is obligated to make any payment from the pooled funds. **Retained limit** includes all **defense costs**. **Retained limit** shall be 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 highest **retained limit** of any of the involved **covered parties** will apply. No **covered party** shall be required to pay more than its **retained limit**. Absent a determination of the **covered parties'** proportionate shares of liability, payment of the **retained limit** shall be apportioned among the **covered parties** as follows:
- (1) The highest **retained limit** shall be divided by the number of **covered parties**;
 - (2) Those **covered parties** whose **retained limits** are lower than their equal shares of the highest **retained limit** shall pay only the amount of their **retained limits**;
 - (3) The remaining amount of the highest **retained limit** shall be divided equally among the remaining **covered parties**;
 - (4) If any of the remaining **covered parties** has a **retained limit** lower than its revised equal share, that **covered party** shall pay only its **retained limit**;
 - (5) The balance of the highest **retained limit** shall be divided equally among the remaining **covered parties** in accordance with the above procedures until the entire amount of the highest **retained limit** has been paid.
- (b) If the payment is for a settlement, the **retained limit** shall be apportioned amongst the **covered parties**, in accordance with the respective parties' agreed upon or court-determined share of liability. In the event that the apportionment requires court determination, the **covered parties** will pay all costs of the **Authority** in seeking such determination, including its attorney's fees in proportion to the court's determination of liability.

24. **Sexual abuse** means any actual, attempted or alleged criminal sexual conduct of a person, or persons acting in concert, regardless if criminal charges or proceedings are brought, which causes physical and/or mental injuries. **Sexual abuse** also includes actual, attempted or alleged: sexual molestation, sexual assault, sexual exploitation or sexual injury. Any or all acts of **sexual abuse** shall be deemed to constitute intentional conduct by the alleged perpetrator or perpetrators done with willful and conscious disregard of the rights or safety of others, or with malice, or conduct that is malicious, oppressive or in reckless disregard of the claimant's or plaintiff's rights, and no coverage shall be provided in any event for the alleged perpetrator or perpetrators.
25. **Sudden and accidental pollution** means the sudden and accidental discharge, dispersal, release, or escape of **pollutants**, resulting in **property damage** or **bodily injury** neither expected nor intended from the standpoint of the **covered party**, onto or upon the land, into the atmosphere, into or under the ground, or into any watercourse, whether natural or man-made, or body of water or aquifer, but does not include any discharge, dispersal, release, or escape of **pollutants**, whether sudden or accidental or gradual or intentional

from any fixed or stationary container, vessel, or tank of any description whatever, whether located above ground or underground. The coverage provided herein for **sudden and accidental pollution** shall be excess to, and shall not contribute with, any other insurance or pooled coverage which is available to the **covered party**. If the other insurance or pooled coverage available to the **covered party** exceeds the **covered party's retained limit** and the loss is in excess of the amount of other collectible insurance or pooled coverage, the coverage provided herein will apply over the other collectible insurance or pooled coverage up to the limits set forth below.

The coverage provided for **sudden and accidental pollution** is limited to \$100,000 over the **retained limit**, per **occurrence**, per **covered party**.

26. **Unmanned aerial vehicle** means an aircraft, aerial system or device that is not designed, manufactured, or modified after manufacture to be controlled directly by a person from within or on the aircraft aerial system or device.
27. **Ultimate net loss** means the total of all **defense costs** incurred by the **covered party** and all **damages** for which the **covered party** is liable either by adjudication or by compromise with the written consent of the **Authority**, arising from an **occurrence** to which this MOC applies, after making proper deduction for all recoveries and salvages and other collectible insurance. In the event several **Participants** are involved in the loss, the **ultimate net loss** will be apportioned amongst those **Participants** by dividing the **ultimate net loss** by the number of **Participants** involved, unless and until the liability of the various **Participants** is determined by arbitration, mediation or judgment, at which time the **ultimate net loss** will be apportioned by the relative liabilities of the **Participants**. **Ultimate net loss** does not include attorneys' fees or costs awarded to the prevailing party in a suit except where such attorneys' fees or costs are attributable to a claim for **damages** covered by this MOC.

