

**COVERAGE AND GOVERNANCE COMMITTEE
AGENDA**

Via Videoconference and Teleconference
**Wednesday, March 22, 2023
10:00 A.M.**

In compliance with the Americans with Disabilities Act, a person requiring an accommodation, auxiliary aid, or service to participate in this meeting should contact the Secretary of the Board at 925-943-1100, e-mail: lcox@mpa-nc.com, as far in advance as possible before the scheduled meeting. The best effort to fulfill the request will be made.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/3494506989> If you do not wish for your name to appear on the screen, then use the drop down menu and click on “rename” to rename yourself to be anonymous.

To join by phone: Dial (669) 900-6833 and enter the Meeting ID: 349 450 6989. If you wish to comment press *9 and wait to be recognized by the meeting Host. Note: Your phone number will appear on the videoconference screen.

Teleconference Locations

Agenda is posted at each teleconference location

City of Brentwood 150 City Park Way Brentwood CA 94513	City of Martinez 525 Henrietta Street Martinez, CA 94553	City of Lafayette 3675 Mt. Diablo Blvd., #210 Lafayette, CA 94549
Town of Danville 500 La Gonda Way Danville, CA 94526	City of Walnut Creek 1666 N Main St, Walnut Creek, CA 94596	

I. CALL TO ORDER – Sukari Beshears, President

II. INTRODUCTIONS

III. APPROVAL OF THE AGENDA AS POSTED

IV. PUBLIC COMMENTS – *This time is reserved for members of the public to address the Board of Directors relative to matters of MPA on the agenda or not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to three minutes per person and fifteen minutes in total.*

V. CONSENT CALENDAR – *If the Board of Directors would like to discuss any items listed, it may be pulled from the Consent Calendar.*

- A. Coverage and Governance Committee Meeting Minutes March 9, 2022. P. 3

Recommended Action: Approve the Consent Calendar.

VI. ACTION ITEMS

1. **Proposed Changes to the General & Auto Liability Memorandum of Coverage** P. 5
Recommendation: Staff recommends the Coverage & Governance Committee approve the proposed changes to the General & Auto Liability Memorandum of Coverage and move forward to the Executive Committee to approve.
2. **Workers' Compensation Memorandum of Coverage Renewal** P. 22
Recommendation: Staff recommends the Coverage & Governance Committee approve the fiscal year renewal of the Workers' Compensation Memorandum of Coverage and move forward to the Executive Committee to approve.
3. **Proposed Changes to the Vehicle Physical Damage Memorandum of Coverage** P. 37
Recommendation: Staff recommends the Coverage & Governance Committee approve the fiscal year renewal of the Vehicle Physical Damage Memorandum of Coverage and move forward to the Executive Committee to approve.

VII. INFORMATIONAL ITEMS – *The following items are informational items only. No action is required.*

VIII. ADJOURNMENT

I hereby certify that the agenda was posted 72 hours before this meeting.



Administrative Officer/Board Secretary

COVERAGE & GOVERNANCE MEETING
March 9, 2022, at 10:00 a.m.
Via Teleconference and Videoconference

MINUTES

EXECUTIVE COMMITTEE

MEMBERS PRESENT

Reina Schwartz, President, City of Clayton
Rob Ewing, Town of Danville
Tracy Robinson, City of Lafayette
Mike Chandler, City of Martinez
Brian Hickey, City of Walnut Creek

EXECUTIVE COMMITTEE

MEMBERS ABSENT

Sukari Beshears, Vice President, City of Brentwood
Charles Ching, City of San Pablo

OTHERS PRESENT

Linda Cox, Chief Administrative Officer
Erwin Chang, General Liability Manager
Barbara Esquivel, Workers' Compensation Manager
Jasmin Intravaia, Administrative Assistant
Kellie Murphy, Johnson, Schachter & Lewis

I. CALL TO ORDER

President, Reina Schwartz, called the meeting to order at 10:04 am.

II. INTRODUCTIONS/ROLL CALL

Roll call conducted by Linda Cox.

III. APPROVAL OF THE AGENDA AS POSTED

Rob Ewing moved, seconded by Brian Hickey, to approve the agenda as posted. A roll call for the vote was conducted. The motion passed with an affirmative vote by all members present.

IV. PUBLIC COMMENTS

None

V. CONSENT CALENDAR

None

VI. ACTION ITEMS

1. **Renewal of the General & Auto Liability Memorandum of Coverage for Program Year 2022-23**

Motion made by Mike Chandler to approve the General & Auto Liability Memorandum of Coverage as amended. Seconded by Rob Ewing. A roll call for the vote was conducted. The motion passed with an affirmative vote by all members present.

2. **Renewal of Workers' Compensation Memorandum of Coverage for Program Year 2022-23**

Motion made by Brian Hickey to approve the Workers' Compensation Memorandum of Coverage as amended. Seconded by Mike Chandler. A roll call for the vote was conducted. The motion passed with an affirmative vote by all members present.

3. **Proposed Changes to the Vehicle Physical Damage Memorandum of Coverage for Program Year 2022-23**

Motion made by Rob Ewing to approve the General & Auto Liability Memorandum of Coverage as amended. A roll call for the vote was conducted. The motion passed with an affirmative vote by all members present.

X. **ADJOURNMENT**– Meeting was adjourned at 10:32 a.m.

ACTION ITEM

**SUBJECT: Renewal of the General Liability Memorandum of Coverage (MOC) for
Program Year 2023-24**

EXECUTIVE SUMMARY

MPA staff and coverage counsel, Kellie Murphy of Johnson Schachter & Lewis, review the MOCs (Workers' Compensation, Vehicle, and General Liability) annually to determine if changes are necessary.

RECOMMENDED ACTION

Staff recommends the following changes to the 2023-24 MOC:

Add the following to number 3 of SECTION IX - RESOLUTION OF COVERAGE DISPUTES.

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 any claim or suit for an amount in excess of the applicable self-insured retention without prior written consent of the Authority at any time while the “covered party” is proceeding under RESOLUTION OF COVERAGE DISPUTES procedures herein. If a claim or suit is settled without prior written consent of the Authority, the Authority may, but is not obligated to, approve the settlement if coverage is determined to apply; if the Authority elects not to do so, the Authority shall not be obligated to pay any portion of the settlement

Topic of discussion:

Removing the sublimit for public officials' errors & omissions in number 11 of SECTION II – DEFINITIONS.

11. “Limit of coverage” means the amount of coverage stated in the declaration page or certificate of coverage for each “covered party” per “occurrence.” With respect to “bodily injury,” “property damage,” and “personal injury,” that amount is \$1,000,000.00 and the self-insured retention is the amount chosen by the “covered party” and reflected in its Declaration page. With respect to “public officials' errors & omissions,” ~~that amount is \$250,000.00 and~~ the self-insured retention is \$25,000.00. For each “occurrence,” there shall be only one limit of coverage regardless of the number of claimants or “covered parties” against whom a claim is made. In the event of allegations of “sexual abuse,” regardless of the number of alleged victims, regardless of the number of alleged acts of “sexual abuse,” and regardless of the number of locations where the alleged acts of “sexual abuse” took place, all instances of “sexual abuse” by the same alleged perpetrator or perpetrators acting together shall be deemed to be one “occurrence” taking place at the time of the first alleged act of “sexual abuse.” Coverage in effect at the time the “occurrence” takes place shall be the only coverage that may apply, regardless of whether other instances of “sexual abuse” by the

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

In the event that a structured settlement, whether purchased from or through a third- party, or paid directly by the “covered party” in installments, is utilized in the resolution of a claim or suit, the Authority will pay only up to the amount stated in the Declarations or certificate of coverage in present value of the claim, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

Staff recommends the Coverage & Governance Committee approve the proposed changes to the General & Auto Liability Memorandum of Coverage and move forward to the Executive Committee to approve.

EXHIBIT

1. General Liability MOC for Fiscal Year 2023-24 redline version.

CORE VALUE

Results Oriented: Reviewing the MOC annually relates to programs and operations.

Effective: July 1, ~~2022~~2023

MUNICIPAL POOLING AUTHORITY MEMORANDUM OF COVERAGE GENERAL & AUTO LIABILITY

Throughout this Memorandum of Coverage (“Memorandum”), words and phrases that appear in *italics* and quotation marks have special meaning. They are defined in Section II, “Definitions.”

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

SECTION I - COVERAGES

The Authority will pay up to the “*limit of coverage*” those sums on behalf of the “*covered parties*” for “*ultimate net loss*” in excess of the applicable self-insured retention that the “*covered parties*” become legally obligated to pay as “*damages*” by reason of liability imposed by law or liability assumed by contract because of:

- A. “*Bodily injury*” or “*property damage*” and/or
- B. “*Personal injury*” and/or
- C. “*Public officials’ errors and omissions*”

as those terms are herein defined and to which this Memorandum applies, caused by an “*occurrence*” during the coverage period.

