VECTOR CONTROL JOINT POWERS AGENCY (VCJPA)

POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE

FOR THE 2019/20 PROGRAM YEAR

VECTOR CONTROL JOINT POWERS AGENCY

MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM

DECLARATIONS

POLICY NO. VCJPA 2019-1GL

NAMED COVERED PARTY:	Vector Control Joint Powers Agency, et. al., as per Endorsement No. 1 1750 Creekside Oaks Drive, Suite 200 Sacramento, CA 95833
POLICY PERIOD:	From 7-1-2019 to 7-1-2020 12:01 a.m. Pacific Time
LIMIT OF COVERAGE:	$1,000,000 per occurrence
FORMS AND ENDORSEMENTS: Forming Part of the Policy at Inception	VCPLP and Endorsement No. 1

ON BEHALF OF VECTOR CONTROL JOINT POWERS AGENCY

Chrissy Mack

Authorized Representative

POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE
FOR THE
VECTOR CONTROL JOINT POWERS AGENCY
(VCJPA)

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POOLED LIABILITY PROGRAM

MEMORANDUM OF COVERAGE FOR THE VECTOR CONTROL JOINT POWERS AGENCY (VCJPA)

In consideration of the payment of the deposit premium, the *Agency* agrees with the *Covered Parties* as follows:

SECTION I - COVERAGE

The *Agency* will pay up to the *Limit of Coverage* those sums on behalf of the *Covered Parties* for the *Ultimate Net Loss,* less the *Retained Limit* that the *Covered Parties* pay as *Damages* because of *Bodily Injury, Property Damage, Personal Injury, Public Officials Errors and Omissions,* or *Wrongful Employment Practice* as those terms are herein defined and to which this Memorandum applies, caused by an *Occurrence* during the *Coverage Period,* except as otherwise excluded.

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 *Agency,* and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles that require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the *Members* of the *Agency*, acting through the Board of Directors in adopting this Memorandum of Coverage. As the *Agency* is not an insurer, it has no obligation to provide "Cumis" counsel to a *Covered Party* in disputed coverage situations under Civil Code section 2860.

SECTION II - DEFINITIONS

1. *"Aircraft"* means a vehicle designed for the transport of persons or property principally in the air.

2. *"Agency"* means the Vector Control Joint Powers Agency.

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

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

5. *"Coverage Period"* means that term prescribed for coverage by the *Agency* as set forth in the Declarations page.

6. *"Covered Indemnity Contract"* means that part of any contract or agreement pertaining to the *Covered Party's* routine governmental operations under which the *Covered Party* assumes the tort liability of another party to pay for *Bodily Injury* or *Property Damage* to a third person or organization. This definition applies only to tort liability arising out of an *Occurrence* to which this Memorandum applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

7. *"Covered Party"* means:

   (a) The directors and officers of the *Agency* while acting on behalf of the *Agency* with respect to Public Officials Errors & Omissions.

   (b) A *Member* of the *Agency*. This includes all entities named in its Declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board), or similar entities coming under the *Member's* direction or control, or for which the *Member's* board members sit as the governing body.

   (c) A member of a joint powers authority (JPA) which is a *Member* of the *Agency* herein, which participates in said JPA's liability program. This includes all entities named in its Declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board), or similar entities coming under the *Member's* direction or control, or for which the *Member's* board member sits as the governing body.

   (d) Any person or *Member* identified as a *Covered Party* in a certificate of coverage to third parties duly issued by the *Agency* for *Occurrences* during the *Coverage Period* identified in the certificate of coverage. The person or *Member* is a *Covered Party* only for *Occurrences* arising out of the described activity.

   (e) Any person who is an official, employee, trustee, or volunteer of a person or *Member* covered by (b), (c), or (d) herein, whether or not compensated, while acting in an official capacity for or on behalf of such person or *Member*, including while acting on any outside board at the direction of such person or *Member*.

   (f) With respect to any *Automobile* owned or leased by a *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 protection does not apply to:

      i. 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. This exception does not apply if the *Automobile* is a *Trailer* connected to an *Automobile* you own; or

      ii. 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.

