

LIABILITY MEMORANDUM OF COVERAGE

FOR

PARSAC

**Public Agency Risk Sharing
Authority of California**

Adopted November 30, 2017

Effective Until Revised

PARSAC MLP REV. 11/19/93
PARSAC MLP REV. 05/31/96
PARSAC MLP REV. 05/29/98
PARSAC MLP REV. 05/28/99
PARSAC MLP REV. 05/19/00
PARSAC MLP REV. 05/18/01
PARSAC MLP REV. 05/10/02
PARSAC MLP REV. 05/29/03
PARSAC MLP REV. 05/20/05
PARSAC MOC REV. 12/01/05
PARSAC MOC REV. 05/29/08
PARSAC MOC REV. 05/27/10
PARSAC MOC REV. 04/14/11
PARSAC MOC REV. 05/29/14
PARSAC MOC REV. 12/04/14
PARSAC MOC REV. 12/03/15
PARSAC MOC REV. 11/30/17

**MEMORANDUM OF COVERAGE
FOR THE
PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA
(PARSAC)**

In consideration of the payment of the deposit premium, the **Authority** agrees with the **Member Entities** as follows:

SECTION I – COVERAGE

Subject to all provisions of this **Memorandum**, the **Authority** will cause the **Program** to pay on behalf of the **Covered Party** the **Ultimate Net Loss** that the **Covered Party** shall become legally obligated to pay as **Damages** by reason of **Tort Liability** imposed by law, or the **Tort Liability** of others assumed in a **Covered Contract**, because of:

- 1. Bodily Injury or Property Damage,**
- 2. Personal Injury, or**
- 3. Public Officials Errors and Omissions**

caused by an **Occurrence** to which this **Memorandum** applies.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled risk sharing. This **Memorandum** is a negotiated agreement amongst the **Member Entities** of the **Authority** and none of the parties 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 **Member Entities** of the **Authority**, acting through the Board of Directors in adopting this Memorandum of Coverage.

SECTION II—DEFINITIONS

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

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 Public Agency Risk Sharing Authority of California (PARSAC).

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 Entity's** operations or business under which the **Member Entity** 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 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
 - 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 the **Authority** at least 14 days in advance of its execution by the Member or its effective date, whichever is earlier.

Covered Individuals means persons who are, or were, elected or appointed officials, employees or volunteers of the **Member Entity**, whether or not compensated, while acting for or on behalf of the **Member Entity**. 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 Entity** and at the express direction of the **Member Entity**, nor to any person who is an independent contractor and not an employee of the **Member Entity**, but who either provides services to or acts as an official of the **Member Entity** in exchange for compensation pursuant to an oral or written contract with the **Member Entity**. **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 Entity** at the time of the act or acts alleged in a **Claim**.

Covered Party means:

1. The **Member Entity**;
2. **Covered Individuals**;
3. Any **Additional Covered Party**;
4. With respect to any **Automobile** owned or leased by the **Member Entity**, or loaned to or hired for use by or on behalf of the **Member 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 express permission of the **Member Entity**, 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 Entity**, of any **Automobile** hired by or loaned to the **Member Entity** or to any agent or employee of such owner or lessee.

Coverage Limit means the limit of coverage shown in item C of 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**.

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 six (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-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 waste water 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 compensatory monetary damages including claimant/plaintiff attorney's fees not otherwise excluded under the **Memorandum**, interest on judgments and costs. **Damages** does not include non-monetary relief or redress or injunctive relief.

Defense Costs means all fees and expenses incurred in connection with the adjustment, investigation, defense and appeal of a **Claim** covered hereunder, including 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 PARSAC to respond to any **Claim** on behalf of PARSAC. **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 claims 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 attorneys' fees awarded to the prevailing plaintiff.

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 stated in the Cover Page.

Member Entity means the entity, which is a signatory to the Joint Powers Agreement creating PARSAC, as they may be amended from time to time, whose name appears on the Cover Page. **Member Entity** includes any other agency, commission, district or board coming under the **Member Entity's** direction or control or for which the **Member Entity's** board members act as the governing board.

Memorandum means the PARSAC Memorandum of Coverage, including the Cover Page and all 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 or series of related accidents or events, including continuous or repeated exposure to substantially the same generally harmful conditions, which results during the **Coverage Period** stated in the Cover Page, 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 and Omissions**, actual or alleged conduct described in the definition of **Public Officials Errors and Omissions** 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 Entity** to carry a firearm in the course and scope of employment.