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 control of the negotiation, investigation, defense, appeal, or settlement of any claim, which the **Authority** determines, in its sole discretion, to have a reasonable probability of resulting in an **ultimate net loss** in excess of the **covered party's retained limit**. No claim shall be settled for an amount in excess of the **covered party's retained limit** without the prior written consent of the **Authority** or its designated representative.

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

The **covered party** shall fully cooperate in all matters pertaining to the investigation, settlement, or adjudication of such claim. The **Authority** shall not be obligated to pay any award, judgment, or settlement in excess of the **limit of coverage** afforded to the **covered party**.

SECTION IV - THE AUTHORITY'S LIMIT OF COVERAGE

Regardless of the number of (1) persons or entities covered under this MOC, (2) persons or organizations making claims or bringing suits, or (3) claims made or suits brought, the **limit of coverage** stated on the Declarations, less the **retained limit**, or any sub-limit contained in this MOC, is the most the **Authority** will pay for an **ultimate net loss** arising out of any one **occurrence**. 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 satisfaction of the **covered party's retained limit**. The **limit of coverage** for an additional **covered party**, including its officials, employees, and volunteers, shall be the limit stated in its additional **covered party** certificate, regardless of the limit which applies to the **Participant**.

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, the **Authority** will pay only up to the amount stated in the Declarations or certificate of coverage, in present value of the claim as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

For the purpose of determining the **limit of coverage** and the **retained limit**, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**. In the event of allegations of **sexual abuse**, regardless of the number of alleged victims, regardless of the number of alleged acts of **sexual abuse**, and regardless of the number of locations where the alleged acts of **sexual abuse** took place, all instances of **sexual abuse** by the same alleged perpetrator or perpetrators shall be deemed to be one **occurrence** taking place at the time the first alleged act of **sexual abuse**. Coverage in effect at the time the **occurrence** takes place shall be the only coverage that may apply, regardless of whether other instances of **sexual abuse** by the same alleged perpetrator or perpetrators took place during other MOC periods. In the event subsequent allegations of **sexual abuse** are made by different alleged victims involving the same alleged perpetrator or perpetrators, they shall be deemed to be part of the same **occurrence** taking place at the time of the first reported **occurrence** involving the same alleged perpetrator or perpetrators, and coverage in effect at the time of the first reported **occurrence** shall be the only coverage that may apply.

SECTION V - COVERAGE PERIOD AND TERRITORY

This MOC applies to **bodily injury, personal injury, property damage, public officials errors and omissions, or sudden and accidental pollution** which occur anywhere in the world during the coverage period identified in the applicable Declarations or certificate of coverage.

SECTION VI - EXCLUSIONS

(A) This MOC does not apply to:

- (1) Except as provided under **sudden and accidental pollution**, any claim arising out of the contamination of the environment by **pollutants** introduced at any time,

into, under or upon land, the atmosphere, or any watercourse or body of water or aquifer. This exclusion applies whether or not the contamination is introduced into the environment intentionally or accidentally or gradually or suddenly and whether or not the **covered party** or any other person or organization is responsible for the contamination. However, as to any such claim for **damages** for **personal injury** or to real property no longer owned, maintained, or used by the **covered party**, the **Authority** will provide a defense up to the amount of \$100,000 over the **retained limit per occurrence** for any such pollution related claim.

“Contamination” includes any unclean, unsafe, or unhealthful condition, either actual or potential, which arises out of the presence in the environment of any **pollutant** whether permanent or transient. “Environment” includes land, bodies of water, underground water or water table or aquifer, the atmosphere, and any other natural feature of the earth, whether or not altered, developed or cultivated.

This exclusion does not apply to firefighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or to the discharge of **pollutants** for the purpose of controlling a fire or to police use of mace, oleoresin capsicum (O.C. or pepper gas), or tear gas, or to weed abatement, or to tree spraying, or to claims arising from sudden and accidental sewer backups, with coverage provided and limited to an amount up to \$100,000 over the **retained limit per occurrence**.

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 waste water treatment or in water used in swimming pools, wading pools, or decorative fountains, with coverage provided and limited to an amount up to \$100,000 over the **retained limit** per **occurrence**. As used herein, “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**.

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 sixty (60) days. Notwithstanding what is stated in the applicable Declarations, the **limit of coverage** for claims described in this exception will be subject to a sub limit of \$100,000.

