

**PUBLIC ENTITY  
RISK MANAGEMENT AUTHORITY**



**MEMORANDUM OF LIABILITY COVERAGE**

**FOR THE PERIOD  
JULY 1, 2020 TO JUNE 30, 2021**

**EFFECTIVE: JULY 1, 2020**

**PUBLIC ENTITY RISK MANAGEMENT AUTHORITY  
MEMORANDUM OF LIABILITY COVERAGE  
Program Year: 2020-2021**

**Effective July 1, 2020**

In consideration of the payment of the premium, the Public Entity Risk Management Authority (the "Authority") agrees with the Covered Party as follows:

**SECTION I – COVERAGES**

The Authority will pay up to the Limit of Coverage those sums on behalf of the Covered Party for the Ultimate Net Loss in excess of the Retained Limit that the Covered Party becomes legally obligated to pay as Damages caused by an Occurrence during the coverage period, except as otherwise excluded.

**SECTION II – DEFINITIONS**

**Aircraft** – means a vehicle designed for the transport of persons or property principally in the air. Aircraft does not include Small Unmanned Aircraft as defined in 14 Code of Federal Regulations (CFR) Part 107.3.

**Covered Contract** – means that part of any member's contract incidental to the primary purpose of the contract which indemnifies the other contracting party against tort liability Damages not excluded herein.

**Covered Party** – means:

- (a) The Authority;
- (b) A member entity of the Authority, including any and all commissions, agencies, districts, authorities, or boards coming under the member entity's direction or control or for which the member entity's board members sit as the governing body;
- (c) Any person or entity holding a certificate of coverage duly issued by the Authority, as limited therein ("Additional Covered Party"). An Additional Covered Party is not covered for claims arising from the Additional Covered Party's sole negligence or for claims by another Covered Party;
- (d) Any person who is an official, employee or volunteer of a person or entity covered by (a), (b) or (c), whether or not compensated, while acting in an official capacity for or on behalf of such person or entity, including while

acting on an outside board at the direction of such person or entity, except an airport or hospital board, regardless of how such body is denominated; and

- (e) With respect to any automobile owned or leased by a member or loaned to or hired for use by or on behalf of a member, any person using such automobile with the permission of the member will be covered under this Memorandum of Coverage for such use; however, this coverage does not apply to:
  - (1) Any person or organization, or any agent or employee thereof, operating an automobile sales agency, rental 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, any lessee, or any agent or employee of such owner or lessee, other than the Covered Party of any automobile hired by or loaned to the Covered Party.
- (f) No person or entity is a Covered Party with respect to the conduct of any current or past partnership, joint venture, or joint powers authority not named in the declarations unless all members are Covered Parties under the language set forth above. However, where any covered individual participates in the activities of a partnership, joint venture, or joint powers authority while acting for or on behalf of the Covered Party at the time of the occurrence, coverage is afforded by this agreement, excess of any coverage that applies to the partnership, joint venture, or joint powers authority.

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

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

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control flood water, no railroad fill or structure, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, no water or wastewater treatment facility, and no barrier which is not across a stream channel, watercourse, or natural drainage area and which has the principal purpose of impounding

water for agricultural use shall be considered a Dam. In addition, no obstruction in the channel of a stream or watercourse which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground shall be considered a Dam.

Nor shall any impoundment constructed and utilized to hold treated water from a sewage treatment plant be considered a Dam. Nor shall any wastewater treatment or storage pond exempted from state regulation and supervision by California Water Code section 6205.5 be considered a Dam.

**Damages** – means compensation in money recovered by a Third Party for loss or detriment it has suffered through the act of a Covered Party, including attorneys' fees attributable to a claim for compensatory damages covered hereunder, interest on judgments, and costs. Damages do not include injunctive, equitable, or other non-monetary relief, or any monetary relief or expense in connection therewith. Damages do not include any money for the direct or indirect benefit to public improvements of a Covered Party.

**Defense Costs** – means all fees and expense caused by and relating to the adjustment, investigation, defense or litigation of a claim for Damages to which this coverage applies, including attorneys' fees and court costs. Defense Costs shall not include the office expense of the Authority or any Covered Party nor the salaries of employees or officials of the Authority or of any Covered Party nor expenses of a claims administrator engaged by 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.

