

AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

MEMORANDUM OF EXCESS LIABILITY COVERAGE

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

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

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

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

SECTION I - COVERAGE AGREEMENT

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

Coverage A. **BODILY INJURY and PROPERTY DAMAGE**

to which this Memorandum of Coverage applies, caused by an occurrence;

Coverage B. **PERSONAL INJURY**

to which this Memorandum of Coverage applies, caused by an offense;

Coverage C. **PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY**

to which this Memorandum of Coverage applies, caused by a **wrongful act**; or,

Coverage D. **EMPLOYMENT PRACTICES LIABILITY**

to which this Memorandum of Coverage applies, caused by a **wrongful act**.

SECTION II - DEFENSE AND SETTLEMENT COSTS

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

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

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

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

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

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

SECTION IV - MEMORANDUM OF COVERAGE PERIOD, TERRITORY

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

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

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

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

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

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

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

SECTION VI - EXCLUSIONS

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

A. AIRCRAFT

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

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

This exclusion shall not apply, however, (1) to liability arising out of the ownership, operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned or operated by the **Covered Party**; or (2) to **non-owned aircraft** operated by or on behalf of the **Covered Party**; or (3) to those areas open to the public for the purpose of entering, leaving, or using the airport facilities (including parking lots and garages).

B. ASBESTOS

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

C. BIDS

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

D. BODILY INJURY

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

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

E. CONTRACTUAL LIABILITY

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

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

F. UNDER COVERAGE A

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

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

G. UNDER COVERAGE B

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

H. UNDER COVERAGE C

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

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

I. UNDER COVERAGE D

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

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

J. DAMS

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

K. EMINENT DOMAIN AND INVERSE CONDEMNATION

To liability, directly or indirectly, arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, whether grounded in federal or state law, regardless of whether such claims are made directly against the **Covered Party** or by virtue of any agreement entered into by or on behalf of the **Covered Party**.

This exclusion shall not apply to any inverse condemnation where any **suits** or claims for inverse condemnation are a result of negligence on the part of a **Covered Party**;

L. ERISA

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

M. EXCLUDED ENTITIES AND OPERATIONS

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

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

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

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

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

3. Employment practices liability;

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

N. FAILURE TO SUPPLY

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

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

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

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

P. NUCLEAR

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

Q. POLLUTION

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

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

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

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

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

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

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

R. PRIOR KNOWLEDGE

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

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

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

S. PROFIT, REMUNERATION OR ADVANTAGE

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

T. PROPERTY DAMAGE

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

U. SECURITIES

To liability arising out of or by reason of:

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

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

V. SUBSIDENCE

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

W. TRANSIT

To liability for **bodily injury** or **property damage** arising out of any transit authority, transit system or public transportation system owned or operated by any **Covered Party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped persons transportation, or to contingent liability where such services are contracted.

X. TAXES, FEES, ASSESSMENTS

To the refund of taxes, fees or assessments.

Y. UNINSURED/UNDERINSURED MOTORISTS

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

Z. WILLFUL VIOLATION

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

AA. WORKERS' COMPENSATION

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

SECTION VII - DEFINITIONS

A. **Administration** means:

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

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

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

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

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

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

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

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

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

1. Operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof;
 2. The existence of tools, uninstalled equipment or abandoned or unused materials.
- F. **Covered Party** means any person or organization qualifying as a **Covered Party** under **SECTION V: WHO IS A COVERED PARTY, COVERED PERSONS OR ENTITIES** section of this Memorandum of Coverage. The coverage afforded applies separately to each **Covered Party** against whom claim is made or **suit** is brought, except with respect to the limits of the **Authority's** liability.

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

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

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

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

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

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

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

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

U. **Property damage** means

1. Physical injury to, or destruction of, tangible property which occurs during the Memorandum of Coverage period, including the loss of use thereof at any time resulting therefrom; or
2. Loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the Memorandum of Coverage period.

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

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

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

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

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

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

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

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

SECTION VIII - CONDITIONS

A. ACTION AGAINST THE AUTHORITY

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

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

B. APPEALS

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

C. ASSIGNMENT

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

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

D. BANKRUPTCY OR INSOLVENCY

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

E. CANCELLATION AND NON-RENEWAL

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

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

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

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

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

F. CAPTIONS

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

G. CHANGES

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

H. CLAIMS SERVICING ORGANIZATION

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

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

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

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

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

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

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

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

J. INSPECTION

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

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

K. MEMBER AGENCY

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

L. OTHER COVERAGE

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

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

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

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

M. SEVERABILITY OF INTERESTS

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

N. SUBROGATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

DAM EXTENSION

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

SCHEDULE

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

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

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

DEFENSE COST

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

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

LIMITED LEAD IN POTABLE WATER LIABILITY COVERAGE

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

SCHEDULE

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

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

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

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

A. This coverage does not apply to:

Terrorism

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

B. The following definitions are added:

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

TRANSIT COVERAGE - SCHEDULED COVERED PARTY

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

COVERED PARTY
City of Santa Monica Big Blue Bus Line

SCHEDULE

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

WAR EXCLUSION

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

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

WAR

Any liability arising out of:

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

BLANKET WAIVER OF SUBROGATION

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

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

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

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

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

Liability arising out of:

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

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

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

All other Memorandum of Coverage terms and conditions remain unchanged.

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

EXCLUSION - ORGANIC PATHOGENS

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

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

Organic Pathogens

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

As used herein, "Organic Pathogen" means any:

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

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