This exclusion does not apply to claims arising from mold and/or fungus, with coverage limited to an amount up to \$100,000 over the **retained limit per occurrence**.

This exclusion does not apply to **property damage** or **bodily injury** caused by a **covered party’s** response to “contamination” caused by a third-party unrelated to a **covered party**. “Response” includes cleanup, removal, containment, treatment, detoxification and neutralization of **pollutants**.

- (2) Any cost or expense arising out of any governmental order, direction, or request that the **covered party** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.
- (3) Claims by any potential, present, or former employee or official of the **covered party**, arising out of a claimed violation of civil rights or employment-related practices, policies, acts, or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of the spouse, registered domestic partner, child, including unborn child or fetus, parent, brother, or sister of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts, or omissions described above are directed. For the purposes of this section, claims shall include all attorneys' fees, costs, salary or wage loss, pain and suffering, general and punitive **damages**, and all related expenses. This exclusion applies to claims of negligent supervision and/or claims of failure to prevent such employment-related practices, policies, acts, or omissions.

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

- (4) **Bodily injury** to:
 - (a) An employee of the **covered party** arising out of and in the course of:
 - (i) Employment by the **covered party**; or
 - (ii) Performing duties related to the conduct of the **covered party's** business; or
 - (b) the spouse, registered domestic partner, child, including unborn child or fetus, parent, brother, or sister of the employee as a consequence of paragraph (a) above.

This exclusion applies:

- (a) Whether the **covered party** may be liable as an employer or in any other capacity; and
 - (b) To any obligation to share **damages** with or repay someone else who must pay **damages** because of the injury.
- (5) Any obligation for which the **covered party** or any insurance company as the **covered party's** insurer may be held liable 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.

- (6) Claims arising out of ownership, maintenance, management, supervision, or the condition or operation of any hospital, airport, marina, or community correctional facility, including but not limited to liability arising out of ownership, operation, maintenance, use or entrustment of any **automobile** while used on the premises of any such hospital, airport, marina, or community correctional facility, except that liability for a marina will be covered if it is added to this MOC by endorsement upon approval by the **Board**, but only to the extent that the **occurrence** does not apply to any coverage normally afforded by Marina Operators' Protection and Indemnity Coverage or any similar coverage.
- (7) Claims arising out of any **medical malpractice**.
- (8) Claims arising out of partial or complete structural failure of a **dam**.
- (9) Fines, assessments, penalties, restitution, disgorgement, exemplary, or punitive damages. This exclusion applies whether the fine, assessment, 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**.
- (10) Claims for injury or **damages** caused by intentional conduct done with willful and conscious disregard of the rights or safety of others, or with malice, or conduct that is malicious, oppressive or in reckless disregard of the rights of others. 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**.
- (11) Claims arising out of or related to **sexual abuse** as to the alleged perpetrator or perpetrators.
- (12) Claims arising out of the hazardous properties of **nuclear material**.
- (13) (a) Claims arising out of or in connection with **inverse condemnation**, by whatever name called and no matter how or under what theory such claims are alleged.

Exclusion (13)(a) does not apply to claims resulting from a weather event acting upon or with the **covered party's** property or equipment, or a weather event in combination with negligent or inadequate design or maintenance of a public work or public improvement.

Exclusion (13)(a) does not apply to claims resulting from the sudden and accidental failure of the **covered party's** property or equipment including

property or equipment intended to protect either the **covered party's** property or the property of third parties.

Except for claims resulting solely from sudden and accidental failure of the **covered party's** property or equipment including property or equipment intended to protect either the **covered party's** property or the property of third parties, the **covered party** will be responsible for paying one-half of the **damages**, attorney fees, and costs above its **retained limit** for claims arising out of or in connection with **inverse condemnation** covered pursuant to the above limited exceptions. This is intended to apply to all **damages**, attorney fees, and costs of every nature including for consequential injury of any type regardless of the type of claim or theory of liability.