As a condition precedent for the Authority to have any duty under this Memorandum, including the duty to pay “*ultimate net loss*” or any portion thereof, a “*covered party*” shall first have complied fully with the provisions of SECTION VIII – CONDITIONS. A “*covered party’s*” failure to so comply shall void the coverage described herein, unless coverage is extended by a two-thirds vote of the full Board.

This Memorandum does not provide insurance, but instead provides for pooled self-insurance. This Memorandum is a negotiated agreement amongst the Members of the Authority, and as such, no party to the Memorandum is entitled to interpret it by reference to legal principles specific to contracts of adhesion, or to commercial insurers. Similarly, no party to this Memorandum may rely on any contract interpretation principles which require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent and reasonable expectation of the members of the Authority, acting through the Board of Directors. As the Authority is not an insurer, it has no obligation (but may choose) to issue reservation of rights letters, nor is it bound by the provisions of Civil Code §2860, which pertains to an insurer’s obligation to provide independent counsel to an insured under circumstances defined by that statute. Failure to provide notice to a “*covered party*” of any coverage dispute shall not operate to

waive any of the provisions of this Memorandum; however, the Authority will use its best efforts to identify coverage disputes and to alert the “covered party” of such as soon as possible.

SECTION II - DEFINITIONS

1. “**Additional covered party**” means any person or “entity” named as an “additional covered party” and holding a certificate of coverage duly issued by the Authority, for “occurrences” during the coverage period identified in the certificate of coverage; if a particular activity is identified in the certificate of coverage, the person or “entity” is a “covered party” only for “occurrences” arising out of the described activity. Coverage for an “additional covered party” shall be provided only when and to the extent required under the contract, subject to the terms and conditions of this Memorandum.

2. “**Aircraft**” means a vehicle designed for the transport of persons or property principally in the air, not including an “unmanned aerial vehicle.”

3. “**Automobile**” means a land motor vehicle, trailer or semi-trailer.

4. “**Bodily injury**” means bodily injury, sickness, disease, or emotional distress sustained by a person, including death resulting from any of these at any time. Bodily injury includes “damages” claimed by any person or organization for care, loss of service or death resulting at any time from the bodily injury.

5. “**Covered indemnity contract**” means that part of a contract or agreement pertaining to the “covered party’s” governmental operations, including but not limited to:

- | | |
|---------------------------------------|---|
| a) Leases; | b) Mutual aid agreements; |
| c) Public works contracts; | d) Special events sponsored by the “covered party,” |
| e) Easement or license agreements; or | f) Use of facilities or equipment by the “covered party,” |

under which the “covered party” assumes the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. This definition applies only to tort liability arising out of an “occurrence” to which this Memorandum applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

6. “**Covered individuals**” means persons who are past or present elected or appointed officials, employees or volunteers of the “entity”, whether or not compensated, while acting for or on behalf of the “entity,” including while acting on outside boards, commissions, agencies, or similar bodies or entities, conditioned on the following:

- (a) The Authority’s coverage will be excess and will not contribute to any other coverage available to the outside board, commission, agency, or similar body or entity;

- (b) If the outside board, commission, agency, or similar body or entity does not carry coverage, the member should encourage they obtain coverage of their own;
- (c) To be afforded coverage, the individual must be acting in good faith, without malice or oppression, and in the best interest of the “entity;” and
- (d) Extension of coverage must be in the best interest of the “entity;”

Persons who are past or present elected or appointed officials, employees or volunteers of the “entity” are not “covered individuals” while acting on an airport or hospital board regardless of how such body is denominated.

Under no circumstances shall the Authority have a duty to defend or indemnify any “covered individual” under circumstances in which the “entity” itself is not legally required to do so. The Board, at its sole discretion, may waive this section if it deems it is in the best interest of the Authority.

7. “**Covered party**” means any person, organization, trust or agency qualifying as a covered party in the covered parties section of this Memorandum.

8. “**Damages**” means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a “covered party.” For purposes of this Memorandum, “damages” includes statutory attorneys’ fees and costs if the attorneys’ fees and costs are related to a claim for “damages” which would otherwise be covered by this Memorandum.

9. “**Defense costs**” means all fees and expenses caused by and relating to the investigation, defense or litigation of a claim including attorney’s fees, court costs and interest on judgments accruing after entry of judgment. Defense costs shall not include the office expenses of the Authority or the “covered party” nor the salaries of employees or officials of the Authority or any “covered party.” Defense costs shall not include any fee or expense relating to coverage issues or disputes between the authority and any “covered party.” Defense costs shall not include attorney fees or costs awarded to a prevailing plaintiff against the “covered party.”

10. “**Entity**” means the entity named in the Declarations, including any and all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities coming under the entity’s direction or control or for which the entity’s board members sit as the governing body. Entity includes all departments and constituent agencies of the entity.

11. “**Limit of coverage**” means the amount of coverage stated in the declaration page or certificate of coverage for each “covered party” per “occurrence.” With respect to “bodily injury,” “property damage,” and “personal injury,” that amount is \$1,000,000.00 and the self-insured retention is the amount chosen by the “covered party” and reflected in its Declaration page. With respect to “public officials’ errors & omissions,” that amount is \$250,000.00 and the self-insured retention is \$25,000.00. For each “occurrence,” there shall be only one limit of coverage regardless of the number of claimants or “covered parties” against whom a claim is made. In the event of allegations of “sexual abuse,” regardless of the number of alleged victims, regardless of the number of alleged acts of “sexual abuse,” and regardless of the number of locations where the alleged acts of “sexual abuse” took place, all instances of “sexual abuse” by the same alleged perpetrator or perpetrators acting together shall be deemed to be one “occurrence” taking place at the time of the first alleged act

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

In the event that a structured settlement, whether purchased from or through a third- party, or paid directly by the “*covered party*” in installments, is utilized in the resolution of a claim or suit, the Authority will pay only up to the amount stated in the Declarations or certificate of coverage in present value of the claim, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

12. “**Medical malpractice**” means the rendering of or failure to render any of the following services:

- a. Medical, surgical, dental, psychiatric, psychological counseling, x-ray or nursing services, or treatment or the furnishing of any food or beverage in connection therewith; or any services provided by a health care provider as defined in section 6146(c), (2), of the California Business and Professions Code.
- b. Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

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

13. “**Nuclear material**” means source material, special nuclear material, or by-product material. “Source material,” “special nuclear material,” and “by-product material” have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

14. “**Occurrence**” means:

- a. With respect to “*bodily injury*” or “*property damage*,” an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in “*bodily injury*” or “*property damage*” neither expected nor intended from the standpoint of the “*covered party*.”
- b. With respect to “*personal injury*” and “*public officials’ errors and omissions*” respectively: an offense described in the definitions of those terms in this Memorandum.

Subject to specific provisions of this Memorandum regarding “*sexual abuse*,” with respect to “*personal injury*” and “*public official’s errors and omissions*,” an “*occurrence*” with a duration of more than one coverage period shall be treated as a single “*occurrence*” arising during the coverage period when the “*occurrence*” begins.

Subject to specific provisions of this Memorandum regarding “*sexual abuse*,” “*property damage*” or “*bodily injury*” with a duration of more than one coverage period shall be deemed to occur during only one coverage period, and that coverage 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 by the Authority.

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

15. “**Personal injury**” means injury, other than “*bodily injury*,” arising out of one or more of the following:

- a. False arrest, detention or imprisonment, or malicious prosecution;
- b. Abuse of legal process;
- c. Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
- d. Publication or utterance of material that slanders or libels a person or organization or disparages a person's organization's goods, products or services, or oral or written publication of material that violates a person's right of privacy;
- e. Unlawful discrimination or violation of civil rights; or
- f. Injury resulting from the use of reasonable force for the purpose of protecting persons or property.

16. “**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, molds and/or fungus, fungal pathogens, electromagnetic fields, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The term pollutants, as used herein, do not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.

17. “**Property damage**” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property; or
- b. Loss of use of tangible property that is not physically injured or destroyed.

18. “**Public officials’ errors and omissions**” means any actual or alleged misstatement or misleading statement or any actual or alleged error or omission by “*covered individuals*” individually or collectively in the discharge of their duties with the “*entity*” and resulting in damage neither expected nor intended from the standpoint of the “*covered party*.” All claims involving the same actual or alleged misstatement or misleading statement or actual or alleged error or omission or a series of continuous or interrelated actual or alleged misstatements or misleading statements or actual or

alleged error or omissions will be considered as arising out of one “occurrence.”

19. “**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, and no coverage shall be provided in any event for the alleged perpetrator.