(g) No person or *Member* is a *Covered Party* with respect to the conduct of any current or past partnership, joint venture, or joint powers authority that is not shown as a named *Covered Party* in the Declarations; however, for any person (1) who is an official, employee, trustee, or volunteer of a *Member* covered by (b) or (c) herein, (2) who participates in the activities of the partnership, joint venture, or joint powers authority (or any separate agency or *Member* created under any joint powers agreement by the named *Member*), and (3) who is acting for or on behalf of a *Member* covered by (b) or (c) herein at the time of the *Occurrence*, then coverage is afforded by this Memorandum. Such coverage will be in excess of and shall not contribute with any collectible insurance or other coverage provided to the other joint powers authority, agency, or *Member*.

(h) Notwithstanding subsections (e) and (f) above, the defense and indemnity coverage afforded by this Memorandum to a past or present official, employee, trustee, or volunteer of a *Member* (including a member entity of a *Member* joint powers authority) is not broader than the *Member's* duty to defend and indemnify its official, employee, trustee, 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, trustee, 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, trustee, or volunteer, then this Memorandum shall not provide any such defense or indemnity coverage to said official, employee, trustee, 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 *Agency* to bar any defense or indemnity coverage under this Memorandum to that *Member's* official, employee, trustee, or volunteer. However, a *Member's* official, employee, trustee or volunteer shall remain a *Covered Party* when using an *Automobile* owned or leased by the *Member* at any time (including *Automobile* use that may be outside the scope of employment), so long as the actual use is with the express permission of the *Member*.

8. *"Damages"* means compensation in money recovered by a third party for loss or detriment it has suffered through the acts of a *Covered Party*. *Damages* include (1) attorney fees not based on contract awarded against the *Covered Party*, (2) interest on judgments, or (3) costs for which the *Covered Party* is liable either by adjudication or by compromise with the written consent of the *Agency*, if the fees, interest, or costs arise from an *Occurrence* to which this coverage applies.

9. *"Defense Costs"* means all fees and expenses incurred by any *Covered Party*, caused by and relating to the adjustment, investigation, defense, or litigation of a claim to which this coverage applies, including attorney's fees, court costs, and interest on judgments accruing after entry of judgment. *Defense Costs* shall include adjusting expenses of a third party claims administrator that are specifically identifiable with a claim subject to this coverage. *Defense Costs* shall also include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the *Covered Party*, which are assumed by the *Covered Party* in a *Covered Indemnity Contract* where such attorney fees or costs are attributable to a

claim for *Damages* covered by this Memorandum. *Defense Costs* shall not include the office expenses, salaries of employees and officials, or expenses of the *Covered Party* or the *Agency*. *Defense Costs* shall not include any fee or expense relating to coverage issues or disputes between the *Agency* and any *Covered Party* unless the entity named in the Declarations prevails in such dispute, or attorney fees or costs awarded to a prevailing plaintiff against the *Covered Party*.

10. *"Lawsuit"* means (a) a civil proceeding in which *Damages* are alleged because of an *Occurrence* and which, in the opinion of the *Agency*, is or may be covered by this Memorandum, and (b) a civil proceeding filed in court under the Clean Water Act, Porter-Cologne Water Quality Control Act or California Environmental Quality Act as described in section VI(1)(d), subsections (iii) and (iv). *Lawsuit* includes arbitration or other alternative dispute resolution proceeding in which such *Damages* are claimed and to which the *Covered Party* must consent or to which the *Covered Party* and the *Agency* mutually consent.

11. *"Limit of Coverage"* shall be the amount of coverage stated in the Declaration page or certificate of coverage, or sublimits as stated 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 that a structured settlement, whether purchased from or through a third-party, or paid directly by the *Covered Party* in installments, is utilized in the resolution of a claim or suit, the *Agency* will pay only up to the amount stated in the Declarations or certificate of coverage in present value of the claim, as determined on the date of settlement, regardless of whether the full value of the settlement exceeds the amount stated in the Declarations or certificate of coverage.

