

**LIABILITY
MEMORANDUM OF COVERAGE
FOR
CALIFORNIA INTERGOVERNMENTAL
RISK AUTHORITY

CIRA**

CIRA GL# 2021/22
Effective July 1, 2021 to June 30, 2022

**MEMORANDUM OF COVERAGE
FOR THE
CALIFORNIA INTERGOVERNMENTAL RISK AUTHORITY
(CIRA)**

This Memorandum of Coverage does not provide insurance, but instead provides for pooled risk sharing. This **Memorandum** is a negotiated agreement among the **Members** of the **Authority** and no party to the **Memorandum** is entitled to rely on any contract interpretation principles which require interpretation of ambiguous language against the drafter of such **Memorandum**. This **Memorandum** shall be applied according to the principles of contract law, giving full effect to the intent of the **Members** of the **Authority**, acting through the Board of Directors in adopting this Memorandum of Coverage.

Throughout this **Memorandum**, words and phrases that appear in boldface have special meanings as provided in Section VII – Definitions.

In consideration of the payment of the contribution deposit, the **Authority** agrees with the **Members** as follows:

SECTION I – LIABILITY COVERAGE AGREEMENT

The **Authority** will pay **Ultimate Net Loss** in excess of the **Retained Limit** that the **Covered Party** shall become obligated to pay by reason of **Tort Liability** imposed by law or assumed in a **Covered Contract** because of **Bodily Injury, Property Damage, Personal Injury, Employment Practices, or Public Officials Errors or Omissions**, if caused by an **Occurrence** to which this **Memorandum** applies.

SECTION II—DEFENSE AND SETTLEMENT

A. *Defense.* For any **Claim** that creates the potential for the recovery of **Damages** to which this **Memorandum** applies, the Authority shall have the duty to pay **Defense Costs** upon satisfaction of the **Retained Limit**. The **Authority** shall have the right to defend any such **Claim** or **Suit** against a **Covered Party** if the final judgment or settlement is likely to result in an **Ultimate Net Loss** in excess of the **Retained Limit**. The **Authority** shall have no obligation to defend or contribute to the defense of uncovered **Claims**, including uncovered **Claims** contained in a suit that contains covered **Claims**. If the **Authority** advances **Defense Costs** within the **Retained Limit**, the **Covered Party** shall promptly reimburse the **Authority** upon request.

B. *Selection and Assignment of Defense Counsel.*

1. With respect to any potentially covered **Claim** or **Suit**, the **Authority** shall select and assign counsel to defend the **Covered Party(s)**. The **Authority** will consider the wishes of a **Covered Party** with respect to the assignment of counsel, but the **Authority** retains the sole right to make the assignment of counsel. If the **Covered Party** refuses to be defended by the counsel assigned by the **Authority**, then this **Memorandum** shall not provide any defense or indemnity to such **Covered Party**

for such **Claim**, and the **Authority** shall not be required to contribute to any **Defense Costs**, settlement or judgment arising from such **Claim**.

2. A **Covered Party** may select as its defense counsel the in-house City or Town Attorney directly employed as such by the **Member**. For purposes of this provision, in-house City or Town Attorney shall not include any outside counsel contracted to act as a City or Town Attorney by the **Member** or any outside counsel contracted by the **Covered Party** to act as counsel for any **Claim**. In the event that a **Covered Party** selects the in-house City or Town Attorney to defend any **Claim**, the **Authority** shall not be required to contribute to any **Defense Costs** arising from such **Claim** or **Suit**, and any **Defense Costs** arising from such **Claim** or **Suit**, or sums incurred by the **Member** for salaries, fees, benefits, or costs of any nature of the in-house counsel shall not apply toward satisfaction of the **Retained Limit**. Notwithstanding the foregoing, and subject to the **Authority's** review and approval, with respect to any covered **Claim** or **Suit** where the **Retained Limit** is \$350,000 or higher, the **Covered Party** may select as its defense counsel outside counsel contracted by the **Member** to act as the City or Town Attorney, but only if the outside counsel has demonstrated experience with the subject matter of the **Claim**. If as the result of the **Authority's** review of the defense counsel's performance on the **Claim** or **Suit**, the **Authority** withdraws its approval of such counsel, then counsel shall be determined and assigned as provided in paragraph 1, regardless of the **Member's Retained Limit**.
 3. With respect to the defense of any covered **Claim** or **Suit** against a **Member** for **Tort Liability** assumed in a **Covered Contract**, the **Authority** shall select and assign counsel to defend such parties identified in the **Covered Contract**. The **Authority** shall select counsel from a list of Panel Counsel established by the **Authority**. The **Authority** will consider the wishes of a **Covered Party** with respect to the assignment of counsel, but the **Authority** retains the sole right to make the assignment of counsel. In the event of a *disagreement regarding the assignment of counsel*, the **Covered Party** retains the right to appeal to the Board of Directors, whose decision shall be final. If either the **Covered Party** or the party identified in the **Covered Contract** refuses to have such party(s) be defended by the counsel assigned by the **Authority**, then the obligation of the **Authority** to contribute to **Defense Costs** arising from such **Claim** or **Suit** shall be limited to such amounts as would be incurred if counsel selected from the Panel Counsel list were assigned the defense of such **Claim** or **Suit**.
- C. *Termination of Authority's Obligation.* The **Authority's** obligation to defend and/or cover any **Claim** shall cease after the **Coverage Limit** stated in Section V has been exhausted by payment of settlement(s), judgment(s) and/or **Defense Costs**.
- D. *Settlement.* 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.

