

**PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA
(PARSAC)**

**MEMORANDUM OF COVERAGE
FOR SELF-INSURED WORKERS' COMPENSATION
AND EMPLOYER'S LIABILITY**

2016/17 PROGRAM YEAR

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SECTION I - INTRODUCTION

This **Memorandum** sets forth the terms, conditions and limits of the workers' compensation obligation and employer's liability coverage which the self-insured members of the **Authority** have agreed to pool within the terms of their **Self-Insured Workers' Compensation Program**, authorized by the **Joint Powers Agreement** creating the **Authority** under the provisions of Section 6500 et seq. of the Government Code.

This **Memorandum** includes the **Cover Page** and all endorsements, addendum's or schedules attached to it.

As provided in Section 990 of the Government Code, pooling of losses in this **Program** is *not insurance*. The sole duty of the **Authority** is to administer the program adopted by the **Members**. The **Authority** can defend and pay only claims which the Members have agreed to pool under the terms of this **Memorandum** and the Joint Powers Agreement. There is no transfer of risk from the **Member** to the **Authority**, nor assumption of risk by the **Authority**.

SECTION II - DEFINITIONS

Throughout this **Memorandum**, including the Cover Page, words and phrases that appear to be in bold print are defined in Section II.

Authority means the Public Agency Risk Sharing Authority of California.

Employee means any person performing work which renders the **Participating Member** legally liable under the Workers' Compensation Act of the State of California, or under the common law of the State of California.

Member Entity means the entity which is a signatory to the **Joint Powers Agreement** Creating the Public Agency Risk Sharing Authority of California, as it may be amended from time to time, and includes any other agency for which the **Member Entity's** City Council sits as the governing body.

Memorandum means the PARSAC Workers' Compensation Memorandum of Coverage, including the Cover Page and all attachments and endorsements forming a part thereof.

Program means the Authority Workers' Compensation Program through which certain specified and limited self-insured workers' compensation and employer's liability risks are administered by the Authority and shared by its **Participating Members** in accordance with the provisions of the Authority's Joint Powers Agreement.

Participating Member means the **Member Entity** listed in paragraph 1 of the Cover Page.

Program Period means the period of time shown in paragraph 3 of the Cover Page.

Retained Limit means the amount of the loss, identified on the Cover Page, which the **Participating Member** becomes liable to pay before the **Authority** is obligated to make payment.

Volunteers means any person while acting within the course and scope of his or her duties for or on behalf of the Member Entity, provided that, prior to the occurrence, the governing Board of the Member Entity has adopted a resolution as provided in Division 4, Part 1, Chapter 2, Article 2 of the California Labor Code, declaring such volunteer workers to be **Employees** of the Member Entity for purposes of the Workers' Compensation Act; or provided that such volunteer workers are statutorily deemed by the Workers' Compensation Act to be **Employees** for the purposes of workers' compensation.

Workers' Compensation Law means the **Workers' Compensation Laws** of the State of California as stated in, but not limited to, California Labor Code 3200 through 6208, inclusive, which include:

1. Injury by both accident and disease; and
2. Any amendments to such laws which are in effect during the **Program Period**;

But **Workers Compensation Law** does not include the provisions of any law that provides non-occupational disability benefits.

SECTION III - WORKERS' COMPENSATION COVERAGE

A. WORKERS' COMPENSATION COVERAGE

The **Program** applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. Bodily injury by accident must occur during the **Program Period**; and
2. Bodily injury by disease must be caused or aggravated by the conditions of employment of the employee by the **Participating Member**. The **Participating Member's** employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the **Program Period**.

B. PAYMENTS AND DEFENSE BY THE PROGRAM

Subject to all the provisions of this Memorandum, the Authority shall cause the **Program** to:

1. Pay promptly when due the benefits required of the **Participating Member** by the **Workers' Compensation Law**.
2. Defend at the expense of the **Program** any claim, proceeding or suit against the **Participating Member** for benefits payable by the **Program**. The **Authority** has the right to investigate and settle these claims, proceedings or suits, but the **Authority** has no duty to defend a claim, proceeding or suit that is not covered by the **Program**.