As respects *Wrongful Employment Practices* coverage only, the *Agency* will pay up to $25,000 per *Occurrence* for the *Ultimate Net Loss* less the *Member's Retained Limit* (as defined in this section II) that the *Covered Parties* become legally obligated to pay as *Damages* because of *Wrongful Employment Practices* caused by an *Occurrence* during the *Coverage Period*, except as otherwise excluded. For purposes of this paragraph, the phrases "*Wrongful Employment Practices*," "*Occurrence*," "*Damages*," and "*Ultimate Net Loss*" shall have the meanings as defined in the Employment Risk Management Authority (ERMA) Memorandum of Coverage that is incorporated herein as though fully set forth. For those *Members* that participate in the ERMA coverage, for any *Occurrence* with an *Ultimate Net Loss* in excess of $25,000, the *Member* shall receive *Wrongful Employment Practices* coverage from ERMA pursuant to and subject to the terms and conditions of the ERMA Memorandum of Coverage. All terms, definitions, exclusions and conditions of the ERMA Memorandum of Coverage are incorporated herein as though fully set forth and shall apply to the *Wrongful Employment Practices* coverage only.

ERMA coverage of *Wrongful Employment Practices* coverage is optional. If a *Member* chooses not to participate in the ERMA program, then that *Member* and the *Covered Parties* under that *Member* shall be excluded from the ERMA Memorandum of Coverage and shall not receive ERMA coverage or benefits. However, the non-participating *Members* and their

Covered Parties may receive limited *Wrongful Employment Practices* coverage from the Agency as described in the preceding paragraph (limited to $25,000 per *Occurrence* less the *Member's Retained Limit*).

12. *"Medical Malpractice"* means the rendering of or failure to render any of the following services:

    (a) Medical, surgical, dental, psychiatric, psychological counseling, x-ray, or nursing service or treatment or the furnishing of food or beverages in connection therewith; or any services provided by a health care provider as defined in Section 6146 (c), (2), (3), of the California Business and Professions Code.

    (b) Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

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

13. *"Member"* shall mean any organization that is a party to the Agreement creating the Vector Control Joint Powers Agency.

14. *"Nuclear Material"* means *Source Material*, *Special Nuclear Material*, or *Byproduct Material*. *"Source Material," "Special Nuclear Material," and "Byproduct Material"* have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

15. *"Occurrence"* means:

    (a) With respect to *Bodily Injury* or *Property Damage*: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in *Bodily Injury* or *Property Damage* neither expected nor intended from the standpoint of the *Covered Party*. Loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the *Occurrence* that caused it.

    (b) With respect to *Personal Injury*: an offense described in the definitions of those terms in this coverage Memorandum.

    (c) With respect to *Public Officials Errors and Omissions*: any actual or alleged misstatement or misleading statement or act or omission as described in the definitions of the term in this coverage Memorandum

    (d) With respect to *Wrongful Employment Practices*: the definition of *Occurrence* is defined in the Employment Risk Management Authority's Memorandum of Coverage that is incorporated herein as though fully set forth and to which this Memorandum applies.

16. *"Personal Injury"* means injury arising out of one or more of the following offenses:

    (a) False arrest, detention or imprisonment, or malicious prosecution;

    (b) Abuse of legal process;

    (c) Wrongful entry into, or eviction of a person from, a room, dwelling, or premises that a person occupies;

    (d) Publication or utterance of material, including continuous or repeated, that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or oral or written publication of material that violates a person's right of privacy;

    (e) Discrimination or violation of civil rights; and

    (f) Injury resulting from the use of reasonable force.

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

18. *"Property Damage"* means:

    (a) Physical injury or destruction of tangible property, including all resulting loss of use of that property; or

    (b) Loss of use of tangible property that is not physically injured or destroyed.

19. *"Public Officials Errors and Omissions"* means any (including continuous or repeated) actual or alleged misstatement or misleading statement or act or omission 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 damage neither expected nor intended from the standpoint of the *Covered Party*. All claims involving the same misstatement or misleading statement or act or omission or a series of contiguous or interrelated misstatements or misleading statements or acts or omissions will be considered as arising out of one *Occurrence.*

20. *"Retained Limit"* means the amount of the self-insured retention for the *Member* as set forth in the applicable Declarations page or endorsement, which is the amount of the *Ultimate Net Loss* for which the *Member* or its *Covered Parties* are liable for before the *Agency* is obligated to make payment, subject to the following:

    (a) 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.