**Limit of Coverage** – means the most the Authority will pay for Ultimate Net Loss arising out of one Occurrence regardless of the number of coverage periods. The Limit of Coverage is stated on the first applicable declaration page or certificate of coverage. However, if more than one member is involved in the same Occurrence, there will be only one Limit of Coverage to be apportioned among the members. That Limit of Coverage will be the highest Limit of Coverage available to any of the members involved in the Occurrence. There will be only one Retained Limit, which will be the highest Retained Limit of any of the members involved in the Occurrence. The apportionment of the Limit of Coverage and Retained Limit shall be made according to the members' proportionate shares of liability as finally determined by the Authority.

The Limit of Coverage for an Additional Covered Party will be the lower of: (1) the Limit stated in the Declarations page for the Member Entity; (2) any limit stated in the Additional Covered Party certificate; or (3) the amount required to be provided by contract or agreement with the Member Entity. Coverage will not be broader than what the Member Entity is required by the contract or agreement to provide.

**Medical Malpractice** – means the rendering of or failure to render any of the following services:

- (a) Medical, surgical, dental, psychiatric, psychological, x-ray or nursing services or treatment or the furnishing of any food or beverages in connection therewith; or any services provided by a healthcare provider as defined in Section 6146(c)(2) or (3) of the California Business and Professions Code;
- (b) Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

**Nuclear Material** – means source material, special Nuclear Material or byproduct material. Source material, special Nuclear Material and byproduct material have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereto.

**Occurrence** – means an event, including continuous or repeated exposure to substantially the same generally harmful conditions, during the coverage period, causing Damages regardless of the number of claimants or covered parties. Claims arising out of or in connection with an earthquake or series of related earthquakes shall be deemed to arise out of one Occurrence.

Regardless of the number of (1) Covered Parties under this Memorandum, (2) persons or organizations who sustain injury of Damage, (3) claims made, or (4) suits brought on account of an event, including continuous or repeated exposure to substantially the same generally harmful conditions, there shall be only one Retained Limit and Limit of Coverage per Occurrence. An Occurrence, offense, or wrongful act taking place over more than one Coverage Period shall be deemed to have taken place during the first Coverage Period when the Occurrence begins, and only that Memorandum of Coverage will apply.

All claims by all claimants related to "childhood sexual assault" as defined in Code of Civil Procedure section 340.1, committed by an assailant, including claims of wrongful, negligent or intentional acts by others deemed to be the legal cause of such assaults by that assailant, shall be treated as a single Occurrence arising during the Coverage Period when the first assault took place. This declaration of intent addresses only the issue of date of Occurrence, and non-accumulation of limits, and does not address issues of scope of coverage or application of exclusions that may relate to a particular claim or claims.

**Pollutants** – means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The term Pollutants as used herein is not defined to mean potable water or agricultural water or water furnished to commercial users or water used for fire suppression.

**Retained Limit** – means the amount, identified in the applicable declaration or certificate of coverage, of Ultimate Net Loss which the Covered Party must incur or become liable for before the Authority is obligated to make any payment. For each Occurrence involving two or more members, payment of only one Retained Limit shall apply (which shall be the highest Retained Limit of the members involved in the occurrence); payment of such Retained Limit shall be apportioned among the members according to each members'

proportionate share of liability as finally determined by the Authority, but said proportionate share of the Retained Limit for any particular member shall in no event exceed that member's original Retained Limit.

**Third Party** – means any person making a claim against a Covered Party.

**Ultimate Net Loss** – means the total of all Defense Costs incurred by the Covered Parties and all Damages for which the Covered Parties are liable either by adjudication or by compromise with the written consent of the Authority, arising from an Occurrence to which this Memorandum applies. Ultimate Net Loss also includes Defense Costs incurred by the Authority after the Authority assumes control of the negotiation, investigation, defense, appeal or settlement of any claim or proceeding.

### **SECTION III – DEFENSE AND SETTLEMENT**

The Authority shall have no duty to assume the control of investigation or defense of any claim unless the Retained Limit is zero. However, the Authority shall have the right to assume the control of the negotiation, investigation, defense, appeal or settlement of any claim which the Authority determines, in its own discretion, to have a reasonable probability of resulting in an Ultimate Net Loss exceeding the Retained Limit. The Covered Party shall fully cooperate in any matters pertaining to such claim or proceeding.