If the **Member's Retained Limit** has already been expended the **Authority** shall have the sole discretion to control the defense and settlement of the **Claim**. Any such decision to settle shall be final.

If the **Member's Retained Limit** has not been expended (i.e., the **Member** will have to contribute funds to effectuate the settlement), then the consent of the **Member** to any

settlement shall be required. If, however, the **Member** refuses to consent to any settlement or compromise recommended by the Authority or its Claim Administrator and elects instead to continue to contest the **Claim**, then the **Authority's** liability shall not exceed the amount for which the **Authority** would have been able to settle the **Claim** plus **Defense Costs** at the time the **Claim** could have been settled or compromised.

SECTION III—COVERAGE LIMIT

- A. The Limit of Coverage shown in **Cover Page** and the rules below determine the most the **Authority** will pay, inclusive of **Defense Costs**, regardless of the number of:
 - 1. **Covered Parties**;
 - 2. **Occurrences**;
 - 3. **Claims** made or **Suits** brought; or
 - 4. Persons or organizations that sustain injuries or **Damages**.
- B. The **Authority** shall pay only for **Ultimate Net Loss** in excess of the **Retained Limit**.
- C. The Limit of Coverage stated in the **Cover Page** is the most the **Authority** will pay for **Ultimate Net Loss** as respects the sum of **Damages** and **Defense Costs** arising out of any one **Occurrence**.
- D. In determining the Limit of Coverage, all injury or damage arising out of exposure to substantially the same general condition(s) shall be considered as arising out of one **Occurrence**.
- E. Any loss of use of tangible property not physically injured or destroyed shall be deemed to occur at the time of the **Occurrence** that caused such loss of use. Any other injury or damage occurring or alleged to have occurred over more than one coverage period shall be deemed to have occurred during the coverage period when the **Occurrence** begins, and only the **Limit of Coverage** for that coverage period shall apply.

SECTION IV—COVERAGE PERIOD AND TERRITORY

This **Memorandum** applies to **Bodily Injury, Property Damage, Personal Injury, Employment Practices, or Public Officials Errors or Omissions** that occur anywhere in the world during the **Coverage Period**.

SECTION V—EXCLUSIONS

This **Memorandum**, including any obligation to defend or to pay **Defense Costs**, is subject to the following exclusions:

- A. *Additional Covered Party.* This **Memorandum** does not apply to **Claims** arising out of the active or sole negligence of an **Additional Covered Party**. Also, no **Additional Covered Party** is covered for **Claims** by another **Covered Party**.
- B. *Aircraft or Airport Operations.* This **Memorandum** does not apply to **Claims** arising out of the ownership, operation, use or maintenance of any **Aircraft** or **Airport** owned by a **Covered Party**. However, this exclusion does not apply to claims arising out of the ownership, operation, use or maintenance of any **Unmanned Aerial Vehicle (UAV)** that is owned or operated by or on behalf of any **Member**.
- C. *Antitrust or Restraint of Trade.* This **Memorandum** does not apply to **Claims** arising out of violation of state or federal antitrust or restraint-of-trade laws.
- D. *Bounce House.* This **Memorandum** does not apply to **Claims** arising out of the ownership, maintenance, or use of any inflatable rebound device or equipment.
- E. *Breach of Contract.* This **Memorandum** does not apply to **Claims** arising out of failure to perform, or breach of, a contractual obligation.
- F. *Contractual Liability.* This **Memorandum** does not apply to **Claims** arising out of the **Covered Party's** assumption of **Tort Liability** in a written agreement or contract, but this exclusion does not apply to liability assumed in a **Covered Contract** if the **Damages** occur subsequent to the execution of the **Covered Contract**.
- G. *Dam Failure.* This **Memorandum** does not apply to **Claims** arising out of the partial or complete structural failure of any **Dam**.
- H. *Disability Accommodation Expenses.* This **Memorandum** does not apply to the cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing Act, or any similar law.
- I. *Employee Benefits Plans.* This **Memorandum** does not apply to **Claims** arising out of any act or omission regarding benefits payable under any employee benefits plan established by the **Covered Party**.
- J. *Employee Injury.* This **Memorandum** does not apply to **Bodily Injury** or **Personal Injury** to:
 - 1. any past or current employee of the **Covered Party** arising out of and in the course of employment by the **Covered Party**; or
 - 2. The spouse, child, parent, brother, sister, or other relative of such employee as a consequence of 1. above.
- K. *Employer Obligation Limitation.* The defense and indemnity coverage afforded by this **Memorandum** to a past or present official, employee or volunteer of a **Member** is not broader than the **Member's** duty to defend and indemnify its official, employee or volunteer, pursuant to California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the **Member** which employs the official, employee or volunteer is not obligated under the California Government Code to provide a defense or to provide indemnity for a **Claim**, or if said **Member** refuses to provide such