(b) Payment of the *Retained Limit* shall be apportioned among the *Covered Parties* in accordance with their proportionate shares of liability. If the payment is for a settlement, the *Retained Limit* shall be apportioned among the *Covered Parties* in accordance with the respective parties' agreed upon or court-determined share of liability. In the event that the apportionment requires court determination, the *Covered Parties* will pay all costs of the *Agency* in seeking such determination, including its attorney's fees in proportion to the court's determination of liability.

(c) For *Wrongful Employment Practices* coverage only, if the Employment Risk Management Authority (ERMA) determines that a *Covered Party* is not in substantial compliance with the requirements of Government Code section 12950.2 (concerning mandatory sexual harassment training) during the *Coverage Period* for an *Occurrence* related to that code section in violation of the condition of coverage at Section VII(1)(F) of the ERMA Memorandum of Coverage, and if ERMA therefore doubles the *Agency's* ERMA *Retained Limit* for the *Occurrence* pursuant to the ERMA Memorandum of Coverage, then the *Agency* shall pay the regular ERMA *Retained Limit* for the *Occurrence* (less the *Member's Agency Retained Limit)* and the *Covered Party* shall pay the penalty (i.e., the second ERMA *Retained Limit*). Upon request by a *Covered Party* facing this penalty, the penalty initially shall be paid in full by the *Agency* and then charged back to the *Covered Party* and paid over time by the *Covered Party* pursuant to the *Agency*'s usual retrospective adjustment process.

(d) For *Wrongful Employment Practices* coverage only, and for *Members* that participate in the ERMA coverage, the *Member's Agency Retained Limit* shall be the lesser of the *Member's Retained Limit* as shown in the applicable Declarations page or endorsement or $25,000.

21. *"Ultimate Net Loss"* means the sums actually paid by the *Covered Parties* comprising the total of all *Defense Costs* incurred by the *Covered Parties* and all *Damages* for which the *Covered Parties* are liable either by adjudication or by compromise with the written consent of the *Agency*, arising from an *Occurrence* to which this coverage applies.

22. "*Unmanned Aircraft System*" means a device or machine that is intended to navigate in the air without an on-board pilot, also commonly referred to as a "drone."

23. *"Wrongful Employment Practice"* this term is as defined in the Employment Risk Management Authority's Memorandum of Coverage that is incorporated herein as though fully set forth and to which this Memorandum applies.

SECTION III - DEFENSE AND SETTLEMENT

The *Agency* shall assume charge of the investigation and defense of all claims seeking *Damages* and *Lawsuits*. The *Agency* shall have the right to control the negotiation, investigation, defense, appeal or settlement of any claim or *Lawsuit* that, in the opinion of the *Agency*, is or may be covered by this Memorandum. The *Covered Party* shall fully cooperate in all matters pertaining to such claim or

Lawsuit. However, the *Covered Party* may exercise settlement control of those claims and *Lawsuits* only within its *Retained Limits* unless the *Agency*'s Litigation Manager notifies the *Covered Party* that the *Agency* is assuming control of the disposition or settlement of such claims and *Lawsuits*.

No claim or *Lawsuit* shall be settled for an amount in excess of the *Agency's Retained Limits* without the prior written consent of the California Affiliated Risk Management Authorities.

If the *Agency* denies liability for a claim or *Lawsuit*, the *Covered Party* may elect to litigate or settle the claim or *Lawsuit* on its own behalf. In either event, however, the *Covered Party* shall be liable for the full amount of any judgment or settlement, including all related costs and fees in connection therewith, unless and until it has been determined by arbitration that the *Agency* has liability for the claim or *Lawsuit* under the Memorandum of Coverage.

