

ICRMA

2023/2024 Liability Program
Memorandum of Coverage

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**INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY
MEMORANDUM OF LIABILITY COVERAGE
MEMORANDUM NO. ICRMA2023-2024**

Declarations

1. COVERED MEMBERS Members of the ICRMA liability program, per Schedule A
2. MEMORANDUM PERIOD From 7-1-2023 to 7-1-2024
12:01 A.M. Pacific Time

3. LIMIT OF COVERAGE
\$35,000,000 per occurrence, as follows:

- ICRMA pooled retained limit: \$2,000,000 (inclusive of the Member retained limit set forth in schedule A) ¹
- Insured limits: (excess of the ICRMA pooled retained limit):

	Per Occurrence Limits	Aggregate Limits
1	\$2M x \$2M per occurrence ²	\$20M annual pool aggregate limit (except Auto Liability)
2	\$5M x \$4M per occurrence	\$10M annual pool aggregate limit for POEO ³ \$10M annual pool aggregate limit for EPL
3	\$4M x \$9M per occurrence	\$8M annual per member aggregate limit (except Auto Liability)
4	\$2.5M x \$13M per occurrence	\$5M annual per member aggregate limit/ \$10M annual pool aggregate limit (except Auto Liability)
5	\$2.5M x \$15.5M per occurrence	\$10M annual pool aggregate limit (except Auto Liability)
6	\$2M x \$18M per occurrence	\$6M annual pool aggregate limit
7	\$5M x \$20M per occurrence	\$5M annual pool aggregate limit
8	\$5M x \$25M per occurrence	\$5M annual pool aggregate limit
9	\$5M x \$30M per occurrence	\$5M annual pool aggregate limit

In the event ICRMA elects or is obligated to provide coverage which is not reinsured, the maximum liability limit that ICRMA is obligated to pay is \$2,000,000, inclusive of the Member retained limit.

Documents attached at issuance: Schedule A, and Public Crisis Event Coverages

On Behalf of the INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY:



Authorized Representative

¹ The member retained limits set forth in Schedule A for Downey, Fullerton, Hawthorne, Inglewood, and Santa Ana meet or exceed the ICRMA pooled retained limit. As a result, those members do not participate in the ICRMA pooled layer.

² Due to the amount of its member retained limit set forth in Schedule A, Santa Ana only participates in this layer for \$1M of coverage per occurrence. Due to the amount of its member retained limit set forth in Schedule A, Fullerton does not participate in this layer.

³ “POEO” refers to Public Officials’ Errors and Omissions as that term is defined in Section II – Definitions (26) “EPL” refers to Wrongful Employment Practices as that term is defined in Section II – Definitions (33).

Schedule A

The ICRMA pooled retained limit is \$2,000,000, inclusive of the applicable Member retained limit listed below as to each Member.

Schedule of Members and Retained Limits

Member	Retained Limit
Adelanto	\$250,000
Bell	\$250,000
Downey*	\$2,000,000
El Monte	\$500,000
El Segundo	\$750,000
Fullerton*	\$4,000,000
Glendora	\$250,000
Hawthorne*	\$2,000,000
Huntington Park	\$500,000
Inglewood*	\$2,000,000
Lynwood	\$250,000
San Fernando	\$250,000
Santa Ana*	\$3,000,000
South Gate	\$500,000

*As the retained limit of these Members is equal to or exceeds the ICRMA pooled retained limit set forth above, there is no ICRMA pooled retained limit as to those Members.

MEMORANDUM OF LIABILITY COVERAGE

FOR THE

INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY
(Hereinafter referred to as “ICRMA”)

This Memorandum of Liability Coverage (MEMORANDUM) does not provide insurance, but instead provides for pooled risk sharing. This MEMORANDUM is a negotiated agreement among the members of the Independent Cities Risk Management Authority (ICRMA). No MEMBER is entitled to rely on any contract interpretation principles pertaining to contracts of adhesion and/or that require ambiguous language to be interpreted against the drafter of such agreement. This MEMORANDUM 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, including but not limited to *Southgate Recreation and Park District v. California Association for Park and Recreation Services* (2003) 106 Cal.App.4th 293, and *City of South El Monte v. Southern Cal. Joint Powers Ins. Authority* (1995) 38 Cal.App.4th 1629, giving full effect to the intent of the MEMBERS of ICRMA, acting through the Board in adopting this MEMORANDUM. Any citation or reference to insurance law in interpreting this MEMORANDUM is only for purposes of illustration or comparison, and does not constitute a waiver by the MEMBERS of ICRMA of the position that this MEMORANDUM is not an insurance policy and that insurance law does not apply. Each MEMBER of ICRMA specifically waives and rejects the argument that this MEMORANDUM is an adhesion contract or is akin to or the functional equivalent of an insurance policy, or any similar arguments or positions. As ICRMA 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 section 2860. Failure to provide notice to a COVERED PARTY of any coverage issue shall not operate to waive any of the provisions of this MEMORANDUM.

Throughout this MEMORANDUM, words and phrases that appear capitalized have special meanings. They are defined in Section II - Definitions.

In consideration of the deposit premium, each MEMBER agrees with its fellow MEMBERS on the Board of ICRMA as follows:

Section I – Coverages / Duty to Defend

ICRMA will pay up to the LIMIT OF COVERAGE set forth in Section IV those sums on behalf of the COVERED PARTY for ULTIMATE NET LOSS in excess of the RETAINED LIMIT that the COVERED PARTY becomes legally obligated to pay as DAMAGES because of BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY, WRONGFUL EMPLOYMENT PRACTICES and/or PUBLIC OFFICIALS’ ERRORS AND OMISSIONS caused by an OCCURRENCE except as otherwise excluded.

ICRMA will pay only those DEFENSE COSTS that are incurred in compliance with the Litigation Management Policies and Procedures (LMPP) and expressly approved by ICRMA, either directly or through the use of a vendor performing bill review services. Only those DEFENSE COSTS that are incurred in compliance with the Litigation Management Policies and Procedures (LMPP) and expressly approved by ICRMA, either directly or through the use of a vendor performing bill review services, shall be applied toward the RETAINED LIMIT.

ICRMA shall have a duty to pay DEFENSE COSTS on behalf of a MEMBER only as long as the CLAIM can be reasonably construed to seek DAMAGES covered by this MEMORANDUM. Insurance law 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 ICRMA's duty to pay DEFENSE COSTS. In considering the duty to pay DEFENSE COSTS, ICRMA may consider facts outside the allegations of the CLAIM. This paragraph states the existing intent of the MEMBERS of ICRMA as to all considerations of the duty to pay DEFENSE COSTS under any negotiated Memorandum of Coverage agreement entered into by the MEMBERS of ICRMA.

Section II – Definitions

1. AIRCRAFT - means an operational vehicle designed for the transport of persons or property principally in the air.
2. APPROVED PANEL COUNSEL - means a panel of attorneys approved and maintained by ICRMA to provide liability defense services to COVERED PARTIES. APPROVED PANEL COUNSEL attorneys shall comply with ICRMA Litigation Management Guidelines.
3. AUTOMOBILE - means a self-propelled land motor vehicle and/or trailer or semi-trailer, including any attached machinery or equipment, designed for travel on public roads and subject to motor vehicle registration, but does not include MOBILE EQUIPMENT.
4. BODILY INJURY - means physical injury, emotional injury, sickness, or disease 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. CLAIM - means a demand, action, or suit against a COVERED PARTY to recover DAMAGES within or alleged to be within the terms set forth in this MEMORANDUM. A demand, action, or suit for injunctive relief, administrative relief, declaratory relief, restitution, issuance of permits or licenses, any administrative proceedings, or other non-monetary forms of relief does not constitute a CLAIM for DAMAGES. Complaints filed with or other proceedings before the California Department of Fair Employment and Housing or the federal Equal Employment Opportunity Commission shall be considered CLAIMS.
6. COMMUNICABLE DISEASE – means any disease, illness, or bodily condition caused by the direct or indirect transmission by any means of or exposure to an INFECTIOUS

AGENT including, but not limited to, those arising out of coronavirus (COVID-19), severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and any mutations arising from or relating thereto.