20. “**Ultimate net loss**” means the sum actually paid or payable in cash in the settlement or satisfaction, investigation or defense of losses for which the “covered party” is liable either by adjudication or by compromise with the written consent of the Authority, after making proper deduction for all recoveries and salvages and other collectible insurance. Ultimate net loss shall include “defense costs” and related expenses incurred by the Authority. Ultimate net loss does not include statutory attorney fees or costs awarded to a prevailing plaintiff unless such fees or costs are related to a claim for “damages” covered by this Memorandum.

21. “**Unmanned aerial vehicle**” means an aircraft, aerial system, or device that is not designed, manufactured, or modified after manufacture to be controlled directly by a person from within or on the aircraft, aerial system, or device.

SECTION III - DEFENSE AND SETTLEMENT

With respect to claims or suits for “damages” to which this Memorandum applies, the Authority shall have the right and duty to defend any claim or suit against the “covered party” even if any allegations are groundless, false or fraudulent. However, in making the determination of its duty to defend, the Authority may rely on the facts alleged within a third party’s complaint, and those extrinsic facts known to it. The Authority shall have no duty to speculate about unpled theories of recovery in order to determine its obligations to defend or to indemnify, nor shall the Authority be under any continuing duty to investigate whether a potential for coverage has arisen at some future date.

The Authority shall have the right to manage, and the “covered party” shall fully cooperate in, all matters pertaining to the investigation, defense, negotiation, and settlement of any claim or suit for “damages” to which this Memorandum applies.

The “covered party” shall be obligated to pay or reimburse the Authority for the entire “ultimate net loss,” up to the applicable self-insured retention. If the “ultimate net loss” exceeds the “covered party’s” self-insured retention, the Authority shall be obligated to pay or cause to be paid the “ultimate net loss” in excess of the applicable self-insured retention, up to the Limit of Liability.

The Authority shall not be obligated to pay any judgment or settlement or to participate in the defense of any claim or suit after the Authority’s “limit of coverage” has been totally exhausted by the payment of “defense costs” and/or judgments or settlements.

No claim or suit shall be settled for an amount in excess of the applicable self-insured retention without the prior written consent of the Authority, and the Authority shall not be required to contribute to any settlement to which it has not consented.

If the “covered party” prevents settlement of any claim or suit for a reasonable amount, defined as the amount the Authority is willing to pay and the claimant is willing to accept, increasing the “covered party’s” potential liability for “damages” and continued “defense costs,” the “covered party” shall pay or shall reimburse the Authority for those “defense costs” incurred after the claim could have been settled, and for any “damages” awarded or settlement agreed upon in excess of the amount for which the claim could have been settled. This includes, but is not limited to, a refusal by the “covered party” to agree to a reasonable non-monetary term of settlement.

The Authority, at its own expense, and with a two-thirds vote of the full Board, shall have the right to assume the control of the negotiation, investigation, defense, appeal or settlement of any claim or suit that the Authority determines, in its sole discretion, to have a reasonable probability of resulting in an “ultimate net loss” in excess of the applicable self-insured retention. If the Authority assumes control of a claim or suit, the “covered party” shall be obligated at the request of the Authority, to pay any sum necessary for the settlement of the claim or suit, or to satisfy liability imposed by law, up to its applicable self-insured retention, and to satisfy every other requirement to effect a final resolution of the claim or suit. If the “covered party” refuses to pay its applicable self-insured retention on request by the Authority, the claim or suit shall not be covered under this Memorandum, except by majority vote of the full Board.

SECTION IV - THE AUTHORITY'S LIMIT OF LIABILITY

Regardless of the number of:

- (1) Persons or “entities” covered under this Memorandum,
- (2) Persons or organizations making claims or bringing suits, or
- (3) Claims made or suits brought,

the each “occurrence” limit is the most the Authority will pay for “ultimate net loss” arising out of anyone “occurrence.”

The “limit of coverage” for any additional “additional covered party” as defined in Section 2, # 1, subject to the per “occurrence” limitation above, shall not exceed the limit stated in its “additional covered party” certificate regardless of the limit which applies to the member.

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

SECTION V - COVERAGE PERIOD AND TERRITORY

This Memorandum applies to "bodily injury," "personal injury," "property damage" or "public officials' errors and omissions" which occur anywhere in the world during the coverage period.

SECTION VI - "COVERED PARTIES"

The parties covered by this Memorandum are:

- (A) The "entity."
- (B) "Covered individuals."
- (C) With respect to any "automobile" owned or leased by the "entity" or loaned to or hired for use by or on behalf of the "entity," any person while using such "automobile" and any person or organization legally responsible for the use thereof, provided the actual use is with the permission of the "entity," and with respect to any "automobile" owned or leased by an employee of the "entity" or by a member of the "entity's" governing board, if the "entity" reimburses or pays the employee or governing board member for use of such "automobile," and only if such "automobile" is operated by said employee or governing board member in the course and scope of employment and only to the extent that the coverage provided hereunder shall be in excess of any other insurance for said "automobile." The foregoing notwithstanding, this coverage does not apply to:
 - (1) Any person or organization or any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, storage garage or public parking place, with respect to an "occurrence" arising out of the operation thereof; or
 - (2) The owner or any lessee, other than the "entity," of a leased or hired "automobile" or any agent or employee of such owner or lessee.
- (D) Any "additional covered party."
- (E) "Covered party" does not include any person, organization, trust or estate or any other type of entity for any risk, claim, or loss which is incurred or occurs under any other joint powers authority, or any joint powers agreement which creates a separate agency or entity, unless added hereto by endorsement. However, as to any person who is an official, employee, or volunteer of an "entity" named in the Declarations and is participating in the activities of any other joint powers authority or any separate agency or entity created under any joint powers agreement on behalf of that "entity," the coverage afforded in this Memorandum of Coverage will apply in excess of and shall not contribute with any collectible insurance or other coverage provided to or through the other joint powers authority or joint powers agreement covering a loss also covered hereunder, whether on a primary, excess, or contingent basis.

SECTION VII - EXCLUSIONS

This Memorandum does not apply to:

1. (a) Claims arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, plumage, release or escape of "*pollutants*" into or upon land, the atmosphere, or any watercourse or body of water. This exclusion does not apply to fire fighting activities, including training burns, or intentional demolition or burns for the purpose of controlling a fire, or the discharge of "*pollutants*" for the purpose of controlling a fire; or to police use of mace, oleoresin capsicum (O.C.), pepper gas or tear gas; to weed abatement or tree spraying; or spraying of any pesticide.

This exclusion does not apply to claims arising from sudden and accidental sewer backups.

This exclusion does not apply to claims arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine and other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or waste water treatment or in water used in swimming pools, wading pools or decorative fountains.

As used herein, "sudden" means abrupt or immediate, and occurring within a period not exceeding twenty-four (24) hours; "accidental" means causing harm neither expected nor intended by a "*covered party*."

This exclusion does not apply to claims arising from mold and/or fungus, with coverage limited to an amount up to \$100,000 over the "*covered party's*" self-insured retention per "*occurrence*."

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

(b) Any loss, cost, or expense arising out of any governmental order, directions or request that the "*covered party*" or any other person or organization test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, or assess the effects of "*pollutants*."

(c) Any loss, cost or expense, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize, remediate, or assess the effects of "*pollutants*."

2. Claims arising out of the manufacture, mining, use, sale, installation, removal or distribution of or exposure to radon, asbestos, asbestos products, asbestos fibers, asbestos dust, or other asbestos-containing materials and:
 - (a) Any obligation of the "*covered party*" to indemnify any party because of such claims, or
 - (b) Any obligation to defend any suit or claims against the "*covered party*" because of such claims.

3. Any claim (including attorney's fees or salary or wage loss claims) by any potential, present or former employee or official of the "covered party" arising out of, but not limited to, a violation of civil rights or employment-related practices, policies, acts, or omissions. This exclusion applies to claims of negligent supervision and/or claims of failure to prevent employment-related practices.
4. (a) Any claim by:
 - (1) Any present or former employee or co-employee of the "covered party" arising out of or sustained in the course of employment with the "covered party," or
 - (2) The spouse, child, unborn child or fetus, parent, brother or sister of any such employee or co-employee as a consequence of exclusion 3, 4(a) (1) or 4(b) herein.