If the Authority assumes control of the handling of a claim, the Covered Parties shall pay at the direction of the Authority all Defense Costs incurred by the Authority and any sum necessary for the settlement of a claim, or to satisfy liability imposed by law, up to the applicable Retained Limit.

The decision to assume control of a claim shall be made by an executive committee appointed by the Board of Directors. Such decision may be appealed to the Board of Directors. The results of such appeal shall be final and binding, and shall not be the subject of any further appeal, arbitration or court action.

The duty to defend and indemnify a member's officials, employees, and volunteers is limited to the member's obligation to do so under the California Government Code.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled risk sharing. As the Authority is not an insurer, it has no obligation to provide "Cumis" counsel as provided by Civil Code Section 2860.

No claim shall be settled for an amount in excess of the Retained Limit 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.

## **SECTION IV – COVERAGE PERIOD AND TERRITORY**

This Memorandum applies to Occurrences anywhere during the coverage period identified in the applicable declaration or certificate of coverage.

## **SECTION V – EXCLUSIONS**

This Memorandum does not apply to:

- (1) Claims arising out of any Covered Party's ownership, operation, use, maintenance or entrustment of any Aircraft or airport. This exclusion shall not apply to claims falling within "Personal Injury" or "Public Officials Errors and Omissions" coverage as defined in the CSAC-EIA General Liability Program Memorandum of Coverage.
- (2) Claims at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to radon, asbestos, asbestos products, asbestos fibers or asbestos dust, or:
  - (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) Claims arising out of failure to perform, or breach of, a contractual obligation, other than a Covered Contract indemnity obligation; or claims arising out of failure to enter into a contract.
- (4) Claims arising out of partial or complete structural failure of a Dam.
- (5) Claims by:
  - (a) Any past or present employee against his or her employer or co-employee;
  - (b) A spouse, child, parent, brother or sister of that employee as a consequence of (a) above; or
  - (c) Any person arising out of the application for or termination of employment or any employment related policies, procedures, acts or omissions including but not limited to coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, violation of civil rights, harassment, humiliation or discrimination;

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

- (6) Claims by a Covered Party against its own past or present employee, official or volunteer.
- (7) Benefits payable under any employee benefit plan (whether the plan is voluntarily established by the entity or mandated by statute).
- (8) Obligations under any workers' compensation, unemployment compensation or disability law or any similar law.
- (9) Liability imposed under the Employee Retirement Income Security Act of 1974, and any law amendatory thereof.
- (10) Bid Specifications/Cost Overruns.
  - (a) Claims arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
  - (b) Mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided; this exclusion extends to such claims however denominated, including claims of breach of oral or written contract, third-party beneficiary claims, *quantum meruit* claims, and/or open account claims.
- (11) Claims arising out of the failure to supply or provide an adequate or specific supply of gas, water, electricity or sewage capacity. This exclusion shall not apply if such failure arises out of sudden and accidental physical damage to tangible property used in the generation or transmission of the supply, or sudden and accidental failure of computer software or programs used in the generation or transmission of supply, or a sudden interruption in the supply of electricity, gas or water to the Covered Party by a third party utility supplier.
- (12) Claims for punitive, exemplary or treble Damages or the imposition of any fine or penalty.
- (13) Claims for Damages caused by any of the following conduct of any Covered Party: (1) constituting a felony, (2) with intent to cause improper harm, (3) with willful and conscious disregard of the rights or safety of others, or (4) with malice. This exclusion does not apply to claims based solely on vicarious liability where the Covered Party did not authorize, ratify, participate in, or consent to such conduct.
- (14) Claims arising out of or in connection with land use regulation and/or land use planning. "Land use planning" and "land use regulation" include the approval or disapproval of any land-use entitlement, including but not limited to general plan amendments, zoning amendments, variances, permits, tract maps, development



agreements, owner-participation agreements, or disposition-and development agreements; the approval or disapproval under any rent control ordinance, outdoor advertising ordinance, adult bookstore ordinance, or taxi ordinance; or the approval or disapproval of the operation of a marijuana dispensary whether medical, recreational or otherwise, any ordinances governing that activity, and any and all enforcement efforts.