defense and/or indemnity to said official, employee, or volunteer, then this **Memorandum** shall not provide any such defense or indemnity coverage to said official, employee, or volunteer. All immunities, defenses, rights, and privileges afforded to a **Member** under California Government Code Section 815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to the **Authority** to bar any defense or indemnity coverage under this Memorandum to that **Member's** official, employee, or volunteer.

- L. *Employment Practices Liability Covered by ERMA.* The Authority has elected to participate in the Employment Risk Management Authority (ERMA) above a Retained Limit, and does not intend to provide duplicative coverage. Accordingly, this **Memorandum** does not apply to a **Claim** for **Employment Practices** to the extent ERMA's coverage is applicable, or would have been applicable had timely notice been provided to ERMA.
- M. *Estimates, Plans and Contract Awards.* This **Memorandum** does not apply to **Public Officials Errors or Omissions** arising out of:
 - 1. estimates of probable costs or cost estimates being exceeded
 - 2. faulty preparation of bid specifications, or architectural or engineering drawings, plans or specifications
 - 3. failure to award contracts in accordance with ordinances, regulations or statutes governing such contracts that must be submitted for bids
- N. *Failure to Supply Utilities.* This **Memorandum** does not apply to any **Claim** arising out of the failure to supply or provide an adequate supply of gas, water, sewage capacity or electricity when such failure to provide results from any decision by the **Member's** governing body with respect to (1) obtaining such fuel, water, or electricity, or (2) allocating such fuel, water, or electricity among the users thereof.
- O. *Fiduciary Liability.* This **Memorandum** does not apply to **Claims** arising out of any breach of responsibility, obligation or duty imposed upon or imputed to a **Covered Party**:
 - 1. under the Employee Retirement Income Security Act of 1974 and any law amendatory thereof
 - 2. under Article XVI, Section 17 of the California Constitution, and any law amendatory thereto
 - 3. under any other law imposing or imputing fiduciary responsibilities, obligations, or duties upon a **Covered Party**.
- P. *Fines, Penalties and Punitive Damages.* This **Memorandum** does not apply to **Claims** for fines, penalties, restitution, disgorgement, punitive damages, or exemplary damages.
- Q. *Impairment or Loss of Property.* This **Memorandum** does not apply to **Public Officials Errors or Omissions** arising out of or resulting in injury or damage to, destruction of, disappearance of, loss of, loss of use of, or diminution of value of any tangible property, money, or securities; or failure to pay debt obligations.

R. *Knowingly False Statements.* This **Memorandum** does not apply to **Personal Injury** arising out of a publication or utterance concerning any organization or business enterprise, or its products or services, made by or at the direction of any **Covered Party** with knowledge of the falsity thereof.

S. *Labor Disputes and Class Actions.* This **Memorandum** does not apply to any potential or actual liability arising out of a lockout, strike, picket line, replacement, or other similar action in connection with labor disputes or labor negotiations; or to any potential or actual liability arising from **Claims** filed or certified as class actions in which employees or other persons represent a class of employees who are alleging similar or related **Claims**.

T. *Land-Use and Other Regulation.* This **Memorandum** does not apply to:

1. any **claim** arising out of or in connection with land-use regulation, land-use planning, the adoption or administrative application of any land use ordinance, resolution, or regulation, or any building code; or the approval or disapproval of any land-use entitlement including but not limited to general plan amendments, zoning amendments, conditional-use permits, tract maps, development agreements, owner-participation agreements, or any other land-use related agreements.
2. the principles of eminent domain or inverse condemnation, by whatever name called, or condemnation proceedings, regardless of whether such claims are made directly against the **Covered Party** or by virtue of any agreement entered into by or on behalf of the **Covered Party**. However, this exclusion shall not apply to claims arising from physical damage to tangible property; provided however, this exception shall not apply to any nonphysical consequential **damages** including but not limited to claims for loss of use, loss of income, loss of profits, and loss of business goodwill.
3. the approval, disapproval, or enforcement of any rent control ordinance, outdoor advertising ordinance, or adult bookstore ordinance, taxi ordinance, or other similar ordinances.
4. the approval or disapproval of the operation of a cannabis business whether medical, recreational, or otherwise; the enactment of any ordinances governing cannabis business, and any enforcement of ordinances governing cannabis businesses.

This exclusion shall not apply to the physical enforcement of an ordinance, resolution, or regulation, such as **Tort Liability** arising from the act of delivering a fine, citation, warning, notice or inspection.