- (b) Claims arising out of the design, construction, ownership, maintenance, operation or use of any water treatment plant or wastewater treatment plant, no matter how or under what theory such claim is alleged, except a claim for **property damage** resulting from the accidental failure of the equipment utilized or contained within the water treatment plant or the wastewater treatment plant.
 - (c) Claims arising out of the initiative process, whether or not liability accrues directly against the **covered party** by reason of any agreement into which the **covered party** has entered.
- (14) Claims arising out of or in connection with **land use regulation or planning**, by whatever name called and no matter how or under what theory such claims are alleged.
- (15) **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.
 - (c) **Aircraft, unmanned aerial vehicle**, or watercraft in the **covered party's** care, custody, or control.
- (16) Claims arising out of ownership, operation, use, maintenance, or entrustment to others of: (a) any **aircraft** or (b) any **unmanned aerial vehicle**, or (c) any watercraft being used for commercial purposes. Ownership, operation, use, or maintenance as used herein does not include static displays of **aircraft** or watercraft in a park or museum setting.

This exclusion does not apply to claims arising out of the operation, ownership, maintenance or use or entrustment to others of any **unmanned aerial vehicle**

owned or operated by or rented to or loaned by or on behalf of any named **covered party** if all of the following conditions are met:

(a) The **unmanned aerial vehicle** is operated in compliance with all applicable federal, state, and local laws, rules, and regulations, including as necessary under a proper and valid Certificate of Authorization obtained from the Federal Aviation Administration.

(b) The operation, ownership, maintenance, or use of the **unmanned aerial vehicle** was approved by the chief executive officer (or designee) of the named **Covered Party** before such operation, ownership, maintenance, or use.

(c) The operation, ownership, maintenance, or use of the **unmanned aerial vehicle** was in the course of a legitimate activity approved by the **Covered party**.

- (17) Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, 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, 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, or sewage.

- (18) Claims arising out of ownership, operation, maintenance, or use of any trampoline or other rebound tumbling device, other than bounce houses.
- (19) Claims arising out of the ownership, operation, maintenance, or use on any land, other than highways, of any off-highway motor vehicle, including but not limited to any motorcycle or motor-driven cycle or bicycle, snowmobile, or other vehicle specifically designed to travel over snow or ice, or any vehicle commonly referred to as a sand buggy, dune buggy, or all-terrain vehicle. This exclusion shall not apply to the operation of any such vehicle if operated by an employee, agent, or volunteer of the **covered party** while acting for or on behalf of the **covered party**.
- (20) Claims arising out of or in the course of any special event not sponsored or co-sponsored by the **covered party**. As to any event sponsored or co-sponsored by the **covered party**, the **Authority** will pay up to \$100,000 over and above the **covered party's retained limit** but no greater amount, unless the injury or damage is caused by the actions of a **covered party** in which case the \$100,000 cap will not apply.
- (21) Claims arising out of the private use of a firing range owned, operated, or maintained by a **covered party**, where such private use is not in the course and scope of the **covered party's** business activities. Without any limitation to Exclusions (1) and (2), or any other exclusions of the MOC, also specifically excluded are any claims for clean-up, removal, containment, treatment,

detoxification, or neutralization of lead or any other by-product of firearm use, whether or not deemed to be **pollutants**, arising out of or connected with the ownership, control or use of a firearm firing range, practice range or other area used for training or practice in the use of firearms.

- (22) Refund of, or restitution for, taxes, fees, service charges, or assessments.
- (23) Claims in whole or in part arising out of the **covered party's** obtaining remuneration or financial gain to which the **covered party** was not legally entitled.
- (24) Claims arising in whole or in part out of the violation of a statute, ordinance, order or decree of any court or other judicial or administrative body, or rule of law, committed by or with the knowledge or consent of the **covered party**.
- (25) Claims against a **covered party** for **damages** other than **property damage** arising out of:
 - (a) estimates of probable cost or cost estimates being exceeded, or
 - (b) faulty preparation of bid specifications or plans, including architectural plans, unless prepared by a qualified licensed and/or registered engineer or architect who is the appointed City Engineer or an employee of the **covered party**.
- (26) (a) Claims arising out of failure to perform, or breach of, a contractual obligation.
 - (b) Claims arising out of liability assumed under any contract or agreement, except liability that would be imposed by law in the absence of the contract or agreement, or when such assumption is the subject of a duly issued certificate of additional covered party; but such assumption is covered only up to the **limit of coverage** stated in the certificate. This exclusion does not apply to liability 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.