SECTION IV - VCJPA'S LIMIT OF COVERAGE

Regardless of the number of (1) persons or entities covered under this Memorandum (2) persons or organizations making claims or bringing suits, or (3) claims made or suits brought, the *Limit of Coverage* stated on the Declarations page, less the *Retained Limit*, or any sublimit contained in this Memorandum is the most the *Agency* will pay for an *Ultimate Net Loss* arising out of any one *Occurrence*. In the event that a structured settlement, whether purchased from or through a third party or paid directly by the *Covered Party* in installments, is utilized in the resolution of a claim or suit, only the present value of the agreed-upon payments (the present value "cost" of the structured settlement) shall be considered in satisfaction of the *Covered Party's Retained Limit*. The *Limit of Coverage* for an additional covered party (including its officials, employees and volunteers) shall be the limit stated in its additional covered party certificate, regardless of the limit that applies to the member entity.

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

SECTION V - *COVERAGE PERIOD* AND TERRITORY

This Memorandum applies to *Bodily Injury, Property Damage, Personal Injury, Public Officials Errors and Omissions,* or Wrongful Employment Practice that occurs anywhere in the world during the *Coverage Period* identified in the applicable Declaration or certificate of coverage.

SECTION VI - EXCLUSIONS

This Memorandum does not apply to:

1. With respect to Pollution:

(a) Any liability arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of *Pollutants* anywhere in the world.

(b) Any loss, cost or expense arising out of any governmental direction or request that the *Agency*, the *Covered Party* or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize, or assess the effects of *Pollutants*; or

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

However, this exclusion shall not apply to *Bodily Injury* or *Property Damage* caused by a *Covered Party's* response to contamination caused by a third party unrelated to a *Covered Party*. Response includes clean-up, removal, containment, treatment, detoxification, and neutralization of *Pollutants*.

(d) The exclusions set forth in (a), (b), and (c) above do not apply to the following exceptions to this Exclusion 1:

i. If a discharge, dispersal, release, or escape of *Pollutants* meets all of the following conditions:

1. It was accidental and neither expected nor intended by the *Covered Party*; and

2. It was demonstrable as having commenced on a specific date during the term of this policy; and

3. Its commencement became known to the *Covered Party* within seven (7) calendar days; and

4. Its commencement was reported in writing to the *Agency* within twenty-one (21) calendar days of becoming known to the *Covered Party*; and

5. Reasonable effort was expended by the *Covered Party* to terminate the discharge, dispersal, release, or escape of *Pollutants* as soon as conditions permitted.

ii. To direct and immediate *Bodily Injury* or *Property Damage* arising out of operations involving the use, application or spraying of any pesticide at or from any site or location not owned or controlled by you on which you, or any contractors or subcontractors working directly or indirectly on your behalf, are performing operations if the operations performed meet all standards of any statute, ordinance, regulation, or license requirement of any federal, state or local government which apply to those operations.

iii. With regard to any actual or alleged violation of the federal Clean Water Act (33 USC sections 1251-1387) the Porter-Cologne Water Quality Control Act (Cal. Water Code sections 13000-14958) or the State Water Resources Control Board General Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Biological and Residual Pesticide Discharges to Waters of the United States from Vector Control Applications arising out of the actual, alleged or threatened discharge of pesticides and resulting in a *Lawsuit* filed by a citizen or a federal or state government agency with jurisdiction enforcing the Clean Water Act, Porter-Cologne Water Quality Control Act or general NPDES permit, the *Agency* will pay *Defense Costs* to the *Covered Party* up to the amount of $250,000 over the *Retained Limit* per *Lawsuit*, subject to an aggregate limit of $1,000,000 per program year for all *Covered Parties*. This exception to Exclusion 1 provides limited defense only coverage for *Lawsuit Defense Costs*. It does not provide any *Defense Costs* or other coverage relating to the investigation of, handling of, or response to a pre-*Lawsuit* notice of an alleged violation or any indemnity for or payment of *Damages*, fines, penalties, civil liability, or opposing party attorney's fees or costs.