Personal Injury means injury, other than **Bodily Injury, Property Damage or Public Officials Errors and Omissions**, as a result of 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 Entity** into a room, dwelling or other similar premises that a person occupies
4. Wrongful eviction by any employee of a **Member Entity** 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, 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.

Program means the PARSAC Liability Coverage Program described by the Participation Agreement for the Liability Program and the PARSAC Joint Powers Agreement.

Property Damage means:

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

Public Officials Errors and Omissions means any act, error, omission, misstatement, misleading statement, neglect or breach of duty by any **Covered Individual** in the discharge of that individual's duties for the **Member Entity**; or any matter claimed against any **Covered Individual** solely by reason of the individual being or having been a public official of the **Member Entity**. **Public Officials Errors and Omissions** does not include **Bodily Injury**, **Property Damage** or **Personal Injury**.

Retained Limit means the amount of **Ultimate Net Loss**, identified in item D of the Coverage Page, which the **Covered Party** becomes liable to pay before the **Authority** is obligated to make payment. For each **Occurrence**, there shall be only one **Retained Limit** regardless of the number of claimants or **Covered Parties** against whom a **Claim** is made.

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

Watercraft means a vessel more than 26 feet in length designed to transport persons or property in, on or through water.

SECTION III—DEFENSE AND SETTLEMENT

A *Duty to Defend.* The **Authority** shall have the right and duty to participate in the defense of any **Claim** or **Suit** against a **Covered Party** if the final judgment or settlement is likely to result in an **Ultimate Net Loss** within the **Coverage Limit** as those terms are defined in the **Memorandum**. The **Authority** is not bound by any “duty to defend” principle which is or may be applicable to insurance carriers; the **Authority**’s obligation to provide a defense to a **Covered Party** is solely and exclusively as provided in this **Memorandum**. 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**. Where a **suit** contains covered and uncovered **Claims** the **Authority** shall make a determination as to its participation in the defense as follows: 100%, 75%, 50% or 25%. The percentage of participation shall be determined by the **Authority** in its sole discretion. As the **Authority** is not an insurer, it has no obligation to provide “Cumis” counsel as provided by Civil Code Section 2860. The defense and indemnity coverage afforded by this **Memorandum** to a past or present official, employee or volunteer of a **Member Entity** is not broader than the **Member Entity**’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 Entity** 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 Entity** 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 Entity** 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 Entity**’s official, employee or volunteer.

B. *Selection and Assignment of Defense Counsel.*

1. With respect to any covered **Claim** or **Suit** against the **Member Entity**, where the applicable **Retained Limit** is under \$250,000, the **Authority** shall select and assign counsel to defend the **Covered Party(s)** against the **Claim** or **Suit**. 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, however 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 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** or **Suit**, and the **Authority** shall not be required to contribute to any **Defense Costs**, settlement or judgment arising from such **Claim** or **Suit**.
2. With respect to any covered **Claim** or **Suit** against the **Covered Party** where the applicable **Retained Limit** is \$250,000 or higher, the **Covered Party** may select and retain counsel from the list of Panel Counsel, except for any Claim involving in any manner law enforcement policies, operations, conduct or personnel. In the

event a **Covered Party** retains counsel who is not on the list of panel counsel, this Memorandum shall not provide any defense or indemnity to the **Covered Party**, and the **Authority** shall not be required to contribute to any **Defense Costs**, settlement or judgment arising from such **Claim** or **Suit**.

3. With respect to any covered **Claim** or **Suit**, a **Covered Party** may select as its defense counsel the in-house City or Town Attorney directly employed as such by the **Member Entity**. 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 Entity** 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 Entity** 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 Entity** to act as the City or Town Attorney. 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 Section III.B, paragraph 1, regardless of the **Member Entity's Retained Limit**.
 4. With respect to the defense of any covered **Claim** or **Suit** against a **Member Entity** 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, however 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. *Defense and/or Coverage Determination.* When a **Claim** is submitted to the **Authority**, the **Authority** will determine whether it has any defense and/or coverage obligation for the **Claim**. Upon the express written request of a **Member Entity**, the **Authority** will provide a written explanation of its defense and/or coverage determination, including the **Authority's** defense and coverage analysis. The **Authority** may also of its own accord, but without any obligation to do so, provide the **Member Entity** with such an explanation.
- D. *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**.