Exclusions (24)(a) and (24)(b) are not applicable to mutual aid agreements.
- (27) Claims arising out of the Employee Retirement Income Security Act of 1974 or any law amendatory thereof, or any similar law, or arising out of fiduciary activities with respect to employee benefit plans.
- (28) Claims arising out of ownership, maintenance, management, supervision, or the condition of any property owned, operated, or controlled by a **housing authority**, unless all of the individuals involved in the operation of the **housing authority** are officials or employees of the **Participant**.

- (29) Claims arising out of the ownership, operation, maintenance, or control of any permanent landfill site or facility. Landfill includes any site for permanent storage, accumulation, burial, compost, sludge, or any other process for reducing or disposing of waste.
- (30) **Ultimate net loss** arising out of relief or redress, in any form other than **damages**.
- (31) Claims arising out of bungee jumping or propelling activities sponsored, controlled, or authorized by a **covered party**.
- (32) Claims by any **covered party** against its own past or present elected or appointed officials, employees, volunteers, or additional covered parties where such claim seeks **damages** payable to the **covered party**.
- (33) Claims arising out of radon, asbestos, asbestos fibers, asbestos products or by-products, or any asbestos-containing material, including any supervision, instructions, recommendations, notices, warnings, or advice given or which should have been given in connection therewith or,
 - (a) Any obligation of the **covered party** to indemnify or to contribute with another because of such claims; or,
 - (b) Any obligation to defend any suit or claims against the **covered party** because of any such claim.

However, the **Authority** will provide a defense up to the amount of \$100,000 over the **retained limit per occurrence**.

- (34) 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.
 - (35) The cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing Act, or similar law.
 - (36) Claims alleging damage caused, in whole or in part, by the **covered party** arising out of or in connection with the introduction, deposition, distribution, accumulation, or contribution of sediment, spoils, or other material into any waterway or body of water.
- (B) This MOC does not apply under **public officials errors and omissions**, to:
- (1) **bodily injury or personal injury**;
 - (2) physical injury to tangible property, including all resulting loss of use of that property; or

- (3) 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.

SECTION VII - CONDITIONS

1. The **covered party's** duties with respect to **occurrence**, claim, or suit likely to involve the **Authority** are as set forth herein. These provisions are conditions precedent to coverage afforded under this MOC. In the event the **covered party** fails to comply with these provisions, the **Authority** shall have the right to deny coverage in whole or in part, unless the **Authority** agrees by majority vote that the failure to comply was not unreasonable and did not materially prejudice the **Authority's** defense or settlement of such **occurrence**, claim or suit.
 - (a) The **covered party** shall notify the **Authority** within 30 days of either: (1) notice of a claim reasonably likely to exceed fifty percent of the **retained limit**; or (2) notice of any **occurrence** involving any of the following:
 - (i) One or more fatalities;
 - (ii) Loss of limb or amputation;
 - (iii) Loss of use of any sensory organ;
 - (iv) Spinal cord injuries (including but not limited to quadriplegia or paraplegia);
 - (v) Third degree burns involving 10% or more of the body;
 - (vi) Serious facial or other disfigurement;
 - (vii) Paralysis;
 - (viii) Closed head injuries;
 - (ix) Loss of use of any body function(s);
 - (x) Long-term hospitalization;
 - (xi) Any claim alleging sexual abuse, molestation, or harassment; or
 - (xii) Title 42 U.S.C. §1983 claims or other claims involving civil rights violations.

Written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place, and circumstances of the **occurrence**, and the names and addresses of the **covered party** and of available witnesses shall be given to the **Authority** or any of its

agents as soon as possible after notice of the claim is given to the **Authority**, if such information is not available prior to giving notice to the **Authority**.