The defense-only coverage described in the preceding paragraph shall not be provided to a *Covered Party* with respect to any *Lawsuit* where alleging a violation of the Clean Water Act, the Porter-Cologne Water Quality Control Act or general NPDES permit involving a pesticide discharge and either (1) the *Covered Party* was not enrolled and covered under the applicable State Water Resources Control Board General Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Biological and Residual Pesticide Discharges to Waters of the United States from Vector Control Applications at the time of the pesticide discharge or (2) the *Covered Party* was not in substantial compliance with the terms and conditions of its general NPDES permit at the time of the pesticide discharge.

iv. With regard to any actual or alleged violation of the California Environmental Quality Act (CEQA) (Cal. Public Resources Code sections 21000-21177) resulting in a CEQA *Lawsuit* against a *Covered Party*, the *Agency* will provide a defense to the *Covered Party* and pay Defense Costs up to the amount of $250,000 over the *Retained Limit* per *Lawsuit*, subject to an aggregate limit of $1,000,000, per program year, all *Covered Parties*. This exception to Exclusion 1 provides limited coverage only for *Lawsuit* Defense Costs. It does not provide any indemnity for or payment of *Damages*, CEQA compliance costs, or opposing party attorney's fees or costs.

In applying the aggregate limits in subsections (iii) and (iv) in the event of multiple *Lawsuits* under those subsections in a single program year, the *Agency* will pay covered *Lawsuit* Defense Costs on a first submitted (i.e., based on the date that the *Agency* receives a bill, invoice or other written request for payment), first paid basis until the aggregate limit is exhausted.

(e) Nothing contained in this exclusion shall operate to provide any coverage with respect to:

i. Any site or location principally used by the *Covered Party*, or by others on the *Covered Party's* behalf, for the handling, storage, disposal, dumping, processing, or treatment of waste material;

ii. Any fines or penalties;

iii. Any clean-up costs ordered by the Superfund Program, or any federal, state, or local governmental authority. However, this specific exclusion (c) shall not serve to deny coverage for third party clean-up costs otherwise covered by this endorsement simply because of the involvement of a governmental authority;

iv. Acid rain;

v. Clean-up, removal, containment, treatment, detoxification, or neutralization of *Pollutants* situated on premises the *Covered Party* owns, rents, or occupies at the time of the actual discharge, dispersal, seepage, migration, release, or escape of said *Pollutants*; or

vi. Water pollution caused by oil or its derivatives, except as used as authorized under pesticide labeling.

2. Claims, including attorney's fees or salary or wage loss claims, by any potential, present, or former employee or official of the *Covered Party*, arising out of, but not limited to, a violation of civil rights or employment-related practices, policies, acts, or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of the spouse, child, unborn child or fetus, parent, brother, or sister of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts, or omissions described above are directed.

3. *Bodily Injury* to:

(a) An employee of the *Covered Party* arising out of and in the course of:

i. Employment by the *Covered Party*; or

ii. Performing duties related to the conduct of the *Covered Party's* business; or

(b) The spouse, child, unborn child or fetus, parent, brother, or sister of the employee as a consequence of paragraph (1) above.

This exclusion applies:

i. Whether the *Covered Party* may be liable as an employer or in any other capacity; and
ii. To any obligation to share *Damages* with or repay someone else who must pay *Damages* because of the injury.

However, this exclusion does not apply to liability assumed under contract.

4. Any obligation under any workers' compensation, unemployment compensation, or disability benefits law or any similar law.

These exclusions 2 and 4 apply whether the *Covered Party* may be liable as an employer or in any other capacity.

5. Claims because of *Bodily Injury*, *Personal Injury*, or *Property Damage* arising out of ownership, maintenance, management, supervision, or the condition of any airport.

6. Claims arising out of any professional *Medical Malpractice*:

(a) Committed by a doctor, osteopath, chiropractor, dentist, or veterinarian; or

(b) Committed by any health care provider, as defined in Business & Professions Code Section 6146(c)(2), working for any hospital or hospital operated out-patient, in-patient, or other clinic at the time of the occurrence giving rise to the loss.

7. Claims arising out of the hazardous properties of *Nuclear Material*.

8. Claims arising out of or in connection with inverse condemnation caused by the construction of a public work or public improvement, land use regulation, land use planning, the principles of eminent domain, or condemnation proceedings by whatever name called, resulting from the initiative process, judicial, administrative, or legislative order, or deliberate decision-making conduct of the *Covered Party*, and whether or not liability accrues directly against any *Covered Party* by virtue of any agreement entered into by or on behalf of any *Covered Party*. This exclusion does not apply to inverse condemnation claims for *Property Damage* arising from accidental failure of a *Covered Party's* property or equipment.