This exclusion applies whether the "entity" may be held liable as an employer or in any other capacity, except with respect to liability of others assumed under a "covered indemnity contract."
- (b) Any obligation for which the "covered party" or any insurance company as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law or any similar law.
5. Liability imposed under the "Employment Retirement Income Security Act of 1974" or any law amendatory thereof, or any law or liability arising out of fiduciary activities as respects employee benefit plans.
6. The cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing Act, or other similar law.
7. Liability imposed under the Fair Labor Standards Act or any law amendatory thereof.
8. Benefits payable under any employee benefit plan (whether the plan is voluntarily established by the "entity" or mandated by statute).
9. Claims by any "entity" against its own past or present elected or appointed officials, employees, volunteers, or additional covered parties where such claim seeks "damages" payable to the "entity."
10. Claims arising out of any professional "medical malpractice" except "medical malpractice" committed by any employee of the "covered party," if that employee is licensed and certified as an RN, LPN, LVN, EMT, paramedic or laboratory technician, and is not employed by or working for any hospital or hospital operated out-patient, in-patient or other clinic at the time of the "occurrence" giving rise to the loss.
11. Claims arising out of ownership, maintenance, management, supervision, or the condition or operation of any hospital or airport.
12. Fines, assessments, fees, penalties, restitution, disgorgement, statutorily multiplied (including but not limited to treble) damages, exemplary damages, or punitive damages,

whether awarded by a court or by an administrative or regulatory agency. Restitution and disgorgement, as used herein, refer to the order of a court or administrative agency for the return of a specific item of property or a specific sum of money, because such item of property or sum of money was not lawfully or rightfully acquired by the "covered party."

13. "Bodily injury" or "property damage" arising out of the hazardous properties of "nuclear material."

14. Claims arising out of or in connection with:

- (a) Land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called, resulting from deliberate decision making by the "covered party" and whether or not liability accrues directly against the "covered party" or by virtue of any agreement entered into by or on behalf of any "covered party."

However, the above exclusion shall not apply to inverse condemnation liability arising from accidentally caused physical injury to or destruction of tangible property, including all resulting loss of use of such property, for which the "covered party" may be legally responsible.

Further, the above exclusion shall not apply to claims for nuisance.

This exclusion does not apply to enforcement of parking ordinances or regulations.

Notwithstanding any of the above, this Memorandum of Coverage shall not apply to any claim arising out of the design, construction, ownership, maintenance, operation, or use of any water treatment plant or waste water treatment plant, no matter how or under what theory such claim is alleged, unless it is a claim based upon the accidental failure of the equipment utilized or contained within the water treatment plant or waste water treatment plant.

- (b) The initiative process, whether or not liability accrues directly against any "covered party" by reason of any agreement entered into by or on behalf of any "covered party."

15. "Property damage" to:

- (a) Property owned by the "entity" or employee.
- (b) Property rented to or leased to the "entity" where it has assumed liability for "damages" to or destruction of such property, unless the "entity" would have been liable in the absence of such assumption of liability.
- (c) "Aircraft," "unmanned aerial vehicles," or watercraft in the "entity's" care, custody or control.

16. "Bodily injury" or "property damage" arising out of the ownership, operation, use or maintenance of:
- (a) any watercraft while being used for public commercial purpose; or
 - (b) any "aircraft"; or
 - (c) any "unmanned aerial vehicle."

Ownership, operation, use or maintenance as used herein does not include static displays or aircraft or watercraft in a park or museum setting.

This exclusion does not apply to claims arising out of the ownership, operation, use, maintenance or entrustment to others of any "unmanned aerial vehicle" owned or operated by or rented to or loaned by or on behalf of any "covered party" if operated at the time of the "occurrence" in accordance with all applicable federal, state, and local laws, rules and regulations, including but not limited to Federal Aviation Administration (FAA) Rules and Regulations for Unmanned Aircraft Systems detailed in part 107 of Title 14 of the Code of Federal Regulations and if also approved by the governing body of the "entity" for use before use.

17. "Bodily injury" or "property damage" arising out of the operation of any transit authority, transit system or public transportation system owned or operated by the "entity," except a transit system operating over non-fixed route systems such as dial-a-ride, senior citizen transportation, or handicapped transportation.
18. Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity or sewage capacity when such failure is a result of the inadequacy of the "entity's" facilities to supply or produce sufficient gas, water, electricity or sewage capacity to meet the demand. If an electrical or natural gas plant, enterprise, utility, or entity, including but not limited to those involved in power supply, power distribution, or power generation is owned, operated, maintained, managed, or supervised by the "entity," the provisions of exclusion 19 apply in place of this exclusion.
19. Claims arising out of the ownership, operation, maintenance, management, supervision, or the condition of any electrical or natural gas plant, enterprise, utility, or entity, including but not limited to those involved in power supply, power distribution, or power generation. This includes but is not limited to, any:
- (a) failure to supply or provide power from any such plant, enterprise, utility, or entity;
 - (b) liability arising out of the ownership, operation, maintenance, use, or entrustment of any "automobile" in connection with activities unique to the ownership, operation, maintenance, management, supervision, or the condition of any such plant, enterprise, utility, or entity; or
 - (c) obligation, whether or not based on contract, of the "covered party" to indemnify any person, entity, or governmental agency because of such claims.

This exclusion does not apply to claims arising out of the ownership, operation, maintenance, use, or entrustment of any "automobile" in connection with activities other than those that are unique to the ownership, operation, maintenance, management, supervision, or the

condition of any electrical or natural gas plant, enterprise, utility, or entity, including but not limited to those involved in power supply, power distribution, or power generation.

20. *"Bodily injury"* arising out of the ownership, maintenance or use of any trampoline, bungee jumping, or any other rebound tumbling device, including but not limited to bounce houses, Bubble Soccer, or any inflatable aquatic/pool device that includes a trampoline component.
21. *"Bodily injury"* arising out of the: (a) ownership, maintenance or use of any course, location, or other facility officially designated for use as a Parkour course, location, or facility; or (b) operation or sponsorship of any Parkour program, class, event, or instruction.
22. *"Bodily injury"* arising out of the ownership, maintenance or use of (a) any skate or skateboard park or other facility officially designated for use of skates, skateboards, or other wheeled recreational devices, or (b) any bicycle park or other facility officially designated for use of bicycles or mixed use of bicycles in a skate or skateboard park or facility.

This exclusion does not apply to *"bodily injury"* arising out of the ownership, maintenance or use of such parks or facilities if operated at the time of the *"occurrence"* in accordance with all applicable federal, state, and local laws, rules and regulations, including but not limited to California Health & Safety Code section 115800, and if written approval is obtained by the Authority prior to the *"occurrence."* Such written approval may be conditioned on the member *"entity"* meeting certain requirements, including but not limited to an inspection of the plans for the park or facility and the facility, and compliance with industry standards related thereto.

23. *"Bodily injury"* arising out of the operation or sponsorship of any rollerblade hockey league, program, class, or instruction.

This exclusion does not apply to *"bodily injury"* arising out of the operation or sponsorship of any rollerblade hockey league, program, class, or instruction if operated at the time of the *"occurrence"* in accordance with all applicable federal, state, and local laws, rules and regulations, and if written approval is obtained by the Authority prior to the *"occurrence."*

24. *"Bodily injury"* arising out of competition among students authorized by the instructor in martial arts classes, or arising out of martial arts tournaments or contests.
25. Under Coverage C, *"public officials' errors and omissions,"* to *"bodily injury"* or *"personal injury."*
26. Under Coverage C, *"public officials' errors and omissions,"* to physical injury to tangible property, including all resulting loss of use of that property.
27. Refund of taxes, fees or assessments.
28. Claims arising out of the intentional conduct done with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *"entity"* 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 *"entity"* is

based solely on its vicarious liability arising from its relationship with such employee, official or volunteer, this exclusion does not apply to said "entity."

This exclusion does not apply to "bodily injury," "property damage," or "personal injury," as those terms are defined, resulting from the use of reasonable force to protect persons or property.

29. Claims arising out of or related to "sexual abuse" as to the alleged perpetrator.
30. Claims arising, in whole or in part, out of a "covered party" obtaining remuneration or financial gain to which the "covered party" was not legally entitled.
31. Claims arising, in whole or in part, out of the violation of a statute, ordinance, order or decree of any court or other judicial or administrative body, or rule of law, committed by or with the knowledge or consent of a "covered party."
32. Claims 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.
33. Claims arising out of estimates of probable cost 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."
34. Claims arising out of:
 - (a) A failure to perform, or breach of, a contractual obligation, or fraudulent inducement to contract.
 - (b) "Bodily injury" or "property damage" for which the "covered party" is obligated to pay "damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "damages:"
 - (1) Assumed in a contract or agreement that is a "covered indemnity contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement, and then only to the extent required by the terms of the "covered indemnity contract;" or
 - (2) That the "covered party" would have in the absence of the contract or agreement.
35. "Ultimate net loss" arising out of relief, or redress, in any form other than money "damages."
36. Claims arising out of liability imposed on any "covered party" under any uninsured/underinsured motorist law or "automobile" no-fault law.

SECTION VIII - CONDITIONS

1. "Covered Party's" Duties in the Event of "Occurrence," Claim or Suit.

As a condition precedent for the Authority to have any duty under this Memorandum, including the duty to pay "ultimate net loss" or any portion thereof, a "covered party" shall first have complied fully with (A) – (E) below. A "covered party's" failure to so comply shall void the coverage described herein, unless coverage is extended by a two-thirds vote of the full Board.