- (b) If claim is made or suit is brought against the **covered party**, the **covered party** shall be obligated to promptly forward to the **Authority's** designated claims adjustor every demand, notice, summons, or process received by it or its representative.
- (c) 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, public officials errors and omissions, or sudden and accidental pollution** with respect to which coverage is afforded under this MOC; and the **covered party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **covered party** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense toward the settlement of any claim for which the **Authority** has accepted responsibility and has so notified the **covered party**.
- (d) Any payments made, or arrangements to make payments, or expenses incurred by the **covered party** in relation to the claim, prior to giving notice of the claim to the **Authority**, shall be the sole responsibility of the **covered party**, and the **Authority** shall have no obligation to pay said costs or to reimburse the **covered party** therefor.
- (e) As to any claim for which the **Authority** has accepted responsibility and has so notified the **covered party**, if the **covered party's** refusal to change its position prevents settlement of the claim for a reasonable amount, defined as the amount the **Authority** is willing to pay and the claimant is willing to accept, and increases the **covered party's** potential liability for **damages** and continued **defense costs**, the **covered party** shall pay or shall reimburse the **Authority** for those **defense costs** incurred after the claim could have been settled, and for any **damages** awarded or settlement agreed upon in excess of the amount for which the claim could have been previously settled.

2. Subrogation

The **Authority** shall be subrogated to the extent of any payment hereunder to all the **covered parties'** rights of recovery thereof and the **covered parties** shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amounts so recovered shall be apportioned as follows:

- (a) The highest layer of coverage shall be reimbursed first and if there be sufficient recoveries then the next highest layer until all recoveries are used up.
- (b) The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the 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 collectible insurance or any other coverage with any insurer, joint powers insurance 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, provided that this clause does not apply with respect to insurance purchased or coverage obtained specifically to be in excess of this MOC. If the other collectible insurance or other coverage exceeds the **covered party's retained limit** and the loss is in excess of the amount of other collectible insurance or other coverage, the coverage provided hereunder will apply over the other collectible insurance or other coverage up to the limits of the **Authority's** liability.

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. In order for the coverage herein to apply, the **covered party** must pay the full amount of its **retained limit**. Payment of the **retained limit** by the **covered party** is required in addition to and regardless of any payments from any other source for or on behalf of that **covered party**, with the exception that commercial coverage purchased directly by a **covered party** for the sole purpose of insuring all or a portion of its **retained limit** may be utilized to pay all, or a portion of, a **covered party's retained limit**.

5. Severability of Interests

The term **covered party** and its sub-terms including entity, covered individual, and additional covered party are 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

A claim which contains allegations of an **occurrence** 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. Coverage for such claims shall be provided by, at most, one MOC.

In the event of allegations of **sexual abuse**, regardless of the number of alleged victims, regardless of the number of alleged acts of **sexual abuse**, and regardless of the number of locations where the alleged acts of **sexual abuse** took place, all instances of **sexual abuse** by the same alleged perpetrator or perpetrators shall be deemed to be one **occurrence** taking place at the time the first alleged act of **sexual abuse**. Coverage in effect at the time the **occurrence** takes place shall be the only coverage that may apply, regardless of

whether other instances of **sexual abuse** by the same alleged perpetrator or perpetrators took place during other MOC periods. In the event subsequent allegations of **sexual abuse** are made by different alleged victims involving the same alleged perpetrator or perpetrators, they shall be deemed to be part of the same **occurrence** taking place at the time of the first reported **occurrence** involving the same alleged perpetrator or perpetrators, and coverage in effect at the time of the first reported **occurrence** shall be the only coverage that may apply.

7. Termination

This MOC 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 effect a waiver or a change in any part of this MOC, nor shall the terms of this MOC be waived or changed except by endorsement issued to form a part of this MOC.

9. 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.

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 Executive Director 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 Executive Director of the **Authority** a written notice of intent to file an action for Declaratory Relief. If no such written notice is submitted to the Executive Director 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

LIABILITY COVERAGE

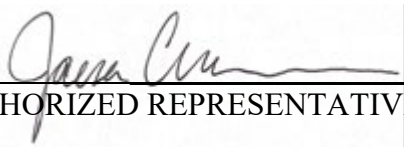
ENDORSEMENT NO. 1

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 Berkeley,
City of Brisbane,
Central Marin Police Authority,
Central Marin Fire Authority
Town of Corte Madera
City of Emeryville,
Town of Fairfax,
City of Larkspur,
City of Los Altos,
City of Menlo Park
City of Mill Valley,
City of Monte Sereno,
City of Novato,
City of Piedmont,
City of Pleasanton,
City of Redwood City,
Town of San Anselmo,
City of Sausalito, and
City of Union City.