9. *Property Damage* to:

(a) Property owned by the *Covered Party*;

(b) Property rented to or leased by the *Covered Party* where it 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; and

(c) *Aircraft* or watercraft in the *Covered Party's* care, custody, or control.

10. Claims arising out of the ownership, operation, use, maintenance, or entrustment to others of: (a) any *Aircraft* or (b) any watercraft exceeding 50 feet in length. Ownership, operation, use,

or maintenance as used herein does not include static displays of aircraft or watercraft in a park or museum setting.

11. Claims arising out of a failure to perform or breach of a contractual obligation.

12. Claims arising out of liability assumed under any contract or agreement, except liability that would be imposed by law in the absence of the contract or agreement, or when such assumption is the subject of a duly issued Certificate of Additional *Covered Party*; but such assumption is covered only up to the *Limit of Coverage* stated in the certificate. This exclusion does not apply to liability assumed in a contract or agreement that is a *Covered Indemnity Contract,* provided the *Bodily Injury* or *Property Damage* occurs subsequent to the execution of the contract or agreement.

13. Fines, assessments, penalties, restitution, disgorgement, exemplary or punitive *Damages*. This exclusion applies whether the fine, assessment, penalty, restitution, disgorgement, exemplary or punitive damage is awarded by a court or by an administrative or regulatory agency. Restitution and disgorgement as used herein refer to the order of a court or administrative agency for the return of a specific item of property or a specific sum of money, because such item of property or sum of money was not lawfully or rightfully acquired by the *Covered Party*.

14. *Ultimate Net Loss* arising out of relief, or redress, in any form other than money *Damages*.

15. Claims arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to radon, asbestos, asbestos products, asbestos fibers, asbestos dust, or other asbestos containing materials, or:

    (a) any obligation of the *Covered Party* to indemnify any party because of such claims, or

    (b) any obligation to defend any suit or claims against the *Covered Party* because of such claims.

16. Claims for injury or *Damages* caused by intentional conduct done by the *Covered Party* with willful and conscious disregard of the rights or safety of others, or with malice. However, where the *Covered Party* did not authorize, ratify, participate in, consent to, or have knowledge of such conduct by its past or present employee, elected or appointed official, or volunteer, and the claim against the *Covered Party* is based solely on its vicarious liability arising from its relationship with such employee, official, or volunteer, this exclusion does not apply to said *Covered Party*.

17. Claims by any *Covered Party* against its own past or present elected or appointed officials, employees, volunteers, or additional covered parties where such claim seeks *Damages* payable to the *Covered Party*.

18. Claims arising out of oral or written publication of material, if done by or at the direction of the *Covered Party* with knowledge of its falsity.

19. Claims arising out of liability imposed on any *Covered Party* under any

uninsured/underinsured motorist law or *Automobile* no-fault law.

20. The cost of providing reasonable accommodation pursuant to the Americans with Disabilities Act, Fair Employment and Housing Act, or similar law.

21. Refund or restitution of taxes, fees, or assessments.

22. Claims for refund, reimbursement, or repayment of any monies to which a *Covered Party* was not legally entitled.

23. Claims arising in whole or in part out of the violation of a statute, ordinance, order, or decree of any court or other judicial or administrative body, or rule of law, committed by or with the knowledge or consent of the *Covered Party* (except as otherwise provided by the exceptions in section VI(1)(d)).

24. Claims arising out of estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.

25. Under *Public Officials Errors and Omissions Coverage*:

    (a) *Bodily Injury*, *Personal Injury*, or physical injury to tangible property, including all resulting loss of use of that property.

    (b) Benefits payable under any employee benefit plan.

26. Claims arising out of the ownership, operation, use, maintenance or entrustment to others of an *Unmanned Aircraft System*. However, this exclusion shall not apply if all of the following conditions are met with respect to any use or operation of an *Unmanned Aircraft System* which gives rise to a claim:

    (a) The *Unmanned Aircraft System* is operated in compliance with applicable federal, state, and local laws, rules and regulations, including but not limited to Federal Aviation Administration (FAA) rules and regulations.