3. Pay the following costs, in addition to other amounts payable under this **Program**, as part of any claim, proceeding or suit the **Authority** defends:
 - a. reasonable expenses incurred at the **Authority's** request, but not loss of earnings;
 - b. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the amount payable under this **Program**;
 - c. litigation costs taxed against the **Participating Member**;
 - d. interest on an award or judgment as required by law; and
 - e. expenses the **Authority** incurs on behalf of the **Program**

C. EXCLUSIONS

The **Program**, including any defense obligations, does not apply to, and the **Participating Member** is solely responsible for, any payments in excess of the benefits regularly provided by the Workers' Compensation Law, including but not limited to those required because:

1. of the **Participating Member's** serious and willful misconduct;
2. the **Participating Member** knowingly employs an employee in violation of law;
3. the **Participating Member** fails to comply with the health or safety law or regulation;
4. the **Participating Member** discharges, coerces or otherwise discriminates against any employee in violation of the law. Notwithstanding the foregoing, the Authority will defend the Participating Member with counsel selected by the Authority against that portion of any civil claim, proceeding, or suit which alleges that the Participating Member engaged in a violation of labor Code Section 132a;
5. of injury to an employee under the minimum age specified in the **Workers' Compensation Law** and illegally employed at the time of injury;
6. of fines, penalties, punitive damages or exemplary damages of any kind.
7. of liability imposed upon the Participating Entity by Article 7, Sections 4850 and 4860.7 of the California Labor Code; notwithstanding the foregoing, the **Authority** will reimburse the **Participating Member** cost of temporary disability benefits for public safety employees.

The **Memorandum** shall not apply to claims involving a waiver of subrogation approved by a **Participating Member** after the date of injury or illness that resulted in the claim. This exclusion does not apply to a waiver of subrogation contained in an agreement or contract that was approved by the **Participating Member** prior to the date of injury or illness that resulted in the claim, provided that the **Authority's** approval was first obtained.

D. RECOVERY FROM OTHERS

On behalf of the **Program**, the **Authority** may, but is not required to, enforce on behalf of **Participating Member** the **Participating Member's** rights under Chapter V of the Workers' Compensation Division of the Labor Code, commencing with Labor code 3850 et seq., including but not limited to **Participating Member's** rights to subrogation to recover the **Program's** payments from anyone legally liable for the injury to **Participating Member's** employee. **Authority**, in its sole discretion in the course of administrating the **Program**, may determine when such subrogation recovery and credit rights and actions are appropriate and beneficial to the **Authority**, the **Program**, or the **Participating Member** and may in its sole discretion elect to pursue or decline to pursue subrogation recovery and credit rights, but no power herein granted to **Program** or **Authority** shall be deemed to impose a duty on **Program** or **Authority** to so proceed. Further, nothing contained herein shall be construed to extinguish the rights granted by Labor Code 3850 et seq. to **Participating Member** to independently proceed to protect **Participating Member's** subrogation recovery and/or credit rights. Should **Program** or **Authority** proceed for a subrogation recovery or credit rights as provided, **Participating Member** will do everything necessary to protect its rights in that regard and to help **Program** and/or **Authority** enforce them.

SECTION IV - EMPLOYER'S LIABILITY COVERAGE

A. EMPLOYER'S LIABILITY COVERAGE

The **Program** applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. The bodily injury must arise out of and in the course of the injured employee's employment by the **Participating Member**.
2. The employment must be necessary or incidental to the **Participating Member's** work in the State of California.
3. Bodily injury by accident must occur during the **Program Period**.
4. Bodily injury by disease must be caused or aggravated by the conditions of the **Participating Member's** employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the **Program Period**.
5. If the **Participating Member** is sued, the suit and any related legal actions for damages for bodily injury by accident or by disease must be brought under the laws of the State of California.

B. PAYMENTS AND DEFENSE BY THE PROGRAM

Subject to all of the provisions in this Memorandum, the **Authority** shall cause the **Program** to:

1. Pay all sums the **Participating Member** legally must pay as damages because of bodily injury to its employees eligible for benefits under this **Program**, provided the bodily injury is covered by this employer's liability protection.

The damages the **Authority** will pay, where recovery is permitted by law, include damages:

- a. for which the **Participating Member** is liable to a third party by reason for a claim or suit against the **Participating Member** by that third party to recover the damages claimed against such third party as a result of injury to the **Participating Member's** employee;
- b. for care and loss of services; and
- c. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by the **Participating Member**; and

- d. because of bodily injury to the **Participating Member's** employee that arises out of and in the course of employment claimed against the **Participating Member** in a capacity other than as employer.
2. Defend, at the **Program's** expense, any claim, proceeding or suit against the **Participating Member** for damages payable by this protection. The **Authority** has the right to investigate and settle these claims, proceedings and suits.

The **Authority** has no duty to defend a claim, proceeding or suit that is not covered by this **Program**.