- (A) In the event of an "occurrence," written notice containing particulars sufficient to identify the "covered party" and also reasonably obtainable information with respect to the time, place and circumstances thereof, addresses of the injured or damaged party(ies) and the identity and addresses of available witnesses, shall be given by or for the "covered party" to the Authority as soon as practicable.

Such notice must be given within 30 days of either: (1) notice of any claim reasonably likely to exceed fifty percent of the "covered party's" self-insured retention; or (2) any notice of "occurrence" involving any of the following:

- One or more fatalities;
- Loss of limb or amputation;
- Loss of use of any sensory organ;
- Spinal cord injuries, including but not limited to quadriplegia and paraplegia;
- Third degree burns involving 10% or more of the body;
- Serious cosmetic disfigurement;
- Paralysis;
- Closed head injuries;
- Loss of use of any body function;
- Long-term hospitalization;
- Alleged sexual abuse, molestation, or harassment; or
- Title 42 U.S.C. section 1983 claims or other claims involving civil rights violations.

The Authority shall have the right, by two-thirds vote of the all the members of the Board, to deny coverage under this Memorandum, or to reduce the "ultimate net loss" payable, for failure to provide notice as required herein, including but not limited to the following:

1. A reduction up to 25% in the "ultimate net loss" that would have been payable on behalf of the "covered party" under this Memorandum had notice been timely given to the Authority, if notice is given between 31 days and 180 days after the date on which it should have been given.
2. A reduction of 26% up to 50% in the "ultimate net loss" payable on behalf of the "covered party" under this Memorandum had notice been timely given to the Authority, if notice is given between 181 days and 270 days after the date on which it should have been given.
3. A reduction of 51% up to 75% in the "ultimate net loss" payable on behalf of the "covered party" under this Memorandum had notice been timely given to the Authority, if notice is given between 271 days and 365 days after the date on which it should have been given.

4. A reduction of 76% up to No coverage, and no payment of any “*ultimate net loss*” if notice is given more than one year after the date on which it should have been given.
- (B) If claim is made or suit is brought against the “*covered party*,” the “*covered party*” shall be obligated upon demand to forward to the Authority every demand, notice, summons or other process received by it or its representative.
- (C) The “*covered party*” shall cooperate with the Authority and, upon its request, assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the “*covered party*” because of “*bodily injury*,” “*personal injury*,” “*property damage*” or “*public officials’ errors and omissions*” with respect to which coverage is afforded under this Memorandum of Coverage; and the “*covered party*” shall, as deemed desirable by the Authority, attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The “*covered party*” shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense on behalf of the Authority. The “*covered party*” shall reimburse the Authority for the “*ultimate net loss*” up to its self-insured retention.
- (D) The “*covered party*” shall comply with all obligations set forth under Section III – DEFENSE AND SETTLEMENT herein.
- (E) Upon tender of a claim, the Authority shall be entitled to complete access to the “*covered party’s*” claim file, the defense attorney’s complete file, and all investigation material and reports, including all evaluations and information on negotiations. The “*covered party*” shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the “*covered party*” by its defense attorneys and/or agents.

2. Bankruptcy or Insolvency:

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

3. Other Coverage:

If collectible insurance or any other coverage with any insurer, joint powers insurance authority or other source respectively is available to the “*covered party*” covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other coverage.

4. Severability of Interests:

The term “*covered party*” and its sub-terms including “*entity*,” “*covered individual*” and “*additional covered party*” are used severally and not collectively, but the inclusion herein of more than one “*covered party*” shall not operate to increase the limits of the Authority’s liability or the applicable self-insured retention per “*occurrence*.”

5. Accumulation of Limits:

Subject to specific provisions of this Memorandum regarding “*sexual abuse*,” with respect to “*personal injury*” and “*public official’s errors and omissions*,” an “*occurrence*” with a duration of more than one coverage period shall be treated as a single “*occurrence*” arising during the coverage period when the “*occurrence*” begins.

Subject to specific provisions of this Memorandum regarding “*sexual abuse*,” “*property damage*” or “*bodily injury*” with a duration of more than one coverage period shall be deemed to occur during only one coverage period, and that coverage 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 by the Authority.

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

6. Termination:

This Memorandum may be terminated at any time in accordance with the Joint Powers Agreement or by action approved by the Authority's Board of Directors.

7. Changes:

Notice to any agent or knowledge possessed by any agent of the Authority or by another person shall not affect a waiver or a change in any part of this Memorandum of Coverage, nor shall the terms of this Memorandum of Coverage be waived or changed, except by endorsement issued to form a part of this Memorandum of Coverage.

8. No action:

No person, organization or other entity shall have the right under this Memorandum of Coverage to join the Authority as a party in any action against any “*covered party*” to determine the Authority's liability.

9. Subrogation:

The Authority shall be subrogated to the extent of any payment hereunder to all the “*covered party's*” rights of recovery therefor; and the “*covered party*” shall do nothing after loss to prejudice

such rights and shall do everything necessary to secure such rights. This subrogation right is automatic and no further approval or direction from the "covered party" is necessary.

Any amount recovered by the Authority shall be apportioned as follows:

- (A) The Authority shall be reimbursed first to the extent of its actual payment hereunder. If any balance remains, it shall be applied to reimburse the "covered party."
- (B) The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in the proceedings conducted solely by the Authority, it shall bear the expenses thereof.

SECTION IX - RESOLUTION OF COVERAGE DISPUTES

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

1. GENERAL

The following procedures shall be followed in resolving any dispute, claim, or controversy arising out of or connected with this Memorandum of Coverage. Such disputes shall be resolved by either administrative proceedings or binding arbitration as provided herein.

2. PROCEDURES FOR RESOLVING DISPUTES

Decisions 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 initially by staff, in consultation with coverage counsel if necessary. An appeal to the Board from a written coverage opinion by staff or coverage counsel must be made in writing to the Authority by the *covered party* within ninety (90) days of receipt of such opinion. If, either prior to or following the Board's decision, a new coverage opinion is sent by staff or coverage counsel to the *covered party*, a new ninety (90) day period commences from receipt of such new opinion in which the *covered party* may appeal to the Board.

Any dispute concerning a decision by the Board must first be submitted to non-binding mediation within sixty (60) days of written notification of the Board's decision. The parties shall cooperate in selecting a mediator and scheduling a mediation within that timeframe. Each party shall bear one-half the cost of the selected mediator. Except for the shared cost of the mediator, each party shall be responsible for its own fees, costs and expenses of mediation.

If the dispute is not resolved at mediation, it shall be submitted to final binding arbitration within ninety (90) days of the date such mediation is held. The arbitration shall be held before a neutral arbitrator, selected by mutual agreement of the parties, who is a lawyer experienced in contract interpretation or a retired federal or California State judge. The arbitrator shall not be employed by or affiliated with the Authority, the *covered party*, or any Member of the Authority. Such arbitration shall be conducted under the auspices of, and in accordance with, the procedures and rules of the California Code of Civil Procedure. Any hearings held in the course of such arbitration

shall be held in Walnut Creek, California, unless the parties mutually agree in writing to another location.

The selection of the arbitrator shall take place within twenty (20) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrator. These timelines may be extended by agreement of the parties.

Initially, each party shall bear one-half the cost of the selected arbitrator. Upon conclusion of the arbitration, the prevailing party shall be entitled to reimbursement from the other party of its share of such cost, payable within 20 days of the date of the decision of the arbitrator. Each party shall otherwise be responsible for its own fees, costs and expenses of arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the parties and the arbitrator relating to the subject of the arbitration other than at oral hearings, with the exception of briefing and written communications copied to all parties.

The decision of the arbitrator shall be final and binding and shall not be subject to appeal.

3. FUNDING OF DEFENSE AND CLAIMS PENDING RESOLUTION OF DISPUTE

During the course of the administrative and arbitration proceedings provided herein for which coverage is denied, the “covered party” will be responsible for all fees and expenses for the defense or litigation of a claim or lawsuit. In the event the arbitrator determines that a duty of defense applies, the Authority will reimburse the “covered party” for “defense costs” as defined in Section II (9).

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 any claim or suit for an amount in excess of the applicable self-insured retention without prior written consent of the Authority at any time while the “covered party” is proceeding under RESOLUTION OF COVERAGE DISPUTES procedures herein. If a claim or suit is settled without prior written consent of the Authority, the Authority may, but is not obligated to, approve the settlement if coverage is determined to apply; if the Authority elects not to do so, the Authority shall not be obligated to pay any portion of the settlement.

4. EFFECT OF ARBITRATION DECISIONS

All decisions on appeals, whether by the Board of Directors (after the time to request arbitration has expired) or by an arbitrator, shall be final and binding upon the “parties.”