7. COVERED PARTY - means:

- (a) The MEMBER named in the Declarations, including any and all councils, commissions, agencies, districts, authorities, boards, including the governing board or similar entities coming under such MEMBER'S direction or control or for which such MEMBER'S board members sit as the governing body. COVERED PARTY includes departments and constituent agencies of the MEMBER, 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 MEMBER whether or not compensated, while acting for or on behalf of the MEMBER, at the direction of the MEMBER, including while acting on outside boards 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), except any airport or hospital board or commission, regardless of how such body is denominated, provided, however, that an airport board or commission may be added to this MEMORANDUM by endorsement on approval of the Board.
- (c) Any person or entity identified as a COVERED PARTY, holding a certificate of coverage duly issued by ICRMA but only for OCCURRENCES arising out of the activity described on the certificate of coverage.
- (d) Any officer or director of ICRMA, and the staff and employees thereof, while in the course and scope of their duties for ICRMA, 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 a MEMBER, or a person who is an official, employee, or volunteer of the MEMBER acting on behalf of the MEMBER, who 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 MEMBER, the coverage afforded by this MEMORANDUM will apply in excess of and shall not contribute with all 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 or loaned for use by or on behalf of the COVERED PARTY, any person

while using such AUTOMOBILE in the course and scope of employment and any person or organization legally responsible for the use thereof, provided its actual use is with the permission of the COVERED PARTY named in the Declarations, 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 MEMORANDUM does not provide uninsured or underinsured motorist coverage.
- (g) The term COVERED PARTY, and any 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 ICRMA's liability or the RETAINED LIMIT.
- (h) Notwithstanding sections (b) and (g) above, the defense and indemnity coverage afforded by this MEMORANDUM to a past or present official, employee, or volunteer of a MEMBER is not broader than the MEMBER'S duty to defend and indemnify its officials, employees, or volunteers pursuant to California Government Code Sections 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the MEMBER 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 MEMBER refuses to provide such defense and/or indemnity to said official, employee, or volunteer, then this MEMORANDUM shall not provide any such defense or indemnity coverage to said official, employee, or volunteer. All immunities, defenses, rights and privileges afforded to a MEMBER 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 ICRMA to bar any defense or indemnity coverage under this MEMORANDUM to that MEMBER'S official, employee, or volunteer.
8. 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.

9. DAM - means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either; (a) is 25 feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream, channel, or watercourse, to the maximum possible water storage elevation; or (b) has an impounding capacity of 50 acre-feet or more.

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

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control 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 wastewater treatment or storage pond exempted from state regulation and supervision by Water Code Section 6025.5 be considered a DAM.

10. DAMAGES - means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a COVERED PARTY, or for liability assumed by the COVERED PARTY under a NON-EXCLUDED INDEMNITY CONTRACT. If such compensation in money is recovered, then DAMAGES also includes attorney fees and costs not based on contract awarded against the COVERED PARTY, if the fees or costs arise from an OCCURRENCE to which this coverage applies. 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 costs not based on contract.
11. DEFENSE COSTS - means fees and expenses incurred by the COVERED PARTY caused by and relating to the defense or appeal of a CLAIM including attorney's fees, 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 NON-EXCLUDED INDEMNITY CONTRACT, where such attorney fees or costs are attributable to a CLAIM for DAMAGES covered by this MEMORANDUM. DEFENSE COSTS shall not include the office expense of ICRMA or the COVERED PARTY, nor

expenses of a claims administrator engaged by the MEMBER, nor shall it include costs of attorneys retained by ICRMA to represent solely its interests.

12. EMPLOYEE - means any person whose labor or services is engaged and directed by a MEMBER, whether past, present or future, including a volunteer, official, or applicant for employment. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial, or confidential position. EMPLOYEE shall not include leased employees, independent contractors or subcontractors, agents, or servants of any MEMBER unless the MEMBER has the right to and does control and direct the details of how the work is to be performed and provides substantially all supplies and equipment necessary to the work.
13. INFECTIOUS AGENT – means any bacteria, virus, toxin, parasite, organism, microorganism, or biological entity capable of causing a COMMUNICABLE DISEASE or exacerbating or accelerating an existing bodily condition or illness.
14. INVERSE CONDEMNATION - means a CLAIM under the California Constitution or United States Constitution alleging that the COVERED PARTY has taken or damaged real, personal, tangible or intangible private property for public use through any means, including land use restrictions.
15. LIMIT OF COVERAGE – means the amount of coverage stated in the Declarations or certificate of coverage issued by ICRMA, subject to any applicable sub-limit.
16. MEMBER - means the entity named in the Declarations.
17. MEMORANDUM - means the Memorandum of Liability Coverage for ICRMA including any endorsements thereto.
18. MEMORANDUM PERIOD - means the period stated in the Declarations.
19. MOBILE EQUIPMENT - means any of the following types of land vehicles, including any attached machinery or equipment:
 - (a) Bulldozers, forklifts, and other vehicles designed principally for use off public roads;
 - (b) Vehicles that travel on crawler treads;
 - (c) Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted equipment of the following types: power cranes, shovels, loaders, diggers, drills, graders, scrapers, rollers;
 - (d) Vehicles which are not self-propelled, maintained to provide mobility to permanently attached equipment of the following types: air compressors, pumps

and generators for spraying, welding, building cleaning, geophysical exploration, lighting and well servicing, and equipment to raise and lower workers.

20. **NON-EXCLUDED INDEMNITY CONTRACT** - means that part of any contract or agreement pertaining to the MEMBER'S routine governmental operations under which the MEMBER 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 **MEMORANDUM** applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
21. **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 and any law amendatory thereof.
22. **OCCURRENCE** - means:

- (a) With respect to **BODILY INJURY** or **PROPERTY DAMAGE**: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results during the **MEMORANDUM PERIOD** in **BODILY INJURY** or **PROPERTY DAMAGE** neither expected nor intended from the standpoint of the **COVERED PARTY**.

PROPERTY DAMAGE which is loss of use of tangible property not physically injured shall be deemed to occur at the time of the **OCCURRENCE** which caused it.

- (b) With respect to **PERSONAL INJURY, WRONGFUL EMPLOYMENT PRACTICES** and **PUBLIC OFFICIALS' ERRORS & OMISSIONS**: an offense, act, omission, or policy described in the definitions of such terms which first occurs during the **MEMORANDUM PERIOD**.

Subject to specific provisions of this **MEMORANDUM** regarding **SEXUAL ABUSE, PROPERTY DAMAGE** or **BODILY INJURY** occurring over more than one **MEMORANDUM PERIOD** shall be deemed to occur during only one **MEMORANDUM PERIOD**, and that **MEMORANDUM PERIOD** shall be when any **PROPERTY DAMAGE** or **BODILY INJURY** was first discovered. Coverage for such **PROPERTY DAMAGE** or **BODILY INJURY** shall be provided by at most one Memorandum of Coverage issued by the Authority.

Subject to specific provisions of this **MEMORANDUM** regarding **SEXUAL ABUSE, with respect to PERSONAL INJURY, WRONGFUL EMPLOYMENT PRACTICES, and PUBLIC OFFICIALS' ERRORS AND OMISSIONS**, an **OCCURRENCE** with a duration of more than one **MEMORANDUM PERIOD** shall be treated as a single **OCCURRENCE** arising during the **MEMORANDUM PERIOD** when the **OCCURRENCE** began.

23. PERSONAL INJURY – means injury, including emotional injury, arising out of one or more of the following offenses:
- (a) False arrest, detention or imprisonment, malicious prosecution or abuse of process;
 - (b) Wrongful entry into or eviction of a person from a room or dwelling or premises that the person occupies, or other invasion of the right of private occupancy;
 - (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 infringement of copyright, title or slogan, or oral or written publication of material that violates a person's right of privacy;
 - (d) Injury resulting from the use of reasonable force for the purpose of protecting persons or property; or
 - (e) Discrimination against any non-EMPLOYEE based upon race, religion, nationality, national origin, color, creed, sex, sexual preference, handicap, disability, age or employment, or violation of civil rights.
24. POLLUTANTS – means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, silica, bacteria, molds and/or fungus, waste and/or electromagnetic fields, shooting ranges, lead, volatile organic compounds (VOC), radioactive materials, any pesticide or herbicide, and asbestos in any form. 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.
25. PROPERTY DAMAGE - means:
- (a) Physical injury to tangible property, including all resulting loss of use to that property; or
 - (b) Loss of use of tangible property that is not physically injured.
26. PUBLIC OFFICIALS' ERRORS AND OMISSIONS - means any actual or alleged misstatement or misleading statement or error or omission, by any individual COVERED PARTY (defined as those individuals described in paragraphs (b), (c) or (d) of the definition of COVERED PARTY), individually or collectively, arising in the course and scope of the individual's duties with the COVERED PARTY or claimed against them 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 a MEMBER arising out of a CLAIM or potential CLAIM against an individual COVERED PARTY which falls within

this definition, then the coverage afforded by this definition shall also apply to the MEMBER, subject to all terms, conditions and exclusions in this MEMORANDUM, whether or not any individual COVERED PARTY is specifically named in a CLAIM or lawsuit. 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 errors or omissions will be considered as arising out of one OCCURRENCE.