- (15) Claims arising out of the principles of eminent domain, condemnation proceedings or inverse condemnation (California Constitution, Article 1, Section 19, U.S. Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments), whether liability accrues directly or indirectly against the Covered Party, including attorney fees and costs. Provided, however, if the Authority in its sole discretion determines that the subject claim is for physical property damage caused by the negligence of the Covered Party, the Authority may provide coverage in whole or in part. The decision of the Authority is final and not subject to arbitration or judicial review, notwithstanding any other provision in this Memorandum.
- (16) Claims arising out of ownership, use, operation or maintenance of any hospital, health care or medical clinic facility; claims arising out of any actual or alleged Medical Malpractice except services performed by emergency medical technicians, paramedics or similar classes of personnel.
- (17) Claims arising out of the hazardous properties of Nuclear Material.
- (18) Claims arising out of the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, unless the discharge, dispersal, release or escape is sudden and accidental and:
  - (a) The Covered Party discovered the Occurrence within seven days of its commencement; and
  - (b) The Occurrence was reported in writing to the Authority within 21 days of its discovery by the Covered Party; and
  - (c) The Covered Party expended reasonable effort to terminate the discharge, dispersal, release or escape of Pollutants as soon as conditions permitted.

This exclusion does not apply to active use of material to suppress a fire, or to weed abatement or tree spraying.

Nothing contained in this Memorandum shall operate to provide any coverage with respect to:

- (d) Any site or location principally used by the Covered Party, or by others on the Covered Party's behalf, for the handling, storage, disposal, dumping,

processing, or treatment of waste material, other than wastewater treatment facilities and sewer systems.

- (e) Any loss, cost or expense arising out of any governmental directions or requests that the entity or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.
- (f) Acid rain.
- (g) Water pollution caused by oil or its derivatives.
- (19) Claims arising out of disputes regarding taxes, fees, fines, liens, or assessments.
- (20) Claims for refund, reimbursement or repayment of any monies or property to which a Covered Party was not legally entitled.
- (21) Claims for uninsured or underinsured motorist coverage.
- (22) Claims for injury to or destruction of (a) property owned by a Covered Party, or (b) property rented or leased to the Covered Party where the Covered Party has assumed liability for damage to or destruction of such property unless the Covered Party would have been liable in the absence of such assumption of liability, or © aircraft or watercraft in the care, custody, or control of any Covered Party.
- (23) Claims for injunctions, equitable relief, writs of mandate or any other form of relief other than the payment of Damages; or any expense or cost incurred by a Covered Party arising from reasonable accommodation of any disabled person, including any employee.
- (24) Claims arising out of automobile or motorcycle or watercraft drag racing, speed racing, or similar speed contests sanctioned or permitted by a Covered Party.

## **SECTION VI – CONDITIONS**

### **A. Covered Parties shall:**

- (1) Forward to the Authority all claims, demands, suits, notices, summons, or other process within 10 days of receipt or service;
- (2) Notify the Authority of any Occurrence the Covered Party becomes aware of that is reasonably likely to result in a claim and/or litigation against the Covered Party and includes injury of the following types:
  - (i) Death;
  - (ii) Paralysis, paraplegia, or quadriplegia;