5. NOT APPLICABLE TO EXCESS CARRIERS

These arbitration provisions are intended to bind only the Authority and its member agencies. They are not intended to be binding upon any of the Authority's excess carriers.

Adopted May ~~13~~1, ~~2022~~2023

Issued By:

MUNICIPAL POOLING AUTHORITY

By: _____ Date: _____
Linda M. Cox, Chief Administrative Officer

MUNICIPAL POOLING AUTHORITY

PROGRAM YEAR JULY 1, ~~2022~~2023 THROUGH JUNE 30, ~~2023~~2024

ENDORSEMENT NUMBER 1

This Endorsement, effective 12:01 a.m., July 1, ~~2022~~2023, and expiring on 12:00 a.m., July 1, ~~2023~~2024 forms a part of the Memorandum of Coverage for the Municipal Pooling Authority.

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

In consideration of underwriting requirements having been met, Exclusion 10, set forth in Section VII of the Memorandum of Coverage, is hereby modified by exempting therefrom the member entity(s) listed below, that have formally adopted a policy on non-medical professional staff assisting with the administration of medications to participants in custodial care programs.

This endorsement is issued to:

City of Antioch; Town of Danville; City of Hercules; City of Lafayette; City of Manteca; City of Martinez; Town of Moraga; City of Oakley; City of Orinda; City of Pinole; City of Pittsburg; City of San Pablo; City of San Ramon; City of Walnut Creek

Date

Linda M. Cox, Chief Administrative Officer

ACTION ITEM

**SUBJECT: Renewal of the Workers' Compensation Memorandum of Coverage (MOC)
 for Program Year 2023-24**

EXECUTIVE SUMMARY

MPA staff and coverage counsel, Kellie Murphy of Johnson Schachter & Lewis, review the MOCs (Workers' Compensation, Vehicle, and General Liability) annually to determine if changes are necessary.

RECOMMENDED ACTION

Staff recommends the Coverage & Governance Committee approve the fiscal year renewal of the Workers' Compensation MOC and move forward to the Executive Committee to approve.

EXHIBIT

1. Workers' Compensation MOC for Fiscal Year 2023-24

CORE VALUE

Results Oriented: Reviewing the MOC annually relates to programs and operations.

Effective: July 1, ~~2022~~2023

**MUNICIPAL POOLING AUTHORITY
MEMORANDUM OF COVERAGE
WORKERS' COMPENSATION**

In return for payment of the premium, Municipal Pooling Authority, hereafter referred to as The Authority, agrees to provide coverage to the Covered Member named in the Declaration Page subject to the terms and conditions set forth in this Memorandum:

GENERAL SECTION

A. The Memorandum of Coverage (Memorandum)

This Memorandum includes the Declaration Page. This Memorandum is the contract of coverage between the Covered Member and the Authority. The terms of this Memorandum may not be changed or waived except by amendment made a part of the Memorandum. This Memorandum constitutes the entire agreement. No condition, provision, agreement or understanding not stated in this Memorandum will affect any rights, duties or privileges in connection with this Memorandum.

B. Continuous Coverage

This Memorandum is effective at 12:01 a.m. of the effective date stated in the Declaration Page. All of the provisions of the Memorandum apply beginning with the date shown in the Declaration Page until June 30th of that fiscal year, and continue annually thereafter in the same manner as if a separate Memorandum had been written for each such consecutive period.

C. Who is Covered

The Covered Member is named in the Declaration and is a Member as defined in the Authority's Joint Powers Agreement. If an entity named in the Declaration loses its status as a Member of the Authority, the coverage under this Memorandum shall terminate immediately upon such change in status.

"Volunteer" shall mean any person while acting within the scope of his or her duties for or on behalf of the Covered Member, provided that, prior to the occurrence, the governing board of the Covered Member has adopted a resolution as provided in Division 4, Part 1, Chapter 2, Article 2, Section 3363.5 of the California Labor Code, declaring such volunteer workers to be employees of the Covered Member for purposes of the Workers' Compensation Act; or provide that such volunteer workers are statutorily deemed by the Workers' Compensation Act to be employees for the purpose of workers' compensation.

D. Workers' Compensation Law

Workers' Compensation Law means the Workers' Compensation Laws of the State of California (which include injury by both accident and disease). It includes any amendments to that law which are in effect during the effective period of the Memorandum. It does not include the provisions of any law that provide non-occupational disability benefits.

E. Qualified Self-Insured

The Covered Member represents that it is a duly qualified self-insured under the Workers' Compensation Law and will continue to maintain such qualifications during the terms this Memorandum is in effect. If the Covered Member should fail to qualify or fail to maintain such qualifications, the coverage provided under this Memorandum shall automatically terminate the first date of such failure.

F. State

State means any state of the United States of America and the District of Columbia.

1.1 Part One - Workers' Compensation Coverage

- A. The Authority agrees to indemnify the Covered Member for loss as a qualified self-insurer under the Workers' Compensation Law of the State of California in excess of the Covered Member's deductible but not for more than up to the Limit of Liability stated in the Declaration Page.
- B. This coverage applies to losses actually incurred by the Covered Member as a qualified self-insured under the Workers' Compensation Law for bodily injury by accident or bodily injury by disease including resulting death and including claims expenses, provided:
 - 1. Bodily injury by accident occurs during the period this Memorandum is in force; or
 - 2. Bodily injury by disease is caused or aggravated by the conditions of employment by the Covered Member and the employee's last day of exposure to such conditions must occur during the period this Memorandum is in force.
- C. The Authority will not cover the Covered Member for any payment made by the Covered Member in excess of benefits regularly required by the Workers' Compensation law if such excess payments are required because:
 - 1. of Serious and Willful Misconduct of the Covered Member;
 - 2. the Covered Member employed an employee in violation of law;
 - 3. the Covered Member failed to comply with a health or safety law or regulation;
 - 4. the Covered Member discharged, coerced, or otherwise discriminated against any employee in violation of Workers' Compensation Law;
 - 5. of any penalty assessment made upon the Covered Member, whether imposed by statute, regulation or otherwise;

6. the Covered Member violated or failed to comply with any Workers' Compensation Law;
7. of Labor Code Section 4850.

1.2 Part Two - Employer's Liability Coverage

- A. The Authority will indemnify the Covered Member as a qualified self-insured of employer's liability in excess of the Covered Member's deductible stated in the Declaration Page but not for more than the limits of coverage stated in the Declaration Page.
- B. Coverage by the Authority will be made only if the original suit and any related legal actions for damages for bodily injury by accident or disease was brought in the United States of America, its territories or possessions or Canada.
- C. Loss means amounts which the Covered Member is legally liable to pay as damage, including claims expenses, because of bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.
- D. This coverage applies to losses incurred by the Covered Member for bodily injury which arises out of and in the course of the injured employee's employment by the Covered Member, provided:
 - 1 the bodily injury by accident occurs during the period this Memorandum is in force; or
 - 2 the bodily injury by disease is caused or aggravated by the conditions of employment by the Covered Member. The employee's last day of last exposure to those conditions of that employment causing or aggravating such bodily injury by disease must occur during the period this Memorandum is in force.
 - 3 The employment is necessary or incidental to work conducted by the Covered Member.
- E. Damages include:
 1. damages for which the Covered Member is liable to a third party by reason of a claim, suit or proceeding against the Covered Member to recover damages obtained by an injured employee of the Covered Member from the third party;
 2. damages for care and loss of services of an injured employee of the Covered Member;
 3. damages for consequential bodily injury to a spouse,, child, parent, brother, or sister of the injured employee of the Covered Member; and provided such damages in 1 and 2 above are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment, by the Covered Member; and
 4. damages because of bodily injury to an employee of the Covered Member arising out of and in the course of employment, claimed against the Covered Member in a capacity other than an employer.

F. Employer's Liability coverage excludes:

1. liability assumed under a contract;
2. punitive or exemplary damages;
3. bodily injury to an employee while employed in violation of law;
4. bodily injury intentionally caused or aggravated by or at the direction of the Covered Member;
5. bodily injury occurring outside the United States of America, its territories or possessions, or Canada to an employee who is temporarily working outside these countries of the Covered Member. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada;
6. damages arising out of the Covered Member's violation of law in the discharge of, coercion of, or discrimination against any employee;
7. an obligation imposed by a worker's compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law; or
8. damages arising out of operations for which the Covered Member:
 - (a) has violated or failed to comply with any workers' compensation law, or
 - (b) has rejected any workers' compensation law.