27. REPORTING OFFICIAL – means mayor, city council, city manager, city attorney, assistant city manager, director of human resources, risk manager or equivalent positions.
28. RETAINED LIMIT – means the amount stated in the Declarations which the MEMBER must pay before ICRMA is obligated to make any payment. RETAINED LIMIT consists of all DEFENSE COSTS and payment of any settlement or judgment for DAMAGES covered by this MEMORANDUM. Only those DEFENSE COSTS that are incurred in compliance with the Litigation Management Policies and Procedures (LMPP) and expressly approved by ICRMA, either directly or through the use of a vendor performing bill review services, shall be applied toward the RETAINED LIMIT. For each OCCURRENCE, there shall be only one RETAINED LIMIT per MEMBER regardless of the number of claimants or COVERED PARTIES against whom a claim is made. If the COVERED PARTY is named as an additional insured or an additional covered party under an insurance program of a third party providing services or materials to the COVERED PARTY, payment under said insurance shall apply to the satisfaction of that RETAINED LIMIT.
29. 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 perpetrator 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.
30. 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, arising from an OCCURRENCE to which this MEMORANDUM applies. 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 MEMORANDUM.
31. UNMANNED AIRCRAFT – means a device or machine that is intended to navigate in the air without an on-board pilot, also commonly referred to as a “drone.”
32. WATERCRAFT - means an operational vehicle in excess of 27 feet designed for the transport of persons or property principally on the water.

33. **WRONGFUL EMPLOYMENT PRACTICES** - means policies, acts or omissions that lead to an **EMPLOYEE'S CLAIM** of harassment, wrongful termination, wrongful failure to employ, retaliation, or unlawful discrimination or violation of civil rights. The exclusion of independent contractors or subcontractors from the definition of **EMPLOYEE** shall not apply to a **CLAIM** for harassment specifically authorized under Cal. Gov. Code §12940(j)(4) and (5). This exception shall not apply to any of the other types of harassment set forth in Cal. Gov. Code §12940(j)(4) and (5).

Section III – Defense and Settlement

ICRMA shall have no duty to assume charge of the investigation or defense of any **CLAIM**. However, ICRMA shall have the right to assume control of or participate in the negotiation, investigation, defense, settlement or appeal of any **CLAIM** which ICRMA determines, in its sole discretion, to have a reasonable probability of resulting in an **ULTIMATE NET LOSS** in excess of the **RETAINED LIMIT**. Decisions by ICRMA 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 Claims Committee as soon as practicable, in a manner directed by the Claims Committee. If ICRMA assumes control of a **CLAIM**, the **COVERED PARTY** shall be obligated to pay, at the direction of ICRMA, any sum necessary for the settlement of the **CLAIM**, or to satisfy liability imposed by law, up to the **RETAINED LIMIT**. If the **MEMBER** refuses to pay its **RETAINED LIMIT** on demand by ICRMA with respect to any **CLAIM**, said **CLAIM** shall not be covered under this **MEMORANDUM**.

Whether or not ICRMA assumes control of the negotiation, investigation, defense, settlement or appeal of any **CLAIM**, ICRMA has the right to reassign defense counsel in its sole discretion. Decisions by ICRMA to reassign defense counsel on a particular **CLAIM** shall be made by the Liability Program Manager, who shall notify the **MEMBER** of such decision in writing. The **MEMBER** may appeal the decision to the Claims Committee by notifying the Liability Program Manager in writing within ten calendar days of the date of written notification from the Liability Program Manager. Appeals will be heard by the Claims Committee as soon as practicable, in a manner directed by the Claims Committee.

Unless ICRMA assumes control of the **CLAIM**, ICRMA will not settle a **CLAIM** without the **MEMBER's** consent; however, the **MEMBER** may not unreasonably withhold such consent. If the **MEMBER** withholds consent to any settlement that ICRMA recommends, then ICRMA's liability for the **CLAIM** will not exceed the amount for which the **CLAIM** could have been settled, plus **DEFENSE COSTS** incurred by ICRMA up to the date of the **MEMBER's** refusal to consent. When total **DEFENSE COSTS** and **DAMAGES** reach the amount for which the **CLAIM** could have been settled, plus **DEFENSE COSTS** paid by ICRMA up to the date of the **MEMBER's** refusal to consent, ICRMA has no further liability for **DEFENSE COSTS** or **DAMAGES** and has the right to withdraw its defense of the **CLAIM**. The **MEMBER** agrees to accept the tender of the defense when ICRMA withdraws.

For purposes of the preceding paragraph, a **CLAIM** "could have been settled" for a given amount when the claimant(s) has (have) made a demand in writing for a final and full settlement in that

amount, the Board has approved a final and full settlement in that amount, and the CLAIM could be settled for that amount if the MEMBER consented. For purposes of applying this paragraph and the preceding paragraph, approval by the Board is required for any settlement where the MEMBER has refused to consent to the settlement.

No CLAIM shall be settled by the MEMBER for an amount in excess of the RETAINED LIMIT without prior written consent of ICRMA. After the amount of the RETAINED LIMIT has been exhausted by payment of judgments, settlements and DEFENSE COSTS, ICRMA will pay any excess within its LIMIT OF COVERAGE for a CLAIM which is covered by the terms of this MEMORANDUM. ICRMA shall not be obligated to pay or to defend any CLAIM after its LIMIT OF COVERAGE has been exhausted by payment of DEFENSE COSTS, judgments or settlements, or after such LIMIT OF COVERAGE has been tendered for settlement.

The COVERED PARTY shall fully cooperate in all matters pertaining to the investigation, defense, negotiation, or settlement of a CLAIM. The duty to fully cooperate requires, at a minimum and without limitation, compliance by the COVERED PARTY and its defense counsel with the Litigation Management Policies and Procedures (LMPP). The duty to fully cooperate also includes the MEMBER placing on the MEMBER's legislative agenda all matters necessary or appropriate for approval of settlements as soon as reasonably practicable under the circumstances. If the Board determines that a COVERED PARTY is refusing to fully cooperate in one or more matters pertaining to the CLAIM, then the Board in its sole discretion may deny coverage for said CLAIM under this MEMORANDUM. If the Board chooses not to deny coverage, the Board in its sole discretion shall determine whether monetary detriment to ICRMA caused by the MEMBER's refusal to cooperate can be reasonably estimated or calculated, and if so shall increase the MEMBER'S RETAINED LIMIT by that amount for purposes of the CLAIM in question. If the Board in its sole discretion determines that monetary detriment to ICRMA cannot be reasonably estimated or calculated, then the Board shall increase the MEMBER'S RETAINED LIMIT for the CLAIM in question by an amount determined by the Board in its sole discretion, provided that the amount of the increase shall be a minimum of 1% and a maximum of 25%.

If a CLAIM alleges both covered and uncovered DAMAGES, the MEMBER and ICRMA shall fully cooperate in determining the reasonable settlement value of any uncovered injury or damage, and shall make that reasonable settlement value available for settlement purposes. In the event ICRMA and the MEMBER cannot agree on the reasonable settlement value of any uncovered injury or damage, then at the written request of either ICRMA or the MEMBER that issue shall be submitted to binding arbitration under the procedures prescribed under the "Arbitration Option" provisions of Section VI.14, "Dispute Resolution." Either the MEMBER or ICRMA, or both, may agree to fund the settlement of the CLAIM, while reserving rights to arbitrate the value of any uncovered injury or damage under this paragraph.

As to a CLAIM which falls within the coverage for WRONGFUL EMPLOYMENT PRACTICES, at a minimum the MEMBER shall offer a portion of the amount which the MEMBER's own economic trial expert will opine is the MEMBER's potential exposure for lost wages and benefits. The portion shall be based on a reasonable estimate of the MEMBER's potential liability determined in consultation with the Liability Program Manager, the MEMBER's TPA, and

defense counsel, including defense counsel's written evaluation of potential liability. Failure of the MEMBER to cooperate in reaching a reasonable estimate of the MEMBER's contribution under this paragraph may be deemed by the Board in its discretion to be a failure to fully cooperate. A dispute under this paragraph may be submitted to binding arbitration under the preceding paragraph, followed by an adjustment between the MEMBER and ICRMA as appropriate. Nothing in this paragraph precludes the Board from determining in its discretion that the MEMBER has failed to fully cooperate.

In the event the CLAIM does not settle but proceeds to verdict or judgment, the MEMBER shall fully cooperate with ICRMA in ascertaining what portion of the verdict or judgment is for uncovered injury or damage, including but not limited to agreeing to a special verdict form setting forth the amount of any verdict or judgment which is for uncovered injury or damage. The amount of any verdict or judgment which is for uncovered injury or damage shall be the sole responsibility of the MEMBER.

As part of any settlement of a CLAIM, the MEMBER shall immediately pay any remaining portion of the RETAINED LIMIT which is necessary to complete the settlement, including any portion of DEFENSE COSTS as necessary to apply to or exhaust the RETAINED LIMIT, and specifically including any DEFENSE COSTS incurred by defense counsel reassigned to the CLAIM. ICRMA shall have no obligation to fund any portion of a settlement until the MEMBER's RETAINED LIMIT is exhausted.