U. *Medical and Healthcare Operations.* This **Memorandum** does not apply to **Claims** arising out of ownership, use, operation or maintenance of any hospital, health care or medical clinic facility, nor to any professional medical services performed by or on behalf of the **Covered Party**, including, but not limited to, dental, veterinary and chiropractic, but this exclusion does not apply to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or preventative health services related to alcoholism, drug abuse, well child healthcare, California children services, immunizations, sexually transmitted diseases, tuberculosis, and family planning..

- V. *Medicare Compliance*. This **Memorandum** does not apply to **Claims** arising from or relating to any sums sought by Medicare with respect to a **Claim** or **Suit** settled by a **Member** within its **Retained Limit**.
- W. *Motorized Racing Contest*. This **Memorandum** does not apply to **Claims** arising out of racing or other speed contests involving powered vehicles sponsored, controlled, or participated in by a **Covered Party**. For the purposes of this exclusion, "powered vehicle" means any wheeled vehicle motivated in whole or in part by an engine or motor powered by fuel or electricity.
- X. *Non-Monetary Relief*. This **Memorandum** does not apply to **Claims** alleging, based upon, or arising out of claims, demands or actions seeking relief or redress in any form other than money damages, or for claimant/plaintiff attorney fees, costs or expenses relating to claims, demands or actions seeking relief or redress in any form other than money damages.
- Y. *Nuclear*. This **Memorandum** does not apply to **Bodily Injury or Property Damage** arising out of the hazardous properties of **Nuclear Material**.
- Z. *Pollution*. This **Memorandum** does not apply to **Claims** arising out of the contamination of the environment by **Pollutants** introduced at any time into or upon the environment. This exclusion applies whether the contamination is introduced into the environment intentionally, accidentally, gradually, or suddenly, and whether the **Covered Party** or any other person or organization is responsible for the contamination.

Unless caused by any of the **Covered Party's** property that has been discarded, dumped, abandoned, or thrown away, this exclusion shall not apply with respect to:

1. Violent breaking open or explosion of any plant, equipment or building for which the **Covered Party** has legal responsibility, either as owner or operator;
2. Fire, lightning or windstorm damage to any plant, equipment or building for which the **Covered Party** has legal responsibility, either as owner or operator;
3. Collision, overturning or upset of any vehicle, railroad vehicle or mobile equipment; or
4. Unintended fire, lightning or explosion not otherwise specified under 1, 2, or 3 above.

It is further agreed that this exclusion does not apply to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** if:

- a) It consisted of a sudden and accidental sewer backup into a home or business and not into public waterways; or
- b) It was accidental and was neither expected nor intended by the **Covered Party**; and
- c) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this **Memorandum**; and
- d) Its commencement became known to the **Member** within ten days; and

- e) Its commencement was reported in writing to the **Authority** within thirty-one days of becoming known to the **Member**; and
- f) Reasonable effort was expended by the **Member** to terminate the situation as soon as conditions permitted.

Notwithstanding the foregoing this **Memorandum** shall not apply to any claim or suit relating to any liability to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize **Pollutants**, whether or not any of the foregoing are, or should be, performed by the **Covered Party** or by others.

AA. *Property in the Covered Party's Control.* This **Memorandum** does not apply to **Property Damage** to:

1. property owned by the **Covered Party**;
2. property rented to, 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
3. **Aircraft** or **Watercraft** in the **Covered Party's** care, custody, or control.

BB. *Refunds.* This **Memorandum** does not apply to **Claims** arising out of the refund of taxes, fees, or assessments.

CC. *Transit Operations.* This **Memorandum** does not apply to **Bodily Injury or Property Damage** arising out of any transit authority, transit system or public transportation system owned or operated by the **Covered Party**, but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation, or handicapped transportation.

DD. *Unlawful Financial Gain.* This **Memorandum** does not apply to **Claims** arising in whole or in part out of any **Covered Individual's** obtaining remuneration or financial gain to which the **Covered Individual** was not legally entitled.

EE. *Watercraft.* This **Memorandum** does not apply to **Claims** arising out of the ownership, operation, use or maintenance of any motorized **Watercraft** while being used in any prearranged or organized racing, speed, or demolition contest or in any stunting activity or in practice in preparation for any such contest or activity, if such contest or activity is sanctioned or permitted by a **Covered Party**. However, this exclusion shall not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any non-motorized **Watercraft**. For the purpose of this exclusion, "non-motorized **Watercraft**" shall mean **Watercraft** without power motors and **Watercraft** with power motors, which are not in use during an event otherwise excluded hereunder.

FF. *Willful Violation of Any Law.* This **Memorandum** does not apply to **Personal Injury** arising out of the willful violation of any law committed by or with the knowledge or consent of the **Covered Party**. **Public Officials Errors or Omissions** arising out of the willful violation of any law.