1.3 Part Three - Other States Coverage

- A. This Memorandum applies in states other than California if an employee of the Covered Member is injured in such a state and if the work of such injured employee of the

Covered Member was within the scope of such employee's employment, at the direction of the Covered Member, and was temporary and transitory in such other state provided the Covered Member is not insured or self-insured in such other state, and

1. such injured employee was regularly employed in California;
 2. the work in the other state was incidental to work in California; and
 3. the work of such injured employee was not at a permanent or fixed location of the Covered Member subject to the Workers' Compensation Law in such other state.
- B. For any workers' compensation benefits awarded under the law of any other state, the Authority will indemnify the Covered Member only to the extent that the other state benefits do not exceed benefits which would have been paid to such injured employee under the Workers' Compensation Law of the State of California.
- C. For any workers' compensation benefits awarded under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Authority will indemnify the Covered Member only to the

extent that those benefits do not exceed benefits which would have been paid to such injured employee under the Workers' Compensation Law of the State of California.

1.4 Part Four - Covered Member's Per Occurrence Deductible and Authority's Limit of Liability

A. LIMIT OF LIABILITY BY THE AUTHORITY

The Limit of Liability for Workers' Compensation will not exceed the Limit of Liability stated in the Declaration Page. The Limit of Liability for Employer's Liability will not exceed the limit stated in the Declaration Page. The total indemnity for Workers' Compensation and Employer's Liability Coverage combined will not exceed in any event the maximum limit stated in the Declaration for California Workers' Compensation.

B. HOW DEDUCTIBLE AND LIMIT OF LIABILITY APPLY

The Covered Member's Per Occurrence Deductible and the Authority's Limit of Liability stated on the Declaration Page apply to losses of the Covered Member as a qualified self-insured of Workers' Compensation and Employers' Liability losses as follows:

1. to one or more employees because of bodily injury or death in any one accident;
2. to any one employee for bodily injury or death by disease.

The inclusion of more than one legal entity as a Covered Member in the Declaration Page will not increase the Covered Member's Per Occurrence Deductible nor the Authority's Limit of Liability.

C. ACCIDENT

Accident means each accident or occurrence or series of accidents or occurrences arising out of any one event.

An Accident is deemed to end seventy-two (72) hours after the event commences. Each subsequent seventy two (72) hours is deemed to be a separate accident period.

D. DISEASE

Disease is an accident only if it results directly from bodily injury by accident.

1.5 Part Five - Claim Expenses

A Claim expenses of the Covered Member mean its litigation costs, interest as required by law on awards or judgments, and its claim investigation or legal expenses which can be directly allocated to a specific claim. Claim expenses exclude: salaries and travel expenses of employees of the Covered Member, annual retainers, and overhead.

1.6 Part Six - Conditions

A. NOTICE OF ACCIDENT

1. The Covered Member shall give prompt written notice to the Authority for all claims in which an injury, disease or death occurs.

2. The Covered Member shall provide for immediate medical and other services required by the Workers' Compensation Law.
3. The Covered Member shall promptly give the Authority complete details on the injury, disease or death. If a suit, claim or other proceeding is commenced on any injury which appears to involve indemnity by the Covered Member, the Covered Member shall give the Authority:
 - (a) all notices, demands, and legal papers related to the claim, proceeding or suit, or copies of these notices, demands, and legal papers; and
 - (b) copies of reports on investigations made by the Covered Member on such claims proceeding, or suits.
4. The Covered Member shall do nothing after an injury occurs that would interfere with the Authority's right to recover from others.
5. The Covered Member shall not voluntarily make payments, assume obligations or incur expenses, except at the Covered Member's own cost.
6. The Covered Member shall cooperate and assist the Authority in the investigation, settlement or defense of any claim, proceeding or suit.

B. DUTIES OF THE AUTHORITY

1. The Authority has the duty to handle, settle or defend any claims, suits, or proceedings against the Covered Member. The Authority shall have the right to investigate any and all claims.
2. The Authority has the discretionary right, and shall be given the opportunity by the Covered Member to associate with the Covered Member in the defense, investigation, or settlement of any claim, suit or proceeding which appears to involve indemnity by the Authority. In such association, the Covered Member and the Authority shall cooperate in all aspects of defense, investigation, or settlement.

C. PAYMENT OF LOSS TO COVERED MEMBER

The Authority will indemnify the Covered Member for any loss under the coverages provided herein as follows:

1. For Workers' Compensation Coverage and Other States Coverage the Authority will pay all benefits required of the Covered Member by the Workers' Compensation Law.
2. For Employer's Liability Coverage if damages are awarded which the Covered Member legally must pay and does pay, the Authority shall pay such damages.

D. SUBROGATION-RECOVERY FROM OTHERS

1. The Authority has the right to recover all payments which it has made on behalf of the Covered Member from anyone liable for such loss.
2. Any such recovery by the Authority will be allocated as follows:
 - (a) if there is insurance coverage in excess of the Authority's Limit of Liability, that insurer's loss will be reimbursed first.

(b) Any balance of the recovery which remains will be allocated between the Covered Member and the Authority in the ratio represented by the allocation of any damages which have been recovered.

E. ACTIONS AGAINST THE AUTHORITY

There will be no right of action against the Authority unless the Covered Member has complied with all the terms and conditions of the Memorandum.

F. ARBITRATION

In the event that the Authority denies coverage for defense and/or indemnity on any claim, the covered party will have the right to appeal to the Board of Directors the decision to deny coverage. Any dispute concerning the decision of the Authority to deny coverage for all or part of a claim shall not be subject to any court action, but shall instead be submitted to binding arbitration. The covered party must exhaust the right to appeal to the Board of Directors, before requesting arbitration of a dispute.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. The covered parties and the Authority shall attempt to stipulate to an arbitrator, and if they are unable to agree upon an arbitrator one will be appointed by the Superior Court. No arbitrator shall be employed or affiliated with the Authority or any Covered Member. The decision of the arbitrator shall be final and binding, shall not be subject to further appeal.

G. OTHER INSURANCE

If the Covered Member has other insurance, reinsurance, indemnity, or reimbursement agreement applicable to a loss for which the Covered Member would be indemnified under this Memorandum, the indemnity under this Memorandum will apply in excess of such other insurance, reinsurance, indemnity or reimbursement which the Covered Member has procured to apply in excess of the sum of the Covered Member's deductible and the Authority's Limit of Liability under this Memorandum.

H. INSPECTION

The Authority has the right at any time, but is not obliged, to inspect the Covered Member's operation and work places. Such inspections are not safety inspections. They relate only to the compliance of the work places with rules of the Authority. The Authority may give report to the Covered Member on the conditions found upon inspection. The Authority does not undertake to perform the duty of any person to provide for the health or safety of the Covered Member's employees or the public. The Authority does not warrant that the Covered Member's work places are safe or healthful, nor that they comply with laws, regulations, codes, or standards.

I. AUDIT

The Covered Member will keep records needed to compute the contribution in accordance with Part Seven - Contributions, and will send copies of those records when the Authority asks for such records. The Authority has the right to examine and audit all records of the Covered Member which relate to this Memorandum, including ledgers, journals, registers, vouchers, contracts, disbursement records, and programs for storing and retrieving data. Information developed by the audit will be used to determine contributions. The Authority has the

right to conduct audits during regular business hours while this Memorandum is in force and within three years after the final settlement of all claims or payment made on account of bodily injury to employees throughout the term of this Memorandum.

J. ASSIGNMENT

An assignment of interest under this Memorandum will not bind the Authority unless an endorsement assigning interest is issued by the Authority to be part of this Memorandum.

K. SOLE REPRESENTATIVE

If more than one Covered Member is named in the Declaration, the Covered Member first named will act on behalf of all Covered Members to give or receive notice of cancellation, receive return contributions, or request changes to the Memorandum.

L. MEMORANDUM CONFORMS TO LAW

If terms of this Memorandum are in conflict with any law applicable to this Memorandum, this statement amends this Memorandum to conform to such law.

M. CAPTIONS

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

1.7 Part Seven - Contributions

Contributions will be determined by applying the rate determined by the Authority's Board of Directors to the Covered Member's gross payroll as established in the Authority's Agreement.

Adopted May ~~13~~, 2022

Issued By:

MUNICIPAL POOLING AUTHORITY

By: _____
Linda M. Cox, Chief Administrative Officer

Date: _____

ACTION ITEM

SUBJECT: Proposed Changes to the Vehicle Physical Damage Memorandum of Coverage (MOC) for Program Year 2023-24

EXECUTIVE SUMMARY

MPA staff and coverage counsel, Kellie Murphy of Johnson Schachter & Lewis, review the MOCs (Workers' Compensation, Vehicle, and General Liability) annually to determine if changes are necessary.

RECOMMENDED ACTION

Staff recommends the Coverage & Governance Committee approve the fiscal year renewal of the Vehicle Physical Damage MOC and move forward to the Executive Committee to approve.

EXHIBIT

1. Vehicle Physical Damage MOC for Fiscal Year 2023-24

CORE VALUE

Results Oriented: Reviewing the MOC annually relates to programs and operations.