If a COVERED PARTY incurs DEFENSE COSTS for activities which are determined by ICRMA to be primarily for the defense of CLAIMS and allegations that are not covered under this Memorandum or that are not incurred in compliance with the Litigation Management Policies and Procedures (LMPP) and expressly approved by ICRMA, either directly or through the use of a vendor performing bill review services, then the Authority shall have no obligation to pay or reimburse such DEFENSE COSTS. This paragraph states the existing intent of the MEMBERS of ICRMA as to all considerations of the duty to pay DEFENSE COSTS under any negotiated Memorandum of Coverage agreement entered into by the MEMBERS of ICRMA.

The MEMBER acknowledges and agrees that its defense counsel has an attorney-client relationship with any COVERED PARTY who is being defended and also with ICRMA as to the defense of the CLAIM. MEMBER acknowledges and agrees that its defense counsel shall comply with ICRMA's Litigation Management Policies and Procedures (LMPP).

MEMBERS shall use APPROVED PANEL COUNSEL for all litigated CLAIMS. ICRMA shall have no obligation to pay any fees or costs incurred by counsel other than APPROVED PANEL COUNSEL. If the MEMBER uses non APPROVED PANEL COUNSEL for a litigated CLAIM, then the MEMBER shall be deemed to have waived any coverage which may apply under this Memorandum. This paragraph shall not apply in the event use of non-APPROVED PANEL COUNSEL is approved by the Board in compliance with the Liability Program Litigation Management Policies and Procedures.

Whenever a member city is involved in litigation with the Independent Cities Risk Management Authority ("ICRMA"), the representative of that member city shall not participate in, nor be

present during, any discussion between ICRMA counsel and the ICRMA Board or any of its committees, nor shall any legally privileged communication between ICRMA's counsel and the Board or the Committee be distributed to the representative of the member city.

The fees incurred by or attributed to attorneys who are EMPLOYEES of the MEMBER shall not be applied to reduce the RETAINED LIMIT.

Section IV – Member’s Retained Limit and ICRMA’s Limit of Coverage

Regardless of the number of (1) COVERED PARTIES under this MEMORANDUM, (2) COVERED PARTIES involved in an OCCURRENCE, (3) persons or organizations making CLAIMS or bringing suits, or (4) CLAIMS made or suits brought, the ICRMA LIMIT OF COVERAGE, less the RETAINED LIMIT, or any sub-limit contained in this MEMORANDUM, is the most the ICRMA will pay for a COVERED ULTIMATE NET LOSS arising out of any one OCCURRENCE. ICRMA's LIMIT OF COVERAGE as the result of any one OCCURRENCE shall be only the ULTIMATE NET LOSS up to ICRMA’s LIMIT OF COVERAGE, less the MEMBER'S RETAINED LIMIT as specified in Schedule A of this MEMORANDUM.

If multiple MEMBERS are involved in any one OCCURRENCE, each MEMBER remains obligated to pay its RETAINED LIMIT prior to coverage under this MEMORANDUM. In the event that the total RETAINED LIMITS of multiple MEMBERS exceeds the amount of the ICRMA LIMIT OF COVERAGE, then any excess amount shall be retained by ICRMA.

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 a 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 RETAINED LIMIT. The LIMIT OF COVERAGE under a certificate of coverage issued by ICRMA, for a COVERED PARTY, including its officials, employees, and volunteers, shall be the limit stated in that certificate, regardless of the LIMIT OF COVERAGE stated in the Declarations which applies to the MEMBER.

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 shall be deemed to be one OCCURRENCE taking place at the time the first instance of SEXUAL ABUSE is either discovered by or reported to the REPORTING OFFICIAL, whichever date is earlier if different. 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 took place during other Coverage Periods.

With regard to WRONGFUL EMPLOYMENT PRACTICES:

All allegations by the same EMPLOYEE in the same CLAIM shall be considered one OCCURRENCE for the purpose of the LIMIT OF COVERAGE regardless of the number of COVERED PARTIES against whom the CLAIM is made.

All CLAIMS by all EMPLOYEES or former EMPLOYEES or applicants for employment arising from the same act, policy or course of conduct by a COVERED PARTY shall be considered as one OCCURRENCE for the purpose of the LIMIT OF COVERAGE regardless of the number of COVERED PARTIES against whom the CLAIM is made.

All CLAIMS which allege WRONGFUL EMPLOYMENT PRACTICES for a duration of more than one MEMORANDUM PERIOD shall be treated as a single OCCURRENCE arising during the first MEMORANDUM PERIOD when the OCCURRENCE began.

Section V – Exclusions

This MEMORANDUM does not apply to:

1. Any loss, cost, damage, expense, or CLAIM arising out of the contamination of the environment by POLLUTANTS introduced at any time, anywhere, in any way, including, but not limited to, into, upon or under any building, structure, 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. “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 buildings, structures, 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, tree spraying or to claims arising from sudden and accidental sewer backups.

This exclusion does not apply to BODILY INJURY or PROPERTY DAMAGE caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one that becomes uncontrollable or breaks out where it was not intended to be.

2. Any obligation to defend any CLAIM arising out of contamination or alleged contamination of any environment by POLLUTANTS introduced at anytime, anywhere, in any way, including, but not limited to, into or upon land, the atmosphere or any watercourse or body of water or aquifer.
3. Any loss, cost, or expense arising out of any governmental order, direction or request that a COVERED PARTY test for, monitor, clean up, remove, remedy, contain, treat, detoxify or neutralize POLLUTANTS.

4. Any loss, cost or expense incurred by a governmental unit or other third party, including, but not limited to, the cost of investigation and monitoring, and attorneys' fees relating to activities in connection with efforts to test for, monitor, clean up, remove, remedy, contain, trace, detoxify or neutralize POLLUTANTS.

Other than as specifically set forth in the exceptions to Exclusion 1, it is the intent and effect of these Exclusions 1 through 4, inclusive, to exclude any and all coverages afforded by this MEMORANDUM for any CLAIM, action, judgment, liability, settlement, defense or expenses, if any, arising out of the discharge, dispersal, release or escape of POLLUTANTS whether such results from the COVERED PARTY'S activities or the activities of others and whether or not it is sudden, gradual, accidental, intended, foreseeable, expected, fortuitous, inevitable and wherever or however it may occur.

5. Any CLAIM arising out of the hazardous properties of NUCLEAR MATERIAL or chemical, biological, radiological, or similar agents, including the use, release, or escape thereof.
6. Any CLAIM arising out of any INFECTIOUS AGENT or COMMUNICABLE DISEASE including, but not limited to, the following:
 - a) any loss, cost or expense relating to the investigation, monitoring, clean-up, remediation, removal, containment, treatment, disposal, or rehabilitation of, or the response in any way to, an actual or suspected INFECTIOUS AGENT or COMMUNICABLE DISEASE;
 - b) responding to orders or directives of any government, governmental agency, civil authority, or public health authority relating to any actual, alleged, or threatened INFECTIOUS AGENT or COMMUNICABLE DISEASE;
 - c) the failure to discover the presence of an INFECTIOUS AGENT or COMMUNICABLE DISEASE;
 - d) the actual, alleged, or threatened transmission of a COMMUNICABLE DISEASE or exposure to an INFECTIOUS AGENT;
 - e) the failure to warn or inadequacy of warnings or instructions related to the actual or potential presence of an INFECTIOUS AGENT or a COMMUNICABLE DISEASE;
 - f) the supervision, hiring, employment, training, testing, or monitoring of any person that may be a carrier of an INFECTIOUS AGENT or infected with a COMMUNICABLE DISEASE;
 - g) the testing or failure to test for an INFECTIOUS AGENT or a COMMUNICABLE DISEASE;

- h) the failure to prevent, control, or limit the spread of an INFECTIOUS AGENT or a COMMUNICABLE DISEASE;
- i) the failure to report the presence of an INFECTIOUS AGENT or a COMMUNICABLE DISEASE; or
- j) any other measures taken or not taken in responding to the actual or suspected presence of an INFECTIOUS AGENT or a COMMUNICABLE DISEASE.

7. BODILY INJURY to:

- a) An EMPLOYEE arising out of and in the course of his/her employment by the MEMBER other than an EMPLOYEE's claim for emotional distress or physical manifestations arising out of WRONGFUL EMPLOYMENT PRACTICES; or
- b) The domestic partner, spouse, child, parent, brother or sister of that EMPLOYEE as a consequence of paragraph 7.a), above.

This exclusion applies whether the MEMBER may be liable as an employer or in any other capacity, except with respect to liability of others assumed under contract.

- 8. Any CLAIM for which the MEMBER or any insurance company as its insurer may be held liable under any workers' compensation or disability benefits law or any similar law where such law is claimant's exclusive remedy.
- 9. Any CLAIM for damages payable or amounts owed under a contract, or for salary, or wages, whether characterized as front pay or back pay, including any pension or other benefits, because of any employment practices, policies, acts or omissions that lead to an EMPLOYEE'S CLAIM of WRONGFUL EMPLOYMENT PRACTICES.
- 10. Any CLAIM arising out of the ownership or operation of any airport.
- 11. Any CLAIM arising out of the operation of any hospital, clinic, or established health care facility owned or operated by a COVERED PARTY due to:
 - a) The rendering of or failure to render:
 - i. Medical, surgical, dental, X-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
 - ii. Any service or treatment conducive to health or of a professional nature; or
 - iii. Any cosmetic or tonsorial service or treatment.
 - b) The furnishing and/or dispensing of drugs or medical, dental, or surgical supplies or appliances.