Attached to and forming part of Policy No. BCJPIA 2023-24 GL

Effective Date: July 1, 2023



AUTHORIZED REPRESENTATIVE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

LIABILITY COVERAGE

ENDORSEMENT NO. 2

Retained Limits applicable to each Participant are as follows:

<u>Member</u>	<u>Retained Limit</u>
City of Albany	\$ 100,000
City of Berkeley	\$ 500,000
City of Brisbane	\$ 25,000
Central Marin Police Authority	\$ 100,000
Central Marin Fire Authority	\$ 250,000
Town of Corte Madera	\$ 100,000
City of Emeryville	\$ 10,000
Town of Fairfax	\$ 50,000
City of Larkspur	\$ 100,000
City of Los Altos	\$ 250,000
City of Menlo Park	\$ 250,000
City of Mill Valley	\$ 250,000
City of Monte Sereno	\$ 5,000
City of Novato	\$ 250,000
City of Piedmont	\$ 25,000
City of Pleasanton	\$ 250,000
City of Redwood City	\$ 350,000
Town of San Anselmo	\$ 10,000
City of Sausalito	\$ 50,000
City of Union City	\$ 250,000

Attached to and forming part of Form No. BCJPIA 2023-24 GL

Effective Date: July 1, 2023



AUTHORIZED REPRESENTATIVE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

LIABILITY COVERAGE

ENDORSEMENT NO. 3

Entities afforded coverage as a sub-entity to a Participant are as follows:

Member/Sub-Entity

City of Albany

City of Albany as Successor Agency to the Albany Community Reinvestment Agency

City of Berkeley

City of Berkeley as the Successor Agency to the Berkeley Redevelopment Agency

City of Brisbane

City of Brisbane as Successor Agency to the Brisbane Redevelopment Agency

City of Emeryville

Management of Emeryville Services Authority (MESA)

City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency

City of Larkspur

City of Larkspur as Successor Agency to the Larkspur Redevelopment Agency

City of Menlo Park

City of Menlo Park acting as Successor Agency to the Community Development Agency of the City of Menlo Park

City of Novato

City of Novato as Successor Agency to the Dissolved Novato Redevelopment Agency

City of Pleasanton

City of Redwood City

Redwood City Water System

City of Redwood City as Successor Agency to the Redevelopment Agency of the City of Redwood City

City of Union City

City of Union City as Successor Agency to the Union City Redevelopment Agency

Town of Corte Madera

Sanitary District No. 2 of Marin County

Attached to and forming part of Form No. BCJPIA 2023-24 GL

Effective Date: July 1, 2023



AUTHORIZED REPRESENTATIVE

BAY CITIES JOINT POWERS INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

LIABILITY COVERAGE

ENDORSEMENT NO. 4

This Endorsement, effective 12:01 a.m., July 1, 2023, forms a part of the BCJPIA Pooled Liability Program Memorandum of Coverage for the 2023-24 Program Year, Form No. BCJPIA 2023-24 GL.

This Endorsement is intended to supplement the Memorandum of Coverage, and to be read in conjunction with that document. Except as expressly amended herein, all terms and conditions contained in the Memorandum of Coverage apply to this Endorsement, and govern its interpretation.

Insurance coverage has been purchased through the Alliant Deadly Weapon Response Program (ADWRP), attached to and forming part of Policy No. PJ2300050003 (“the ADWRP Policy”). If a loss covered under the Memorandum of Coverage is also covered under the ADWRP Policy, coverage provided under the Memorandum of Coverage shall be excess to, and shall not contribute with, such coverage. If the coverage under the ADWRP Policy exceeds the **covered party’s retained limit** and the loss is in excess of the amount of coverage under such policy, the coverage provided under the Memorandum of Coverage will apply over the limit of liability provided under the Alliant Program once that limit of liability has been exhausted, up to the applicable **limit of coverage**.

Any coverage provided under the Memorandum of Coverage for a loss also covered under the ADWRP Policy shall be subject to all terms and conditions set forth in the Memorandum of Coverage, and nothing in this Endorsement or otherwise shall operate to expand or otherwise change such coverage, regardless of the nature, type, or extent of the coverage provided under the ADWRP Policy.


AUTHORIZED REPRESENTATIVE