- GG. *Wage and Hour*. This **Memorandum** does not apply to any **Claim** brought under the Fair Labor Standards Act (29 U.S.C. 201 et seq.), the California Labor Code, or any other state or local law governing minimum wages, overtime compensation, reimbursement of employee expenses, timely payment of employee compensation, or errors in wage statements or other employment records. This exclusion does not apply to claims of discrimination in pay brought pursuant to the Equal Pay Act, 29 U.S.C.S. 206 (d) or similar state laws.
- HH. *Workers' Compensation*. This **Memorandum** does not apply to **Claims** for which the **Member** or its insurance company may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.
- II. *Unwanted Electronic Communications*. This **Memorandum** does not apply to any liability arising out of any act that violates any statute, ordinance, or regulation of any federal, state, or local government, including any amendment or addition to such laws, which prohibits or limits the sending, transmitting, or communicating of material or information by unsolicited sending of faxes, emails, or other means of electronic transmission.
- JJ. *Use of a Firearm*. This **Memorandum** does not apply to **Claims** arising from the use of a firearm in connection with **Code Enforcement** by non-**Peace Officers** in connection with the enforcement of the criminal laws of the State of California by non-**Peace Officers**.

SECTION VI—CONDITIONS

- A. *Amendment or Cancellation*. This **Memorandum** may be amended or cancelled at any time in accordance with the provisions of the Joint Powers Agreement creating CIRA and its Bylaws. The terms of this **Memorandum** may not be changed except by written amendment issued by the **Authority** to form a part of this **Memorandum**.
- B. *Appeal of Disputes with Authority*. Any disputes concerning coverage or procedures of the **Authority** may be appealed only to the **Authority's** Board of Directors in the manner and form that it may from time to time determine. Decisions by the **Authority** to assume control of the negotiation, appeal, or settlement of a **Claim**, or whether or not coverage exists for a particular **Claim** or part of a **Claim** or any other dispute that arises under and in connection with the Memorandum shall be made by the Board of Directors of the **Authority** or the Executive Committee as set forth herein. An appeal of a coverage determination of the General Manager or Coverage Counsel of the **Authority** or of any other dispute that arises under and in connection with the Memorandum shall be made in writing to the **Authority** within 60 days of the decision or dispute and shall be heard and determined by the Board at the next regularly scheduled meeting of the Board. If at the request of the **Covered Party**, or in the event that in the judgment of the **Authority** that exceptional circumstances warrant, an appeal of a coverage determination or any other dispute that arises under and in connection with the Memorandum shall be heard by the Executive Committee within 21 days of receipt of the appeal. Any determination by the Executive Committee may be appealed by the **Covered Party** and shall be determined at the next regularly scheduled meeting of the Board.
- C. *Appeal of Judgments*. In the event the **Covered Party** elects not to appeal a judgment, the **Authority** may elect to do so at its own expense, but in no event shall the **Authority's**

liability for **Ultimate Net Loss** plus all **Defense Costs** necessary and incident to such appeal exceed the limit of coverage stated in Section V.

D. *Bankruptcy.* Bankruptcy or insolvency of the **Covered Party** shall not relieve the **Authority** of any of its obligations under this **Memorandum**.

E. *Duties in the Event of an Occurrence or Claim.*

1. The **Covered Party** shall 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** because of **Bodily Injury, Property Damage, Personal Injury, Employment Practices, or Public Officials Errors or Omissions** with respect to which coverage is afforded under this **Memorandum**; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

2. The **Covered Party** shall provide a copy to the **Authority** within 15 calendar days of all Government Code Section 910 claims likely to exceed 50% of the **Member's Retained Limit** and within 7 calendar days of all suits covered by this **Memorandum**, except property damage claims under five thousand dollars (\$5,000.00).

3. The **Covered Party** shall notify the **Authority** not later than 7 calendar days of any **Occurrence** reasonably considered a serious incident that is likely to be covered by this **Memorandum**, including but not limited to:

- (i) One or more fatalities;
- (ii) Loss of a limb;
- (iii) Loss of use of any sensory organ;
- (iv) Paralysis, Quadriplegia, or paraplegia;
- (v) Third degree burns involving more than ten percent of the body;
- (vi) Serious facial disfigurement;
- (vii) Long term hospitalization;
- (viii) Closed head injury;
- (ix) Serious loss of use of any bodily function; or
- (x) Receipt of notice from any source that an **Employment Practice** has been committed, regardless of whether a **Claim** for such conduct is anticipated.

4. The **Covered Party** shall forward to the **Authority** every demand, notice, summons, or other process received.

5. The **Covered Party** shall not, except at its own cost and expense, voluntarily make any payment, assume any obligation, or incur any expense without the written consent of the **Authority**.