This exclusion shall not apply, however, to liability of the MEMBER or its EMPLOYEES arising out of the performance of occupational physical examinations, paramedical services, first aid or emergency care, T.B. (tuberculosis) testing clinics, immunization clinics, health and wellness clinics, community health services clinics, general public health services, or 911 emergency response centers and activities.

12. Any CLAIM arising out of the partial or complete structural failure of a DAM, including but not limited to rupture, bursting, overflow, seepage, or release of water from any DAM.
13. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive damages, including damage multipliers. 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" or "disgorgement," as used in this MEMORANDUM, refer to a demand for the return of a specific item of property or a specific sum of money which was not lawfully or rightfully acquired by the COVERED PARTY.
14. Any CLAIM 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 plaintiff's rights. The intent of this exclusion is to eliminate coverage for any compensatory damages awarded because of conduct which is also the basis for an award of punitive damages, regardless of jurisdiction or venue. 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.
15. PROPERTY DAMAGE to:
 - a) Property owned by the MEMBER;
 - b) Property rented to or leased to the MEMBER where it has assumed liability for damage to or destruction of such property, unless it would have been liable in the absence of such assumption of liability; or
 - c) AIRCRAFT or WATERCRAFT in the MEMBER'S care, custody and control.
16. Any CLAIM arising out of the ownership, operation, use, maintenance or entrustment to others of:
 - a) Any AIRCRAFT; or
 - b) Any WATERCRAFT 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.

17. Any CLAIM arising out of the ownership, operation, use, maintenance or entrustment to others of an UNMANNED AIRCRAFT. However, this exclusion shall not apply if all of the following conditions are met with respect to any use or operation of an UNMANNED AIRCRAFT which gives rise to a CLAIM:
 - a) The UNMANNED AIRCRAFT is operated in compliance with applicable Federal Aviation Administration (FAA) rules and regulations, including as necessary under a proper and valid Certificate of Authorization (COA) obtained from the FAA.
 - b) Any personnel operating the UNMANNED AIRCRAFT were trained and certified in the operation of the system.
 - c) The operation of the UNMANNED AIRCRAFT was approved by a MEMBER employee or official, which employee or official was acting in a management or supervisory role when approving the operation of the UNMANNED AIRCRAFT.
 - d) The operation of the UNMANNED AIRCRAFT was in the course of a legitimate MEMBER approved activity.
 - e) If necessary, the appropriate agency of the MEMBER properly secured a search warrant prior to the operation of the UNMANNED AIRCRAFT.
18. Any CLAIM arising out of the operation of any transit district, transit system, or public transportation system owned or operated by the MEMBER, except any transit system operating over non-fixed route systems such as "dial-a-ride," senior citizen transportation, or handicapped transportation. This exclusion shall not apply to any CLAIM for WRONGFUL EMPLOYMENT PRACTICES or other employment related CLAIM.
19. Any CLAIM arising out of the failure to supply or provide an adequate supply of gas, water or electricity, when such failure is a result of the inadequacy of the MEMBER'S facilities to supply or produce sufficient gas, water or electricity to meet customary and expected 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 MEMBER to procure, produce, process, or transmit the gas, water, or electricity.

20. Any CLAIM arising out of the principles of eminent domain, condemnation proceedings or INVERSE CONDEMNATION, land use planning or regulation, annexation, or other condemnation proceedings by whatever name called. This exclusion applies whether or not liability accrues directly against the MEMBER or by virtue of any agreement entered into by or on behalf of the MEMBER. This exclusion applies where such CLAIM results from:

- a) The deliberate decision-making conduct of the MEMBER;
- b) A judicial, administrative, or legislative order; or
- c) The initiative process.

This exclusion shall not apply to physical injury to tangible property, including all resulting loss of use to that tangible property which has been physically injured, resulting from the accidental failure of a COVERED PARTY'S property or equipment.

- 21. Any CLAIM arising out of any decision by the MEMBER, or any officer or employee of the MEMBER to engage in the operation of any business involving marijuana.
- 22. Any CLAIM, judgment or settlement or other agreement from any arbitration proceeding under any contract in which the MEMBER has assumed liability, including a NON-EXCLUDED INDEMNITY CONTRACT, where either of the following is true: a) ICRMA is not entitled to or not given the right to exercise with the MEMBER the MEMBER'S rights in the choice of arbitrators, or b) ICRMA is not entitled to or not given the right to exercise with the MEMBER the MEMBER'S rights in the conduct of the arbitration proceedings.
- 23. Any CLAIM due to war, whether or not declared, civil war, terrorism, or revolution or to any act or condition incident to the foregoing.
- 24. Any CLAIM arising out of land movement, subsidence, or earthquake.
- 25. Benefits payable under any employee benefit plan (whether the plan is voluntarily established by the MEMBER or mandated by statute) because of unlawful discrimination.
- 26. Refund of or restitution for taxes, fees, service charges, or assessments.
- 27. Any CLAIM arising in whole or in part out of a COVERED PARTY'S obtaining remuneration or financial gain to which the COVERED PARTY was not legally entitled.
- 28. Any CLAIM arising in whole or in part out of the willful 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 any COVERED PARTY.
- 29. Any CLAIM arising out of estimates of probable costs or cost estimates being exceeded or 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.
- 30. Any CLAIM arising out of failure to perform, or breach of, a contractual obligation.

31. Any CLAIM arising out of liability assumed under any contract or agreement. This exclusion does not apply to liability for DAMAGES:
 - a) Assumed in a contract or agreement that is a NON-EXCLUDED INDEMNITY CONTRACT, provided the BODILY INJURY or PROPERTY DAMAGE occurs subsequent to the execution of the contract or agreement;
 - b) That the MEMBER would have in the absence of the contract or agreement; or
 - c) Assumed in a mutual aid agreement.
32. Any CLAIM arising out of or pursuant to any of the following:
 - a) the Employee Retirement Income Security Act of 1974,
 - b) the Consolidated Omnibus Budget Reconciliation Act;
 - c) the Worker Adjustment and Retraining Notification Act;
 - d) The Fair Labor Standards Act (FLSA), including but not limited to any wage and hour or other claim arising under the FLSA or any California Wage Orders or any similar federal or state law;
 - e) any similar federal, state or local laws;
 - f) any amendments to such laws;
 - g) any regulations promulgated under any such laws; or
 - h) any state statute or common law rule which imposes fiduciary duties and responsibilities with respect to employee benefit programs.
33. Any CLAIM arising out of ownership, operation, maintenance, or use of any trampoline or other rebound tumbling device. This exclusion shall not apply to inflatable bounce houses.
34. Any CLAIM 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 while acting for or on behalf of the MEMBER.
35. Any CLAIM arising out of or in the course of any special event not sponsored or co-sponsored by the MEMBER, but this exclusion shall not apply to a CLAIM for a dangerous condition of public property.

36. Any CLAIM arising out of the private use of a firing range owned, operated, or maintained by a MEMBER, where such private use is not in the course and scope of the MEMBER'S business activities.
37. Any CLAIM arising out of oral or written publication of material, if done by or at the direction of a COVERED PARTY with knowledge of its falsity.
38. Any CLAIM by any MEMBER against its own past or present elected or appointed officials, EMPLOYEES, volunteers, or additional COVERED PARTIES where such CLAIM seeks DAMAGES payable to the MEMBER. This exclusion shall not apply to any CLAIM by a COVERED PARTY or MEMBER against any officer or director of ICRMA, and the staff and employees thereof, while in the course and scope of their duties for ICRMA, with respect to PUBLIC OFFICIALS' ERRORS AND OMISSIONS coverage.
39. Any CLAIM by any MEMBER, where such CLAIM seeks DAMAGES payable to the MEMBER, against another MEMBER, or against any elected or appointed officials, EMPLOYEES, volunteers, or additional COVERED PARTIES of another MEMBER, where it is alleged that such individuals were acting within the course and scope of their duties with another MEMBER. This exclusion shall not apply to any CLAIM by a COVERED PARTY or MEMBER against any officer or director of ICRMA, and the staff and employees thereof, while in the course and scope of their duties for ICRMA, with respect to PUBLIC OFFICIALS' ERRORS AND OMISSIONS coverage.
40. ULTIMATE NET LOSS arising out of relief or redress in any form other than DAMAGES.
41. The MEMBER'S cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing act, or similar law.
42. Any CLAIM 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.
43. Any CLAIM arising out of CYBER LIABILITY by whatever name called, including but not limited to defamation, discrimination, invasion of privacy, or infringement of copyright, trademark, trade name, title or slogan. However, this exclusion shall not apply to an offense covered under the definition of PERSONAL INJURY, if the offense otherwise would be covered if the data or information had been disclosed or transmitted by other than electronic means, when the offense allegedly arises out of disclosure or transmittal of data or information.