- E. **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 Entity's Retained Limit** has already been expended the **Authority** shall have the sole discretion to control, including settlement, the **Claim**. Any such decision to settle shall be final.

If the **Member Entity's Retained Limit** has not been expended (i.e., the **Member Entity** will have to contribute funds to effectuate the settlement), then the consent of the **Member Entity** to any settlement shall be required. If however, the **Member Entity** 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 IV—COVERAGE LIMIT

A. The Limit of Coverage shown in item C of the Cover Page and the rules below determine the most the **Program** 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 **Program** shall pay only for **Ultimate Net Loss** in excess of the **Retained Limit** as stated in item D of the Cover Page.

C. The Limit of Coverage stated in item C of the Cover Page is the most the **Program** will pay for **Ultimate Net Loss** as respects the sum of **Damages** and **Defense Costs** arising out of any one **Occurrence**.

D. For the purpose of determining the Limit of Coverage all **Bodily Injury, Property Damage, Personal Injury or Public Officials Errors and Omissions** arising out of exposure to substantially the same general condition(s) shall be considered as arising out of one **Occurrence**.

E. Any actual or alleged 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 **Covered Period** shall be deemed to have occurred either during the **Covered Period** when the **Occurrence** begins, or during such **Covered Period** as determined by the Board of Directors in its sole discretion, and only the **Limit of Coverage** for that **Covered Period** shall apply.

SECTION V—COVERAGE PERIOD AND TERRITORY

This **Memorandum** applies to **Bodily Injury, Property Damage, Personal Injury or Public Officials Errors or Omissions** that occurs anywhere in the world during the **Coverage Period** stated in the Cover Page.

SECTION VI—EXCLUSIONS

This **Memorandum**, including any obligation to defend or to pay **Defense Costs**, does not apply to:

A. *Additional Covered Party's Sole Negligence.* **Claims** arising out of the sole negligence of an **Additional Covered Party**.

B. *Aircraft or Airport Operations and Watercraft.* **Claims** arising out of the ownership, operation, use or maintenance of any **Aircraft or Airport** or any **Watercraft** 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 Entity**.

C. *Antitrust or Restraint of Trade.* **Claims** arising out of violation of state or federal antitrust or restraint-of-trade laws.

D. *Breach of Contract.* **Claims** arising out of failure to perform, or breach of, a contractual obligation.

E. *Contractual Liability.* **Claims** arising out of the **Covered Party's** assumption of **Tort Liability** in a written agreement or contract. This limitation does not apply to liability assumed in a **Covered Contract** provided that the **Damages** occur subsequent to the execution of the **Covered Contract**.

F. *Dam Failure.* **Claims** arising out of the partial or complete structural failure of any **Dam**.

G. *Impairment or Loss of Property.* **Public Officials Errors and 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.

H. *Employee Benefits Plans.* **Claims** arising out of any act or omission regarding benefits payable under any employee benefits plan established by the **Covered Party**.

I. *Employee Injury. 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.

J. *Employment Practices Liability.* **Claims** arising out of or in any manner related to:

1. failure or refusal to hire any job applicant

2. failure or refusal to assign new duties to or to promote any employee
3. discipline of any employee
4. demotion, reassignment or termination of employment of any employee
5. discrimination against or violation of the civil rights of any employee or official in violation of the federal or state constitutions, any federal, state or local laws, any amendments to such laws or any regulations issued under such laws.
6. coercion, defamation, evaluation, humiliation, infliction of emotional distress, invasion of privacy, sexual or other harassment, investigation or any other acts, errors, omissions, practices, procedures or policies in any way connected with any past, present or future employment relationship.

K. *Estimates, Plans and Contract Awards. Public Officials Errors and 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

L. *False Statements. 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.

M. *Failure to Supply Utilities.* Any **Claim** arising out of the failure to supply or provide an adequate supply of gas, water, sewage capacity or electricity. However, this exclusion does not apply if the failure to supply results from direct and immediate accidental injury to tangible property owned or used by a **Covered Party** to procure, produce, process or transmit gas, water, sewage capacity or electricity.

N. *Fiduciary Liability.* **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**.

O. *Fines, Penalties and Punitive Damages.* **Claims** for fines, penalties, restitution, disgorgement, punitive damages or exemplary damages.