F. *Duties with Respect to Covered Contracts.*

1. With respect to any contract for which a **Covered Party** seeks coverage as a **Covered Contract**, the **Covered Party** shall submit the proposed contract to the **Authority** for its review and approval, at least 14 days prior to the date of execution of the contract, or its effective date, whichever is earlier. Alternatively, the **Covered Party** may have the proposed contract reviewed and approved by the Town or City Attorney prior to execution.
 2. The factors that shall be considered by the **Authority** in determining approval of a contract shall include:
 - a. the party contracting with the **Covered Party** has requested indemnification for services the contracting party is providing to the **Covered Party**;
 - b. the subject matter of the proposed contract does not pertain to an essential service of the **Covered Party** and there are available options to contract with other providers;
 - c. whether all efforts to negotiate terms acceptable to the **Authority** have been exhausted;
 - d. whether there is alternative coverage through the commercial market for the proposed subject matter of the contract, for example, special events coverage; and,
 - e. whether the **Member** executes the contract against the **Authority's** recommendation.
- G. *Other Coverage or Insurance.* If collectible insurance with any insurer, coverage with any other joint powers authority or other self-funding mechanism is available to the **Covered Party** covering a loss to which this **Memorandum** applies (whether on a primary, excess or contingent basis), the coverage of 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 or coverage purchased specifically to be in excess of this **Memorandum**. The bankruptcy of, insolvency of, or placement into rehabilitation or receivership by any regulatory agency of any joint powers authority or insurance company providing joint powers authority coverage or insurance coverage to the **Covered Party** shall not amend the application of this condition.
- H. *Satisfaction of Retained Limit.* For defense or indemnity to be available hereunder, the **Covered Party** must first pay the full amount of its **Retained Limit**. Payment of the **Retained Limit** by the **Covered Party** is required in addition to, and regardless of, any payment from any other source for or on behalf of the **Covered Party**, such as, for example, insurance procured by a third party pursuant to which the **Covered Party** is an additional named insured or otherwise covered. The foregoing does not apply to any insurance specifically purchased by the **Member** or any **Covered Party** to cover all or any part of the **Retained Limit**.
- I. *Relationship to Joint Powers Agreement.* The provisions of this **Memorandum** are subject to and subordinate to the terms and provisions of the Joint Powers Agreement creating

CIRA, and in the event of any conflict between the terms and provisions of said Agreement and this **Memorandum**, the terms and provisions of the Agreement shall control.

- J. *Severability of Interests.* The coverage applies separately to each **Covered Party** against whom **Claim** is made, as if a separate **Memorandum** were issued to it, except with respect to the **Authority's** Limit of Coverage.
- K. *Subrogation.* To the extent of any payment under this **Memorandum**, the **Authority** shall be subrogated to all the **Covered Party's** rights of recovery thereof. The **Covered Party** shall do everything necessary to secure such rights and shall do nothing after the **Occurrence** to prejudice such rights. Any amount so recovered shall be apportioned as follows:
1. The **Authority** shall be reimbursed to the extent of all payment under this **Memorandum**. Any remaining balance shall be applied to reimburse the **Covered Party**.
 2. The expenses of such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the **Authority**, the **Authority** shall bear the expenses thereof.
- L. *Actions.* No action shall lie against the **Authority** with respect to the coverages and related provisions defined in the **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.
- M. *Venue.* In the event of any dispute between a **Member** and the **Authority** concerning the coverage provided by the **Memorandum**, the place of venue for any **Suit** concerning such coverage dispute shall be the County of Sacramento, and any action concerning such dispute shall be filed in the Superior Court for the County of Sacramento, California.
- N. *Medicare Compliance.* Where a **Member** settles a claim within its **Retained Limit**, in which a claimant is either presently Medicare eligible or will be Medicare eligible within 30 months of the settlement, the **Member** shall comply with all pertinent laws and regulations applicable to the settlement, and shall ensure that Medicare's interests are fully addressed, protected, and documented in the settlement.

The failure by a **Member** to comply with all pertinent laws and regulations applicable to the settlement or to properly protect and document Medicare's interests in the settlement, shall preclude coverage under the Memorandum for **Claims** arising from or relating to any sums sought by Medicare with respect to a **Claim** or **Suit** settled by a **Member** within its **Retained Limit**.

SECTION VII—DEFINITIONS

Additional Covered Party means any person, organization or entity that is specifically named by the **Authority** in a written attachment to this **Memorandum**.

Aircraft means any vehicle controlled directly by a person from within or on the vehicle, designed to transport people or property through the air.

Airport means any locality either on land or water which is adopted for the landing and taking off of **Aircraft**, including all land, water, buildings, structures, equipment, or other improvements necessary or convenient in the establishment and operation of an **Airport**.

Authority means the California Intergovernmental Risk Authority (CIRA).

Automobile means a land motor vehicle, trailer, or semi-trailer.

Bodily Injury means bodily injury, sickness or disease sustained by any person, including death resulting from any of these at any time.

Claim means a notice, demand, or **Suit** against a **Covered Party** to recover **Damages**.