Section VI – Conditions

The following are conditions precedent to coverage under this MEMORANDUM. Failure of the COVERED PARTY to comply with any of the duties set forth herein may result in a denial of coverage under this MEMORANDUM.

1. Premium and Audit

Each MEMBER shall pay its deposit premium, which is the amount to be paid by each MEMBER for the coverage provided.

ICRMA may examine the MEMBER'S books and records at any reasonable time, as far as they relate to the subject matter of this MEMORANDUM and the premiums therefor.

2. Inspections

ICRMA has the right, but is not obligated, to inspect the MEMBER'S property and operations at any reasonable time. Neither such 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 MEMBER or others, to determine or warrant that such property or operations are safe.

3. Duties in the Event of an Occurrence or Claim

The COVERED PARTY shall notify its designated TPA of all CLAIMS immediately. In addition, the COVERED PARTY shall notify ICRMA within 30 days upon receipt of notice of a CLAIM reasonably likely to exceed, inclusive of defense costs, Two Hundred and Fifty Thousand Dollars (\$250,000.00) or fifty percent of the RETAINED LIMIT, whichever is less, or of any OCCURRENCE involving:

- a. One or more fatalities;
- b. Loss of limb or amputation or multiple fractures;
- c. Loss of use of any sensory organ;
- d. Spinal cord injuries, quadriplegia, paraplegia, or hemiplegia;
- e. Burns in the second or third degree;
- f. Serious cosmetic disfigurement;
- g. Paralysis;
- h. Suspected or diagnosed substantive brain trauma resulting in cognitive disability and/or neurological injury associated with depreciated sensory consequence;
- i. Serious loss of use of any body functions;
- j. Long-term hospitalization;
- k. Sexual abuse, molestation, or harassment;
- l. Allegations under Title 42 U.S.C. section 1983 claims or other alleged civil rights violations;
- m. Allegations that include a statutory attorney fees provision;
- n. Any class action; or

- o. WRONGFUL EMPLOYMENT PRACTICES, including complaints filed with or other proceedings before the California Department of Fair Employment and Housing or the federal Equal Employment Opportunity Commission.

Notice to ICRMA of a CLAIM as set forth above must be in a separate writing and clearly identified as a notice under this provision of the MEMORANDUM. Written notice containing particulars sufficient to identify the COVERED PARTY, and all reasonably obtainable information with respect to the time, place, and circumstances of the OCCURRENCE, and the names and addresses of the COVERED PARTY and available witnesses shall be given to ICRMA or any of its agents as soon as possible after notice of the CLAIM is given to ICRMA, if such information is not provided to ICRMA prior to or at the time of giving notice to ICRMA.

Such written notice shall comply with the ICRMA Liability Claim Best Practices and Performance Standards for Third Party Administrators and shall be sent to ICRMA or its designee.

The MEMBERS of ICRMA acknowledge and agree that it is crucial to efficient claims administration that any CLAIM shall be timely reported to ICRMA, and that failure to do so can result in monetary detriment to ICRMA and/or to a MEMBER. The MEMBERS of ICRMA acknowledge and agree that each MEMBER is responsible for timely reporting to ICRMA, and that reporting to the Member's own TPA is not alone sufficient. The MEMBERS of ICRMA acknowledge and agree that in the event of late notice to ICRMA, proof of actual damages to ICRMA from such late notice may be impossible, and even if possible can be costly and inconvenient to reasonably ascertain or estimate.

ICRMA shall have the right to deny coverage, in whole or in part, under this MEMORANDUM for failure to provide notice as required herein. If coverage is not denied, the Board in its discretion, under all the circumstances, may determine that the failure to provide timely notice of a CLAIM has resulted in monetary detriment to ICRMA, which monetary detriment reasonably can be ascertained or estimated. In that event, the Board shall have the right to increase the MEMBER's RETAINED LIMIT in the amount of the monetary detriment caused to ICRMA, which increase shall apply only to the CLAIM of which timely notice was not provided to ICRMA.

If the monetary detriment to ICRMA for failure to provide notice as required herein cannot reasonably be ascertained or estimated, then the following liquidated damages provision shall apply. If coverage is not denied in whole or in part, the COVERED PARTY'S failure to give such written notice of the CLAIM shall result in an increase of the MEMBER's RETAINED LIMIT with respect to said CLAIM, in an amount determined in the discretion of the Claims Committee, subject to review by the Board and subject to the following: The amount by which the MEMBER's RETAINED LIMIT is increased shall be a minimum of 1%, and a maximum of 25%.

- (a) If a CLAIM is made or suit is brought against the COVERED PARTY, the COVERED PARTY shall forward to ICRMA every demand, notice, summons or other process received by the COVERED PARTY or its representative.
- (b) The COVERED PARTY shall cooperate fully with ICRMA in the handling, investigation, defense, and/or settlement of a CLAIM and, upon its request, assist in enforcing any right of contribution or indemnity against any person or organization that may be liable to the COVERED PARTY because of an OCCURRENCE with respect to which coverage is afforded under this MEMORANDUM. The COVERED PARTY shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses and shall not, except at its own cost, voluntarily make any payments, assume any obligation or incur any expense which is likely to result in an ULTIMATE NET LOSS that exceeds the RETAINED LIMIT stated in the Declarations. In the event that the amount of ULTIMATE NET LOSS becomes certain either through final court judgment or agreement among the COVERED PARTY, the claimant and ICRMA, then ICRMA shall pay on behalf of the COVERED PARTY the ULTIMATE NET LOSS as long as the COVERED PARTY has provided ICRMA notice of the OCCURRENCE or CLAIM and has cooperated fully with ICRMA as required herein.

4. Bankruptcy and Insolvency

Bankruptcy or insolvency of the MEMBER or any COVERED PARTY shall not relieve ICRMA of any of its obligations hereunder nor shall such bankruptcy or insolvency increase ICRMA'S obligations hereunder.

5. Other Coverage

- (a) Except as provided in 5(b), the MEMBER must pay the full amount of its RETAINED LIMIT in order for coverage under this MEMORANDUM to apply. Payment of the RETAINED LIMIT by the MEMBER is required in addition to, and regardless of, any payment or payments from any other source for or on behalf of that MEMBER. If insurance or any other coverage with any insurer, joint powers authority or other source is available to the COVERED PARTY covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance or coverage. This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a COVERED PARTY herein as an insured or a covered party, where such coverage applies to a loss also covered hereunder.
- (b) Commercial coverage purchased directly by a MEMBER for the sole purpose of insuring all or a portion of its RETAINED LIMIT, or coverage obtained by a provider of services or products to a MEMBER and on which that MEMBER is an additional insured or a covered party, may be utilized to pay all, or a portion of, the RETAINED LIMIT.

6. Changes to the Memorandum

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this MEMORANDUM nor preclude ICRMA from asserting any right under the terms of this MEMORANDUM, nor shall the terms of this MEMORANDUM be waived or changed, except by endorsement issued by ICRMA to form a part of this MEMORANDUM.

7. Subrogation

ICRMA shall be subrogated to the extent of any payment hereunder to the COVERED PARTY'S rights of recovery thereof, and the COVERED PARTY shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amount so recovered shall be apportioned as follows:

- (a) 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 ICRMA, ICRMA shall bear the expenses thereof.
- (b) The highest layer of coverage shall be reimbursed first and, if there be sufficient recoveries, then the next highest layer, until all recoveries are exhausted.

8. Assignment of Interest

No assignment of interest under this MEMORANDUM shall bind ICRMA without its written consent endorsed hereon.

9. Severability of Interests

In the event of an OCCURRENCE for which more than one COVERED PARTY is or may be held liable, this MEMORANDUM shall cover each such COVERED PARTY as if separate MEMORANDA had been issued to each COVERED PARTY, except that ICRMA's liability for all COVERED PARTIES shall not exceed the LIMIT OF COVERAGE set forth in Section IV.

The inclusion of more than one COVERED PARTY in an OCCURRENCE under this MEMORANDUM shall not operate to increase the LIMIT OF COVERAGE or the RETAINED LIMIT.

In the event that a CLAIM is brought against two or more MEMBERS arising out of the same OCCURRENCE, and there is a dispute as to apportionment of liability between two or more MEMBERS, ICRMA shall take no part in adjudicating the apportionment of liability between two or more MEMBERS beyond the obligation to pay DEFENSE COSTS. The MEMBERS shall make every good faith effort to cooperate with each other, including entering into an appropriate joint defense agreement, to achieve maximum savings and efficiency. If the apportionment of liability between the MEMBERS is resolved, so that the only remaining issue as to the MEMBERS is damages, then the MEMBERS agree that they can be defended from that point forward by a single attorney

to be selected by the involved MEMBERS from APPROVED PANEL COUNSEL. If the involved MEMBERS cannot agree on a single attorney, then ICRMA's Liability Program Manager shall select an attorney from APPROVED PANEL COUNSEL. In the event that the MEMBERS cooperate to achieve significant cost savings, the Liability Program Manager shall recommend to the Board that the RETAINED LIMIT of one or more involved MEMBERS may be decreased in an amount to be determined by the Board. Any such decrease in RETAINED LIMIT shall apply only to the subject CLAIM under this paragraph.