- (iii) Loss of eye(s) or limb(s);
  - (iv) Spinal cord or brain injury;
  - (v) Dismemberment or amputation;
  - (vi) Sensory organ or nerve injury or neurological deficit;
  - (vii) Serious burns;
  - (viii) Severe scarring;
  - (ix) Sexual assault or battery including but not limited to rape, molestation, or sexual abuse;
  - (x) Substantial disability or disfigurement;
  - (xi) Sensory organ or nerve injury or neurological deficit; or
  - (xii) Any class action;
- (3) Cooperate with the Authority and upon the Authority's request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Covered Party for Damages or expenses with respect to which coverage is afforded under this Memorandum;
- (4) Attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
- (5) Not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense without the written consent of the Authority.
- B. **Bankruptcy.** Bankruptcy or insolvency of the Covered Party shall not relieve the Authority of any of its obligations hereunder.
- C. **Other Coverage.** If insurance or other coverage with any insurer, joint powers authority or other source is available to the Covered Party covering a loss also covered by this Memorandum (whether on primary, excess, or contingent basis), the coverage under this Memorandum shall be in excess of, and shall not contribute with, such other insurance or coverage, provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum. If the Covered Party has entered into a written agreement, prior to any loss event, in which it is agreed that this coverage shall be primary and/or non-contributory with respect to an additional covered party, then this coverage shall respond as primary and/or non-contributory, but shall be limited to the lesser of the limits stated on the Certificate of Liability Coverage or the minimum limits required by the written agreement.
- D. **Actions.** No action shall lie against the Authority with respect to the coverages and related provisions defined in this Memorandum unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Memorandum, nor until the amount of the Covered Party's obligations to pay shall have been finally determined either by judgment against the Covered Party after actual trial or by written agreement of the Covered Party, the claimant and the

Authority. Any person or organization or the representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recovery under this Memorandum to the extent of the coverage afforded by this Memorandum. No person or entity shall have the right under this Memorandum to join the Authority as a party to any action against the Covered Party to determine the Authority's liability, nor shall the Authority be impleaded by the Covered Party or its legal representative.

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

- (1) The highest layer of coverage shall be reimbursed first and if there be sufficient recoveries then the next highest layer until all recoveries are depleted;
- (2) The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by the Authority, the Authority shall bear the expenses thereof.

The Authority waives its rights of subrogation against any person or organization with whom the Covered Party has entered into a written agreement that includes a waiver of subrogation, but only if the agreement is in effect before the Occurrence giving rise to the claim.

- F. **Changes.** Except by written endorsement issued by the Authority to form a part of this Memorandum, the terms of this Memorandum cannot be waived or changed, regardless of the act, omission, notice to, or knowledge by anyone.

- G. **Arbitration.** Decisions by the Authority as to whether coverage exists for a particular claim (or part of a claim) shall be made by the Board of Directors or by such employee or committee as the Board designates. A Covered Party may appeal to the Board of Directors any such decision.

Any dispute concerning this Memorandum shall not be the subject of any court action, but shall instead be submitted to binding arbitration to determine whether the Authority abused its discretion and acted arbitrarily or capriciously. The Covered Party must exhaust the right to appeal to the Board of Directors, if applicable, before requesting arbitration of a dispute.

Arbitration shall be conducted pursuant to Title IX of the California Code of Civil Procedure (commencing with Section 1280), except as otherwise provided herein. Arbitration shall be conducted by a three-person panel. The Covered Party or Parties shall select a total of one arbitrator; the Authority shall select one arbitrator;

and the two arbitrators shall then select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the Authority or any Covered Party.

The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply.

The arbitration panel shall have jurisdiction to determine whether or not coverage applies. Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Section I - Coverages, plus interest at the same rate as the Authority earned on investments for the time period involved.

Each party shall bear the cost of its selected arbitrator and shall bear one-half the cost of the third arbitrator. Each party shall bear its own costs and expenses of arbitration, including attorneys fees.

The decision of the panel of arbitrators shall be final and binding, and shall not be subject to appeal.

**ENDORSEMENT NO. 1**

**PUBLIC ENTITY RISK MANAGEMENT AUTHORITY  
Policy Year 2020-2021**

**DEFENSE COSTS - CITY ATTORNEY**

The definition of Defense Costs is modified to include attorney time by the City Attorney's office. Credit will be given at the following rates:

City Attorney/Interim City Attorney	\$165 per hour
Assistant City Attorney	\$125 per hour
Deputy City Attorney	\$110 per hour

Credit is contingent on the City Attorney's office following the claims handling reporting guidelines established by the Claims Manager, and itemization of attorney time on a monthly basis in conformance with the billing guidelines established by the Claims Manager.

In addition to all other notice and reporting requirements, the handling attorney will notify PERMA if, at any time, the exposure for defense costs plus indemnity is equal to or more than 50% of the City's Retained Limit.

This endorsement is part of the Memorandum of Liability Coverage and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Issued To:** City of Moreno Valley

**Issue Date:** June 4, 2020

**Authorized Representative,**



---

Scott Ellerbrock  
General Manager