Code Enforcement means enforcement of zoning laws, regulations, and ordinances; land use laws, regulations, and ordinances; and nuisance, abatement, dumping or similar municipal ordinances.

Covered Contract means that part of any written agreement or contract pertaining to the **Member's** operations or business under which the **Member** assumes the **Tort Liability** of another party to pay for **Bodily Injury or Property Damage** to a third person or organization. A **Covered Contract** does not include any part of any contract or agreement:

1. That indemnifies any person or organization for **Bodily Injury or Property Damage** caused by the active or sole negligence of such person or organization.
2. That indemnifies any person or organization for **Bodily Injury or Property Damage** arising out of the ownership, operation, maintenance or use of any **Aircraft, Unmanned Aerial Vehicle, Airport or Watercraft**.
3. That indemnifies an architect, engineer or surveyor for **Bodily Injury or Property Damage** arising out of:
 - a. Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
 - b. Giving directions or instructions, or failing to give directions or instructions, if that is the primary cause of the **Bodily Injury or Property Damage**.
4. Under which the **Covered Party**, if an architect, engineer, or surveyor, assumes liability for **Bodily Injury or Property Damage** arising out of the **Covered Party's** rendering or failing to render professional services, including those listed in 3. above, and supervisory, inspection or engineering services.

5. That has not been approved by City or Town Attorney or by the **Authority** prior to its execution.

Covered Individuals means persons who are, or were, elected or appointed officials, employees, or volunteers of the **Member**, whether or not compensated, while acting for or on behalf of the **Member**. However, no coverage or defense will be provided to a volunteer while using his or her personal **Automobile**, unless such use is for the business of the **Member** and at the express direction of the **Member**, nor to any person who is an independent contractor and not an employee of the **Member**, but who either provides services to or acts as an official of the **Member** in exchange for compensation pursuant to an oral or written contract with the **Member**. **Covered Individual** shall not include any person, whether or not compensated, who is not acting in the course and scope of his or her employment or whose conduct, as a matter of law, is not within the course and scope of his or her employment by the **Member** at the time of the act or acts alleged in a **Claim**.

Covered Party means:

1. The **Member**;
2. **Covered Individuals**;
3. Any **Additional Covered Party**;
4. With respect to any **Automobile** owned or leased by the **Member**, or loaned to or hired for use by or on behalf of the **Member**, any person while using such **Automobile** and any person or organization legally responsible for the use thereof, provided the actual use is with the express permission of the **Member**, but this coverage does not apply to:
 - a. 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
 - b. the owner or any lessee, other than the **Member**, of any **Automobile** hired by or loaned to the **Member** or to any agent or employee of such owner or lessee.

Cover Page means the document that is issued with this **Memorandum**, identifying the **Member**, the **Coverage Period**, the **Limit of Coverage**, and the **Retained Limit**.

Coverage Limit means the limit of coverage shown in the **Cover Page** as more fully defined under Section IV of this **Memorandum**.

Coverage Period means the time period shown on the **Cover Page** of this **Memorandum**. The phrase "coverage period" without boldface or capitalization refers to any annual period, including but not limited to the time period shown in the **Cover Page**.

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 more than six (6) feet in height, regardless of storage capacity, or which has a storage capacity not more than 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-waters, no railroad fill or structure, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, 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 regulations and supervision by Water Code Section 6025.5 be considered a **Dam**.

Regardless of the language of the above definition, however, no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a **Dam**, unless such structure is under the jurisdiction of any agency of the Federal government.

Damages means money that the **Covered Party** is legally obligated to pay, or agrees to pay with the **Authority's** agreement, as the result of a **Claim**, including claimant's attorney fees, interest on judgments, and costs. **Damages** does not include amounts incurred by the **Covered Party** to comply with non-monetary remedies such as injunctions.

Defense Costs means all fees and expenses incurred in connection with the adjustment, investigation, defense, and appeal of a **Claim** covered hereunder, including defense attorney fees, court costs, premiums for appeal bonds, and interest on judgments accruing after the entry of judgment, and also shall include the costs of any claims administrator or defense counsel specifically assigned by the **Authority** to respond to any **Claim** on behalf of the **Authority**. For the purpose of satisfying the **Retained Limit** only, **Defense Costs** shall include reasonable attorney fees and costs incurred in making a pre-**Claim** response to a Public Records Act request if such work will materially aid the defense of the **Claim**. **Defense Costs** shall not include attorneys' fees or costs arising in connection with **Claims** that are not covered by this Memorandum. **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 the **Covered Party**, nor expenses of any claim administrator engaged by the **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** does not include attorney fees awarded to the prevailing plaintiff.

Employment Practices means a wrongful act in connection with any person's prospective employment, actual employment, or termination of employment by a **Covered Party**, including but not limited to unlawful discrimination, sexual harassment, retaliation, or wrongful termination.

Hostile Fire means a fire that becomes uncontrollable and breaks out from where it is intended to be.