10. No Accumulation of Limits

Subject to specific provisions of this MEMORANDUM regarding SEXUAL ABUSE, PROPERTY DAMAGE or BODILY INJURY occurring over more than one MEMORANDUM PERIOD shall be deemed to occur during only one MEMORANDUM PERIOD, and that MEMORANDUM PERIOD shall be when any PROPERTY DAMAGE or BODILY INJURY was first discovered. Coverage for such PROPERTY DAMAGE or BODILY INJURY shall be provided by at most one Memorandum of Coverage issued by the Authority.

Subject to specific provisions of this MEMORANDUM regarding SEXUAL ABUSE, with respect to PERSONAL INJURY, WRONGFUL EMPLOYMENT PRACTICES, and PUBLIC OFFICIALS' ERRORS AND OMISSIONS, an OCCURRENCE with a duration of more than one MEMORANDUM PERIOD shall be treated as a single OCCURRENCE arising during the MEMORANDUM PERIOD when the OCCURRENCE began.

11. Cancellation and Termination

This MEMORANDUM may, with respect to any MEMBER, be cancelled by ICRMA either for the then-current MEMORANDUM PERIOD or, in the event of expulsion, permanently upon the occurrence of the events and under terms set forth in the ICRMA Joint Powers Agreement and the Bylaws.

This MEMORANDUM may be terminated at any time in accordance with the Bylaws.

12. Drop Down Exclusion

ICRMA's LIMIT OF COVERAGE shall not be increased for any reason, including, but not limited to, the refusal or inability, for any reason, of the MEMBER to pay its RETAINED LIMIT or by the refusal or inability of any underlying or excess insurer to pay, whether by reason of insolvency, bankruptcy, or otherwise.

13. Interpretation and Governing Law

This MEMORANDUM shall be interpreted without regard to the draftsman. The terms and intent of this MEMORANDUM, with respect to the rights and obligations of any MEMBER, COVERED PARTY, or ICRMA, shall be interpreted and construed on the express assumption that each participated equally in its drafting.

This MEMORANDUM shall be governed and construed in accordance with the laws of the State of California.

14. 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.

These provisions apply to any coverage dispute between the Authority and any COVERED PARTY which arises under any Memorandum of Coverage in effect before the effective date of this Memorandum.

Within sixty (60) days of the COVERED PARTY's receipt of a writing setting forth the Authority's coverage position which the COVERED PARTY disputes, the COVERED PARTY shall submit the dispute in writing to the Authority's Executive Director. Within twenty (20) days of receipt of such writing, the Executive Director or designee shall acknowledge receipt and place the matter on the agenda of the Claims Committee for consideration at its next scheduled meeting. The COVERED PARTY and/or the Authority may, but are not required to, make a written and/or oral presentation to the Claims Committee. Within twenty (20) days following that meeting, the Claims Committee shall render to the COVERED PARTY its written decision on the dispute or an explanation of why a decision could not be rendered and the timing of the Claims Committee's further consideration of the issue. If not satisfied with the Claims Committee's decision, the COVERED PARTY or Coverage Counsel or General Counsel, within twenty (20) days of receipt of that decision, must submit a written notice of appeal to the Executive Director of the Authority for consideration by the Board at its next scheduled meeting for which the dispute can be timely placed on the agenda. Within twenty (20) days following the meeting of the Board, the Board shall render to the COVERED PARTY its written decision on the dispute, or an explanation of why a decision could not be rendered and the timing of any further consideration of the issue by the Board.

The COVERED PARTY must exhaust the right to appeal, as set forth above, before pursuing any court action or any other relief or action, including arbitration of a dispute if the COVERED PARTY and the Authority agree to arbitrate under the Arbitration Option set forth below. The COVERED PARTY must submit a written notice of intent to file an action for Declaratory Relief, or a written request for arbitration, within ninety (90) days of receipt of the Board's final written decision. If no such written notice or written request 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. 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.

Unless the parties to this Memorandum agree otherwise, any coverage dispute between the Authority and a COVERED PARTY regarding the interpretation of this Memorandum, including a decision of the Authority to deny a defense and/or deny coverage for all or part of a CLAIM, shall be resolved by an action for Declaratory Relief filed in the appropriate Superior Court in and for the State of California. Either the COVERED PARTY or the Authority may initiate the action for Declaratory Relief.

The scope of the action for Declaratory Relief shall be limited to seeking a judicial interpretation of this Memorandum of Coverage, 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 of Coverage, 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 of Coverage 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.

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 of Coverage by the Authority shall remain unchanged. Further, the Authority shall owe Defense Costs only to the extent they are incurred in compliance with the Litigation Management Practices and Procedures (LMPP) and expressly approved by ICRMA, either directly or through the use of a vendor performing bill review services.

The provisions of Section III – Defense and Settlement herein apply even if a COVERED PARTY is disputing and/or appealing a coverage denial or coverage limitation regardless of the stage of the dispute and notwithstanding any agreement between the parties to defer or hold in abeyance the dispute or any portion thereof. Specifically, the COVERED PARTY shall not settle CLAIMS with total incurred amounts in excess of the Covered

Member's Retained Limit without the prior written consent of ICRMA at any time while the COVERED PARTY is proceeding under the Alternative Dispute Resolution herein. If a CLAIM is settled without the prior written consent of ICRMA, ICRMA may, but is not obligated to, approve the settlement if coverage is determined to apply; if ICRMA elects not to do so, ICRMA shall not be obligated to pay any portion of the settlement.

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.

Arbitration Option: 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 Board and the COVERED PARTY. 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.

If both the Board and the COVERED PARTY agree to arbitrate, arbitration shall be conducted pursuant to the California Code of Civil Procedure, sections 1280 *et seq.* Arbitration shall be conducted by single arbitrator. The arbitrator shall not be employed by or affiliated with the Authority or the COVERED PARTY or any of the MEMBERS.

If both the Board and the COVERED PARTY agree to arbitrate, the parties shall select the arbitrator within twenty (20) calendar days from the date of the written 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 superior court in the county in which the COVERED PARTY is located requesting appointment of a neutral arbitrator, and the procedures set forth in the California Code of Civil Procedure section 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 costs and expenses of arbitration regardless of the outcome of the 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. 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 any appeal. The scope of the arbitration shall be limited to the same scope as described above with respect to an action for Declaratory Relief.

Public Crisis Event Coverages Supplement

**PUBLIC CRISIS EVENT COVERAGES
SUPPLEMENT TO THE MEMORANDUM
OF LIABILITY COVERAGE**

For The

INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY

(Hereinafter referred to as “Authority”)

**Coverage Supplement Term: From 07.01.23 To 07.01.24
12.01 A.M. standard time at your mailing address on file**

This Supplement to the Memorandum of Coverage (**MEMORANDUM**) does not provide insurance, but instead provides for pooled risk sharing. This Supplement to the **MEMORANDUM** is a negotiated agreement among the members of the Independent Cities Risk Management Authority (**Authority**) and none of the parties to the **MEMORANDUM** or the Supplement is entitled to rely on any contract interpretation principles that require interpretation of ambiguous language against the drafter of such agreement. This Supplement to the **MEMORANDUM** shall be applied according to the principles of contract law, giving full effect to the intent of the members of the **Authority**, acting through the Board in adopting this **MEMORANDUM**. As the **Authority** is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide “Cumis” counsel to a **COVERED PARTY** in disputed coverage situations under Civil Code section 2860. Finally, failure to provide notice to a **COVERED PARTY** of any coverage dispute shall not operate to waive any of the provisions of this Supplement to the **MEMORANDUM**.

Throughout this Supplement to the **MEMORANDUM**, words and phrases that appear capitalized have special meanings. They are defined in this Supplement in **SECTION III – ADDITIONAL DEFINITIONS**.

In consideration of the deposit premium, the **Authority** and the **MEMBER** agree as follows as respects this Supplement to the **MEMORANDUM**:

SUPPLEMENTAL COVERAGE LIMITS:

Coverage A: Public Crisis Response - \$250,000	Each Public Crisis Event Per Member Agency
Coverage B: Public Crisis Communication - \$50,000	Each Public Crisis Event Per Member Agency
Coverage A and B Combined Limit: - \$300,000	Coverage A and B Annual Aggregate Per Member Agency
Coverage A and B Combined Limit: - \$600,000	Per Pool
Retained Limit - \$0	Per Member Agency

SECTION I – SUPPLEMENTAL COVERAGE AGREEMENT:

A. Advancement of Public Crisis Response Costs during a Public Crisis Event:

The **Authority's** reinsurer will pay on behalf of the **Member Agency** those **Public Crisis Response Costs** that may be associated with **occurrences** covered by the **Memorandum** that arise out of a **Public Crisis Event** that first commenced during the Coverage Period, up to the amount of the **Public Crisis Response Limit** shown in the SUPPLEMENTAL COVERAGE LIMITS of this Supplement. The **Authority's** reinsurer may advance directly to third parties the amount of **Public Crisis Response Costs** that may be associated with damages covered by the **Memorandum**.