3. Pay the following costs, in addition to the other amounts payable under this employer's liability protection, as part of any claim, proceeding or suit the **Authority** defends:
 - a. reasonable expenses incurred at the **Authority's** request, but not loss of earnings;
 - b. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the Maximum Amount of Protection under this **Program**;
 - c. litigation costs taxed against the **Participating Member**;
 - d. interest on a judgment as required by law; and
 - e. expenses the **Authority** incurs on behalf of the **Program**.

C. EXCLUSIONS

This **Memorandum** shall not apply to:

1. liability assumed under a contract. This limitation does not apply to a warranty that the **Participating Member's** work will be done in a workmanlike manner;
2. punitive or exemplary damages;

3. bodily injury to an employee while employed in violation of law with the actual knowledge of any of the **Participating Member's** executive officers;
4. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by the **Participating Member**;
6. bodily injury or damages of any kind arising out of termination or discharge of any employee; or
7. bodily injury or damages of any kind arising out of the coercion, demotion, reassignment, discipline, defamation, sexual or other harassment or humiliation of, or discrimination against any employee. Notwithstanding the foregoing, the Authority will defend the **Participating Member** with counsel selected by the Authority against that portion of any civil claim, proceeding, or suit which alleges that the **Participating Member** engaged in a violation of labor Code Section 132a;

The **Memorandum** shall not apply to claims involving a waiver of subrogation approved by a **Participating Member** after the date of injury or illness that resulted in the claim. This exclusion does not apply to a waiver of subrogation contained in an agreement or contract that was approved by the **Participating Member** prior to the date of injury or illness that resulted in the claim, provided that the **Authority's** approval was first obtained.

D. RECOVERY FROM OTHERS

On behalf of the **Program**, the **Authority** may enforce the **Participating Member's** rights, and the rights of persons entitled to the benefits of this **Program**, to recover the **Program's** payments for anyone liable for the injury. The **Participating Member** will do everything necessary to protect those rights for the **Program** and to help the **Authority** enforce them.

E. ACTIONS AGAINST THE AUTHORITY OR PROGRAM

There will be no right of action against the **Authority** or **Program** under this employer's liability protection unless:

1. The **Participating Member** has complied with all the terms of this **Memorandum**; and
2. The amount the **Participating Member** owes has been determined with the **Authority's** consent or by actual trial and final judgment.

This **Memorandum** does not give anyone the right to add the **Authority** or **Program** as a defendant in an action against the **Participating Member** to determine the **Participating Member's** liability.

SECTION V - COVERAGE OUTSIDE CALIFORNIA

Coverage under this Section V is identical to **Section III - WORKERS' COMPENSATION** of this **Memorandum**. It applies to the **Participating Member's** employees who are hired in California and are eligible for benefits under this **Program** while they are working anywhere outside of California.

SECTION VI - THE PROGRAM'S LIMITS OF LIABILITY

For workers' compensation, the **Program's** responsibility to pay benefits is limited to the amount shown in paragraph 5.a. of the Cover Page. For employer's liability the **Program's** responsibility to pay damages is limited to the amount shown in paragraph 5.b of the Cover Page. The total amount payable for workers' compensation and employer's liability combined is limited to the amount shown in paragraph 5.c of the Cover Page. The **Participating Member** shall pay for its own account any loss up to the amount stated in the Cover Page as the **Participating Member's Retained Limit**.

The maximum amounts of coverage on the Cover Page apply to benefits or damages paid by the **Program** on behalf of the **Participating Member**:

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

The **Authority** will not pay any claims for benefits or damages after the **Program** has paid the maximum amounts of coverage as explained above.

SECTION VII - PARTICIPATING MEMBER'S DUTIES IF INJURY OCCURS

The **Participating Member** shall notify the **Authority** of any injury which occurs that is reasonably likely to be covered by this **Memorandum**. The **Participating Member** shall notify the **Authority** in writing of any claim, either paid or reserved, for 50% or more of the **Participating Member's** retention stated in Item 5 of the **Memorandum** Cover Page due to any of the following events: Claim, award, verdict, action, suit, proceeding or judgment. The **Participating Member** must also give the **Authority** immediate written notice of any injury involved in the following types of accidents:

1. A fatality;
2. An amputation of a major extremity;
3. Any serious head injury (including skull fracture or loss of sight of either or both eyes);
4. Any injury to the spinal cord;
5. Any second or third degree burn of 25% or more of the body;
6. Any accident which causes serious injury to two or more employees;
7. Any disability of more than one year, or when it appears reasonably likely that there will be a disability of more than one year.
8. Any claim believed to be fraudulent and \$20,000 or more has been paid in allocated expenses;
9. Any claim likely to result in a permanent disability of 50% or more; or
10. Any exposure to bloodborne pathogens or infectious disease.