Limit of Coverage means the amount of coverage shown in the **Cover Page**, or sublimits as started therein, for each **Covered Party** per **Occurrence** subject to any lower sublimit stated in this **Memorandum**. 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 a structured settlement, whether purchased from or through a third-party, or paid directly by the **Covered Party** in installments, as utilized in the resolution of a claim or suit, the **Authority** will pay only up to the amount stated in the **Cover Page** 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 sated in the **Cover Page**.

Member means the entity which a party to the Joint Powers Agreement creating CIRA and whose name appears on the **Cover Page**. **Member** includes any other agency, commission, district, or board coming under the **Member's** direction or control or for which the **Member's** board members act as the governing board.

Memorandum means the CIRA Memorandum of Coverage, including the **Cover Page** and any attachments and endorsements forming a part thereof.

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 them in the Atomic Energy Act of 1954 or any law amendatory thereof.

Occurrence means:

1. With respect to **Bodily Injury** or **Property Damage**, an accident or event, including continuous or repeated exposure to substantially the same generally harmful conditions, which results during the **Coverage Period** in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Covered Party**, except that assault and battery committed by, at the direction of, or with the consent of the **Covered Party** for the purpose of protecting persons or property from injury or death shall be considered an **Occurrence**;
2. With respect to **Personal Injury**, the commission of an offense described in the definition of **Personal Injury** during the **Coverage Period**;
3. With respect to **Public Officials Errors or Omissions** and **Employment Practices**, conduct described in the definitions of those phrases during the **Coverage Period**.

Peace Officer means a person designated under Penal Code Sections 830 to 832.6 as a peace officer, or a public officer authorized under Penal Code Sections 830 to 832.6 to carry a firearm, and who is authorized by the **Member** to carry a firearm in the course and scope of employment.

Personal Injury means injury resulting from one or more of the following offenses:

1. False arrest, detention, or imprisonment

2. Malicious prosecution or abuse of process
3. Wrongful entry by any employee of a **Member** into a room, dwelling or other similar premises that a person occupies
4. Wrongful eviction by any employee of a **Member** of a person from a room, dwelling or other similar premises that such person occupies
5. The publication or utterance of a libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property, or a publication or utterance in violation of rights of privacy
6. Discrimination or violation of civil rights
7. Infliction of emotional distress

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to acids, alkalis, asbestos, chemicals, fumes, hazardous waste, lead, polychlorinated biphenyls, radioactive material, smoke, soot, toxic substances, vapor, mold, fungal pathogens, electromagnetic fluids and airborne particles or fibers, waste, and any related material. Waste includes material to be recycled, reconditioned, or reclaimed. The term **Pollutants** as used herein shall not include potable water or agricultural water or water furnished to commercial users or water used for fire suppression.

Property Damage means:

1. Physical injury to or destruction of tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.
2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

Public Officials Errors or Omissions means any act, error, omission, misstatement, misleading statement, neglect, or breach of duty by any **Covered Party** (individually or collectively) arising in the course and scope of their duties with the **Covered Party** or claimed against them solely by reason of their being or having been public officials or employees, and which results in **Damages** neither expected nor intended from the standpoint of the **Covered Party**.

Retained Limit means the amount of **Ultimate Net Loss**, specified in the **Cover Page**, which the **Covered Party** must incur or become liable to pay before the **Authority** is obligated to make payment. Payments by others on the **Covered Party's** behalf count toward satisfaction of the **Covered Party's Retained Limit**. For each **Occurrence**, there shall be only one **Retained Limit** applicable regardless of the number of claimants or **Covered Parties** against whom a **Claim** is made. If the **Covered Parties** have different **Retained Limits**, the lowest **Retained Limit** of any party found liable will apply. Payment of the **Retained Limit** shall be apportioned among multiple **Covered Parties** in accordance with their proportionate shares of liability. If the apportionment requires arbitration the **Covered Parties** will pay all costs of the

Authority in seeking such determination, including the **Authority's** attorney fees, according to their proportionate shares of liability.

Suit means a civil proceeding in which a **Covered Party** is named as a party defendant or cross-defendant, or an arbitration proceeding or alternative-dispute resolution proceeding to which a **Covered Party** submits with the **Authority's** written consent.

Tort Liability means civil liability imposed by law in the absence of any agreement or contract.

Unmanned Aerial Vehicle (UAV) or drone means an aircraft (with its aerial system or control device) that is not controlled directly by a person from within or on the aircraft, and which is piloted or operated in conformance with 14 C.F.R. 107 et seq. Any pilot or operator must have a remote pilot certificate issued in compliance with Subpart C of Section 107 or possess a valid Certificate of Waiver or Authorization issued by the FAA and satisfy the requirements of Section 107.65.

Ultimate Net Loss means **Defense Costs** and **Damages** the **Covered Party** is legally obligated to pay by reason of a judgment or a settlement made with the written consent of the claimant(s), the **Covered Party**, and the **Authority**.

Watercraft means a vessel designed to transport persons or property in, on, or through water.