B. Public Crisis Communication Expenses:

The **Authority's** reinsurer will pay on behalf of the **Member Agency** the costs of **Crisis Communication Services** arising from a **Public Crisis Event** that first commences during the Coverage Period, up to the amount of the **Crisis Communication Coverage Limit**.

C. A **Public Crisis Event** will be deemed to have first commenced at the time during the Coverage Period when a **Key Executive** of the **Member Agency** first becomes aware of an **Occurrence** that gives rise to a **Public Crisis Event** and shall end at the earliest of the time that the **Authority's** reinsurer determines that a crisis no longer exists or when the **Coverage A and B Combined Limit**, whichever applies, has been exhausted.

D. The **Public Crisis Event** must arise out of, or result from, an occurrence that would otherwise be covered under the terms of the **Memorandum**.

E. No amount of Retained Limit shall apply to a Public Crisis Event or Public Crisis Response. The Supplemental coverage provided is first dollar coverage, subject to all of the terms and conditions of this Supplement.

F. The SUPPLEMENTAL COVERAGE LIMITS shown above are in addition to the Limits of Coverage shown in the Declarations of the Memorandum of Coverage.

SECTION II – SUPPLEMENTAL LIMITS OF COVERAGE:

- A. The **Public Crisis Response Limit** is the most the **Authority's** reinsurer will pay for all **Public Crisis Response Costs** under this Supplement, regardless of the number of **Public Crisis Events** deemed to have first commenced during the Coverage Period.
- B. The **Public Crisis Communication Limit** is the most the **Authority's** reinsurer will pay for all **Public Crisis Communication Costs** under this Supplement, regardless of the number of **Public Crisis Events** deemed to have first commenced during the Coverage Period.
- C. The **Coverage A and B Combined Limit** is the most the **Authority's** reinsurer will pay in the aggregate for all **Public Crisis Response Costs** and **Public Crisis Communication Costs** under this Supplement, regardless of the number of **Public Crisis Events** deemed to have first commenced during the Coverage Period.
- D. The **Authority's** reinsurer will have no obligation to advance **Public Crisis Response Costs** or to pay **Public Crisis Communication Costs** from the earliest of the time that the **Authority's** reinsurer determines that a crisis no longer exists or when the **Coverage A and B Combined Limit**, whichever applies, has been exhausted.

SECTION III – ADDITIONAL DEFINITIONS:

- A. **Public Crisis Communication Limit** means the limit shown for **Coverage B: Public Crisis Communication** in the SUPPLEMENTAL COVERAGE LIMITS of this Supplement.
- B. **Public Crisis Communication Firm** means any public relations firm approved by the **Authority's** reinsurer that is hired by the **Authority's** reinsurer to perform **Public Crisis Communication Services** in connection with the **Public Crisis Event**.
- C. **Public Crisis Communication Services** means those services performed by a **Public Crisis Communication Firm** in advising the **Member Agency** from a covered **Public Crisis Event** by maintaining and restoring public confidence in that **Member Agency**.
- D. **Public Crisis Communication Costs** means the following amounts incurred during a covered **Public Crisis Event**:
 - 1. Amounts for the reasonable and necessary fees and expenses incurred by a **Public Crisis Communication Firm** in the performance of **Crisis Communication Services** for a **Member Agency** solely arising from a covered **Crisis Management Event**; and
 - 2. Amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of a **Member Agency** or a **Public Crisis Communication Firm** that are incurred at the direction of a **Public Crisis Communication Firm**, and solely arising from a covered **Crisis Management Event**.
- E. **Public Crisis Event** means an event, situation or occurrence that, in the good faith opinion of a **Key Executive** of the **Member Agency** and with the concurrence of the **Authority's** reinsurer, in absence of **Public Crisis Communication Services**, has arisen out of or resulted from:
 - 1. **occurrences** that are provided coverage for under the terms of the **Memorandum**, and
 - 2. the potential for significant adverse multi-state or national news media coverage for the **Member Agency** in connection with such event, situation or occurrence

The **Public Crisis Event** may have components of escalating intensity that has led to interference of the normal operations of the **Member Agency** that jeopardizes the public opinion of the **Member Agency**, and receives close media or governmental scrutiny.

F. Public Crisis Response Costs means the following reasonable and necessary expenses incurred during a **Public Crisis Event** and directly caused by a **Public Crisis Event**, provided that such expenses have been pre-approved by the **Authority's** reinsurer and are associated with damages that would be covered by the **Memorandum**, as follows:

1. Medical expenses;
2. Funeral expense;
3. Psychological counseling;
4. Travel expenses;
5. Temporary living expenses;
6. Expenses to secure the scene of a **Public Crisis Event**; and
7. Any other expenses as pre-approved by the **Authority's** reinsurer.

G. Public Crisis Response Limit means the limit shown for **Coverage A: Public Crisis Response** in the SUPPLEMENTAL COVERAGE LIMITS of this Supplement.

H. Key Executive means the City Manager/Chief Executive Officer, Assistant City Manager, Department Director, Mayor or General Counsel of the **Member Agency**. A **Key Executive** also means any other person designated as such in writing by the **Member Agency's** Board of Directors prior to or at the time the **Public Crisis Event** first commenced.

SECTION IV – ADDITIONAL EXCLUSIONS:

A. This supplemental coverage will not apply to any **Public Crisis Response Costs** or **Public Crisis Communication Costs** in connection with a **Public Crisis Event**:

1. arising out of, based upon or attributable to any acts alleged, or to the same or related acts alleged or contained, in any crisis, claim or **Suit** that has been reported, or in any circumstances where notice has been given under any coverage of which this **Memorandum** is a renewal or replacement or which it may succeed in time; or
2. arising out of, based upon or attributable to any pending or prior crisis, claim, or **Suit** as of the inception date of this **Memorandum**;
3. arising out of, based upon or attributable to any crisis, claim or **Suit** that is not otherwise covered by the **Memorandum**

SECTION V – ADDITIONAL CONDITIONS:

A. To be eligible for the advancement of **Public Crisis Response Costs** or the payment of any **Public Crisis Communication Cost**, the **Member Agency** must report any **Public Crisis Event** to the approved **Public Crisis Communication Firm** or directly to the **Authority's** reinsurer as soon as practicable when the **Member Agency's Key Executive** first becomes aware of an **Occurrence** that may reasonably be expected to give rise to a **Public Crisis Event**.

Notice of a **Public Crisis Event** must be given to the approved **Public Crisis Communication Firm**, the Abernathy-MacGregor Group, by calling and speaking with a representative of the Abernathy-MacGregor Group at one of the following first points of contact phone numbers:

Los Angeles Office Contacts	New York Office Contacts
<p>Matt Reid <i>Managing Director</i> Office: (213) 630-6550 Cell: (213) 317-1605 Email: matt.reid@h-advisors.global</p> <p>James Bourne <i>Senior Vice President</i> Office: (213) 630-6550 Cell: (213) 212-1134 Email: james.bourne@h-advisors.global</p>	<p>Kendell Fitter <i>Managing Director</i> Office: (212) 371-5999 Cell: (212) 940-9506 Email: kendell.fitter@h-advisors.global</p> <p>Rhonda Barnat <i>Senior Counselor</i> Office: (212) 371-5999 Cell: (212) 940-9518 Email: rhonda.barnat@h-advisors.global</p> <p>Joshua Pak <i>Senior Vice President, Director of Financial Services</i> Office: (212) 371-5999 Cell: (212) 940-9515 Email: joshua.pak@h-advisors.global</p>

Written notice shall be given as soon as practicable thereafter and should include:

1. how, when and where the **Public Crisis Event** is taking or took place;
 2. the names, addresses, and contact information of any injured parties and any witnesses; and
 3. the nature and location of any injury or damage arising out the Public Crisis Event.
- B.** Any payment by the **Authority’s** reinsurer for **Public Crisis Communication Costs** or any advancement of **Public Crisis Response Costs** under this Supplement will not:
1. be deemed to be a determination of the **Member Agency’s** liability with respect to any claim or **Suit** that results from a **Public Crisis Event**; and
 2. create any duty for the **Authority** to defend any **Suit** or to investigate any claim arising from a **Public Crisis Event**, nor trigger, create or imply any coverage obligations under the **Memorandum**

All other terms, definitions, conditions and exclusions of the **Memorandum** remain unchanged.