Notice of accident given to the **Authority** shall contain complete details of the injury, disease or death. If a suit, claim or other proceeding is commenced because of an injury listed above, or of any injury which appears to involve coverage by the **Authority**, the **Participating Member** shall give the **Authority**:

- A. All notices and legal papers related to the claim, proceeding or suit; or copies of these notices and legal papers; and
- B. Copies of reports on investigations made by the **Participating Member** on such claims, proceedings or suits.

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 **Participating Member'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 **Participating Member's Retained Limit** has not been expended, (i.e., the **Participating Member** will have to contribute funds to effectuate the settlement), then the consent of the **Participating Member** to any settlement shall be required. If however, the **Participating 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 VIII -PREMIUM

A. PREMIUM PAYMENTS

The Covered Member will pay all premiums and assessments when due.

B. DEPOSIT PREMIUM

At the beginning of each program year, the **Participating Member** must pay the Authority the deposit premium indicated on the annual billing mailed to each **Participating Member**. At the end of the program year, a payroll audit will be conducted and:

1. The **Participating Member** will owe the **Authority** the amount by which the final premium is greater than the deposit premium; or
2. The **Authority** will issue a credit memo to the **Participating Member** for the amount by which the deposit premium is greater than the final premium.

C. FINAL PREMIUM

The deposit premium indicated on the annual billing is an estimate. The final premium will be determined after the end of the program year by using actual, not the estimated, premium basis which includes payroll and all other remuneration paid or payable during the program year for the services of:

1. All the **Participating Member's** officers and employees engaged in work covered by this **Memorandum**; and
2. All other persons engaged in work that could make the **Authority** liable under Part One (workers' compensation insurance) of this Memorandum. If the **Participating Member** does not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if the **Participating Member** gives the **Authority** proof that the employers of these persons lawfully secured their workers' compensation obligations.

D. RECORDS

The **Participating Member** will keep records of information needed to compute premium. The **Participating Member** will provide the **Authority** with copies of those records upon the **Authority's** request.

E. FINANCIAL AUDIT

The **Covered Member** will allow the Authority to examine and audit all of the **Participating Member's** records that relate to this **Memorandum**. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and computer programs for storing and retrieving data. The **Authority** may conduct the audits during regular business hours during the program year and within three (3) years after the program year ends. Information developed by audit will be used to determine final premium.

SECTION IX – CONDITIONS

A. INSPECTION

The **Authority** has the right, but is not obligated, to inspect the **Participating Member's** workplaces at any time. The **Authority's** inspections may relate to the health, safety or other conditions of the workplace. The **Authority** may give the **Participating Member** reports on the conditions found and may also recommend changes. While these recommendations may help reduce losses, the **Authority** does not undertake to perform the duty of any person to provide for the health or safety of the **Participating Member's** employees or the public. The **Authority** does not warrant that the **Participating Member's** workplaces are safe or healthful or that they comply with laws, regulations, codes or standards.

B. OTHER PROTECTION OR COVERAGES

If there is any other indemnity, insurance or reinsurance protecting against benefits, damages or expenses covered by this **Program**, the protection afforded by this **Program** shall apply excess of any other such indemnity, insurance or reinsurance unless such other indemnity, insurance or reinsurance specifically applies to this **Program**.

C. WITHDRAWAL AND EXPULSION

The rights and obligations of the **Participating Member** and the **Authority** with regard to the withdrawal or expulsion of the **Participating Member** are set forth in the **Joint Powers Agreement**.

D. ASSIGNMENT OR TRANSFER

No transfer or assignment of the rights or duties of the **Participating Member** shall be binding on the **Program** or the **Authority**, without the **Authority's** written consent.

E. QUALIFIED SELF-INSURER

The **Participating Member** represents that (1) it is a duly qualified self-insurer for workers' compensation and employer's liability under the laws and regulations of the State of California and (2) it will continue to maintain such qualifications during the **Program Period**. If the **Participating Member** should terminate such qualification of the **Participating Member** as a self-insurer is cancelled or revoked during the **Program Period**, this **Program** shall be cancelled automatically, with no requirement to give notice to the **Participating Member**, effective the date and time of termination, cancellation or revocation of such self-insurer qualification.

F. VENUE

In the event of any dispute between a **Participating Member** and the **Authority** concerning the coverage provided by this **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.

G. RELATIONSHIP TO JOINT POWERS AGREEMENT

The provisions of this **Memorandum** are subject to and subordinate to the terms and conditions of the **Joint Powers Agreement** creating PARSAC and, in the event of any conflict between the terms and conditions of said **Agreement** and this **Memorandum**, the terms and conditions of the **Agreement** shall control.

H. 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.