P. *Condemnation and Land-Use Regulation.* Any **claim** arising out of or in connection with land-use regulation, land-use planning, 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. With respect to any coverage granted by this provision that is not otherwise provided by the **Memorandum**, the **Coverage Limit** is \$700,000 **Ultimate Net Loss** as the result of any one **Occurrence**.

Q. *Medical Malpractice.* **Claims** arising out of ownership, use, operation or maintenance of any hospital, health care or medical clinic facility, and any professional medical services performed by or on behalf of the **Covered Party**, including, but not limited to, dental, veterinary and chiropractic, but this limitation does not apply to such services performed by emergency medical technicians or paramedics functioning under the direction and control of the **Covered Individuals**.

R. *Nuclear.* **Bodily Injury or Property Damage** arising out of the hazardous properties of **Nuclear Material**.

S. *Pollution.* **Claims** arising out of the actual, alleged or threatened discharge, dispersal, escape, migration, release, or seepage of **Pollutants**. However, this limitation does not apply to **Bodily Injury or Property Damage** arising out of or caused by any actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** if:

1. It was directly caused by **Hostile Fire**, explosion, lightning, windstorm, vandalism, malicious mischief, or by the collision, overturning or upset of a motor vehicle; or
2. It was accidental and neither expected nor intended by the **Covered Party**; and
3. It was instantaneous and was demonstrable as having commenced at a specific time and date during the **Covered Period**; and
4. Its commencement became known to the **Covered Party** within seven days; and
5. Its commencement was reported in writing to the Authority within twenty days of becoming known to the **Covered Party**; and
6. The **Covered Party** takes reasonable steps to correct or terminate the discharge, dispersal, seepage, migration, release or escape of **Pollutants**.

Nothing contained in this Limitation S shall operate to provide any coverage or any obligation to defend or pay **Defense Costs** with respect to:

1. Any site or location used by others on the **Covered Party's** behalf for the handling, storage, disposal, dumping, processing or treatment of waste material. This limitation applies whether or not the action by others was known to the **Covered Party**;
2. Any clean-up costs mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and any similar laws or statutes;

3. Clean up, removal, containment, treatment, detoxification or neutralization of **Pollutants** situated on the premises the **Covered Party** currently owns, rents or occupies.
4. Any **Claim**, liability, loss, cost or expense based upon or arising out of **Personal Injury or Public Officials Errors and Omissions**.

T. *Property in the Covered Party's Control.* **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.

U. *Refunds.* **Claims** arising out of the refund of taxes, fees or assessments.

V. *Transit Operations.* **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 limitation does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation, or handicapped transportation.

W. *Unlawful Financial Gain.* **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.

X. *Willful Violation of Any Law.* **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 and Omissions** arising out of the willful violation of any law.

Y. *Workers' Compensation.* **Claims** for which the **Member Entity** or its insurance company may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law.

Z. *Non-monetary Relief.* **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.

AA. *Non-Certified Skateboard Parks.* Any **Claim** arising out of the ownership, operation, design, use or maintenance of a skateboard park the design for which an engineer or an architect has not certified.

BB. *Earthquake. Damages* caused directly or indirectly by an earthquake.

CC. *Compliance with ADA Requirements.* **Claims** alleging, based upon or arising out of the violation of the Americans with Disabilities Act of 1990, any similar Federal, State or local law, any amendment to such laws, or any regulations promulgated under any such laws Notwithstanding the foregoing, and subject to the **Coverage Limit**, the **Memorandum** shall

provide coverage for **Defense Costs** and **Damages** to the claimant(s), including claimant(s)/plaintiff(s) attorneys' fees and costs as the result of the alleged ADA violation.

DD. *Medicare Compliance.* **Claims** arising from or relating to any sums sought by Medicare with respect to a **Claim** or **Suit** settled by a **Member Entity** within its **Retained Limit**.

EE. *Use of a Firearm.* 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 VII—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 PARSAC 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 **Program** 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 **Program'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 or Public Officials Errors and 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 Entity'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; or
 - (ix) Serious loss of use of any bodily function.
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.

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.* In order 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 purchased by the **Member Entity** 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 PARSAC, 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 Entity** 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 Entity** 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 Entity** 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 Entity** 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 Entity** within its **Retained Limit**.