MUNICIPAL POOLING AUTHORITY

MEMORANDUM OF COVERAGE - Vehicle Physical Damage

This Memorandum of Coverage ("Memorandum") sets forth the terms, conditions, and limitations of coverage provided to **Covered Members** for Vehicle Physical Damage. The terms of this Memorandum may not be changed or waived except by amendment made part of this Memorandum.

I. DEFINITIONS

The following words and phrases have special meaning throughout this Memorandum (including endorsements forming a part of this Memorandum) and appear in **boldface type** when used:

- A. **"You"** and **"your"** mean the City, Town, or other entity listed as a Member in the Declarations, including its officials, employees, agents and volunteers;
- B. **"We," "us,"** and **"our"** mean Municipal Pooling Authority of Northern California;
- C. **"Covered Member"** means the City, Town, or other entity listed as a Member in the Declarations.
- D. **"Covered vehicle"** means a land motor vehicle, including a **private passenger type, commercial type,** and trailer or semi-trailer, including equipment permanently attached thereto (but not including wearing apparel or personal effects) which is listed on the "Schedule of Vehicles" attached to the Annual Premium Invoice and is either:
 - 1. Owned by the **Covered Member,** or
 - 2. Leased to the **Covered Member** under an agreement expressly prohibiting any right of the lessor or owner to use such vehicles during the term of such lease except either as an operator employed by the **Covered Member** or for its repair or exchange; rented temporarily by an employee in the course and scope of employment to whom the **Covered Member** furnishes a vehicle for that employee's exclusive use, even if such temporary rental vehicle is not listed on the "Schedule of Vehicles."
 - 3. Vehicles newly acquired by the **Covered Member** will be considered **covered vehicles** for the first 30 days they are in **your** possession. After 30 days, newly acquired vehicles will only be **covered vehicles** if **you** notify **us,** and the effective date for such coverage will be the date **you** notify **us.**
 - 4. **"Covered vehicle"** does not include a vehicle owned by or registered in the name of any individual, officer, board member, or any motor vehicle insured elsewhere for physical damage coverage;
- E. **"Loss"** means direct and accidental loss or damage to covered vehicles;

- F. **"Private passenger type"** means a 4-wheel land motor vehicle of the private passenger or station wagon type;
- G. **"Commercial type"** means a land motor vehicle such as a, but not limited to, bus, truck, pick-up, van, sedan or panel delivery vehicle, including truck-type tractors, trailers or semi-trailers used for any municipal purpose.

II. COVERAGE AGREEMENTS

We will pay for any **loss** less the applicable deductibles to **covered vehicles** occurring during the coverage period and reported within 90 days of the **loss**, except as excluded herein. All vehicles must be scheduled prior to **loss** or have been acquired fewer than 30 days prior to the **loss**, in order for coverage under the Memorandum to apply.

III. DEDUCTIBLE

For each **covered vehicle loss**, **our** obligations under this Memorandum will be reduced by the applicable Deductible, as stated in the Declarations of this Memorandum. In the event of multiple vehicles damaged in a single **loss**, only one deductible will apply per **Covered Member**.

IV. EXCLUSIONS

We will not cover loss:

- A. Caused intentionally by **you, your** officials, employees, agents, volunteers, or any other person using **your covered vehicle** with **your** permission; or
- B. Caused by:
 - 1. wear and tear or
 - 2. freezing
 - 3. mechanical or electrical breakdown or failure, unless such damage is the result of other **loss** covered by this Memorandum; or
- C. To tires, unless (1) the **loss** is coincident with and from the same cause as other **loss** covered by this Memorandum; or (2) by fire; or
- D. Caused by diminution in value; or
- E. Caused by **your** failure to protect the **covered vehicle** after the initial **loss**; or
- F. Due to war whether or not declared, insurrection, terrorism, rebellion or revolution, or to any act or condition incident to any of the foregoing; or
- G. Radioactive contamination; or
- H. Of any item not permanently installed in your **covered vehicle**, including but not limited to any device or instrument designed for the recording or reproduction of sound, unless such device or instrument is permanently installed in the **covered vehicle**; or

- I. Due to conversion, embezzlement or secretion by any person in possession of a **covered vehicle** under a bailment, lease, conditional sale, purchase agreement, mortgage or other encumbrance.

V. LIMIT OF LIABILITY

The limit of our liability for **loss** to any one **covered vehicle** shall not exceed the amounts set forth below.

- A. For a **covered vehicle** that is not determined to be a "Total Loss," the total of the following:
1. The lesser of the following amounts:
 - a) The actual cash value at the time of **loss** of the **covered vehicle** or such part of the covered vehicle as was damaged; or
 - b) The amount stated on **your** "Schedule of Vehicles" for the **covered vehicle** as of the time of **loss**.
 - c) The cost to repair or replace such **covered vehicle** or part thereof with other of like kind and quality; or
 - d) For a **covered vehicle** newly acquired during the Coverage Period, the cost new, less any depreciation at the time of the **loss**; or
 - e) The coverage limit specified in the Declarations; and
 2. Tow charges for the initial tow (from scene of accident), if any.
- B. For a **covered vehicle** that is determined to be a "Total Loss," the total of the following, or the coverage limit specified in the Declarations, whichever is less:
1. The actual cash value at the time of **loss** of the **covered vehicle** or the amount stated on **your** "Schedule of Vehicles" for the **covered vehicle** as of the time of the **loss**, whichever is less;
 2. Applicable sales tax;
 3. Tow charges for the initial tow (from scene of accident), if any;
 4. Storage expenses, if any, not to exceed \$3,000.00 (\$100.00 per day for a maximum 30 days); and
 5. For attached equipment that cannot be transferred to another vehicle, the purchase price less 10% depreciation per year to a maximum of 70% depreciation

VI. COVERAGE PERIOD AND TERRITORY

This coverage applies only to **loss** that occurs during the Coverage Period while the **covered vehicle** is within the United States of America, its territories or possessions or Canada, or is being transported between ports thereof.

VII. CONDITIONS

This coverage shall be subject to the following conditions:

A. **Your Duties After Accident or Loss:**

1. Protect the **covered vehicle**, whether or not this coverage applies to the **loss**; reasonable expenses incurred in affording such protection shall be deemed incurred at **our** request.
2. Notify **us** as soon as practicable and in the event of theft or larceny, immediately notify the police;
3. Within 90 days of the loss provide such information as we may reasonably require. Upon **our** request, exhibit the damaged property.
4. Cooperate with **us** and upon **our** request assist in making settlements, in the conduct of lawsuits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **you** for **loss** to which this coverage applies; attend hearings and trials and assist in securing and providing evidence and obtaining the attendance of witnesses; but **you** shall not, except at **your** own cost, make any payment, assume any obligation, offer or pay any reward for recovery of stolen property, or incur any expense other than those specifically provided by this coverage.

B. **Payment of Loss:**

With respect to any **loss** covered by the Memorandum, **we** may pay for said **loss** in money, or may: (1) repair or replace the damaged or stolen property, or (2) return at **your** expense any stolen property to **you**, with payment for any resultant damage thereto, or (3) take all or part of the damaged or stolen property at the agreed or appraised value, but there shall be no abandonment to **us**. **We** are not obligated to reimburse **you** or pay **you** for any expenses incurred in connection with a loss unless prior express approval was obtained. **We** will not reimburse **you** or pay **you** for repairs performed by your employee or agent.

C. **Newly Acquired Vehicles:**

If you acquire a new vehicle, **you** must notify **us** within 30 days of the date on which **you** take possession of the vehicle. No coverage will be extended to **you** for vehicles which have not met this notice requirement.

Additional pro-rated premiums may be assessed during the policy year for one or more newly acquired vehicles with a total value in excess of \$25,000.

D. **Removal of Vehicle:**

You may at any time request that a vehicle be removed from the "Schedule of Vehicles," and thus not a **covered vehicle**. The effective date of removal for all purposes will be the date of the request, and will not be made retroactive.

E. **Appraisal:**

We may, within sixty days of notification of **loss** obtain an appraisal of the **loss**. If **you** disagree with the amount of the **loss**, **you** may obtain **your** own appraisal. If **you** and **we** still

cannot agree to the amount of the **loss**, the appraisers shall submit their differences to a competent and disinterested umpire. An award in writing of any two shall determine the amount of **loss**. Each party shall pay its chosen appraiser and shall bear equally the other expenses of the appraisal and the umpire.

We shall not be held to have waived any of **our** rights by any act relating to appraisal.

F. **Action Against Us:**

No action shall lie against **us** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this coverage, not until 30 days after proof of loss is filed and the amount of **loss** is determined as provided in this Memorandum.

G. **Other Coverage:**

This shall not apply to any **loss** against which **you** have other valid collectible insurance.

Adopted May ~~31~~, 202~~2~~3

Issued By:

MUNICIPAL POOLING AUTHORITY

By: _____ Date: _____

Linda M. Cox, Chief Administrative Officer