    (b) The operation of the Unmanned Aircraft System is in the course of legitimate activity which was approved by a member employee or official, which employee or official was acting in a management or supervisorial role when approving the operation of the *Unmanned Aircraft System*.

    (c) The Governing Body of the member before use has approved use of *Unmanned Aircraft Systems*.

The exclusions in this section VI do not apply to *Wrongful Employment Practices* coverage as described in sections I and II and the Employment Risk Management Authority Memorandum of Coverage. Rather, the applicable coverage exclusions are those set forth in the Employment Risk Management Authority Memorandum of Coverage.

SECTION VII - CONDITIONS

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

(a) The *Covered Party* shall notify the *Agency* within 30 days upon receipt of notice of a claim, or the establishing of a reserve on any claim or suit (including multiple claims or suits arising out of one *Occurrence)*, such claim or reserve amounting to fifty percent or more of the *Retained Limit*; Title 42 U.S.C. 1983 cases in which a complaint has been served or with reserves of twenty-five percent or more of the *Retained Limit*; or regardless of reserve, any *Occurrence* involving:

i. One or more fatalities,
ii. Loss of a limb or amputations,
iii. Loss of use of any sensory organ,
iv. Spinal cord injuries (quadriplegia or paraplegia),
v. Third degree burns involving ten percent or more of the body,
vi. Serious facial disfigurement,
vii. Paralysis,
viii. Closed head injuries,
ix. Serious loss of use of any body function, or
x. Long-term hospitalization.

Written notice containing particulars sufficient to identify the *Covered Party* and also reasonably obtainable information with respect to the time, place, and circumstances thereof, and the names and addresses of the *Covered Party* and of available witnesses, shall be given to the *Agency* or any of its authorized agents as soon as possible.

(b) If a claim is made or suit is brought against the *Covered Party* and such claim or suit falls within the descriptions in paragraph (a) above, the *Covered Party* shall be obligated to forward to the *Agency* every demand, notice, summons, or other process received by it or its representative.

(c) The *Covered Party* shall cooperate with the *Agency* and upon its 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*, *Personal Injury*, *Property Damage*, 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.

(d) The *Agency* shall be entitled to complete access of the *Covered Party's* claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The *Covered Party* shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the *Agency*, and to provide the *Agency* with simultaneous copies of all correspondence provided to the *Covered Party* by its defense attorneys and/or agents.

2. Bankruptcy or Insolvency

Bankruptcy or insolvency of the *Covered Party* shall not relieve the *Agency* of any of its obligations hereunder.

3. Other Coverage

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

This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a *Covered Party* herein as an additional *Covered Party* or additional insured party, where coverage is extended to a loss also covered hereunder.

4. Severability of Interests

The term *Covered Party* is used severally and not collectively, but the inclusion herein of more than one *Covered Party* shall not operate to increase the limits of the *Agency's* liability or the *Retained Limit* applicable per *Occurrence*.

5. Accumulation of Limits

A claim which contains allegations extending to a duration of more than one *Coverage Period* shall be treated as a single *Occurrence* arising during the first *Coverage Period* when the *Occurrence* begins.

6. Termination

This Memorandum may be terminated at any time in accordance with the Bylaws of the *Agency*.

7. Changes

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

8. Subrogation

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

(a) The highest layer of coverage shall be reimbursed first, and if there are sufficient recoveries, then the next highest layer shall be reimbursed until all recoveries are used up.

(b) The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by the *Agency*, it shall bear the expenses thereof.

9. Arbitration

Decisions by the *Agency* whether to assume control of the negotiation, investigation, defense, appeal, or settlement of a claim, or whether or not coverage exists for a particular claim or part of a claim shall be made by the Board of Directors of the *Agency*.

Any dispute concerning a decision of the *Agency* to deny coverage for all or part of a claim shall not be subject to any court action, but shall instead be submitted to binding arbitration. The *Covered Party* must exhaust the right to appeal to the Board of Directors before requesting arbitration of a dispute.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a three-person panel. The *Covered Party* or parties shall select one arbitrator and the *Agency* shall select one arbitrator, and the two arbitrators shall select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the *Agency* or the *Covered Party* or parties.

The selection of arbitrators shall take place within twenty (20) calendar days from the receipt of the request for arbitration. The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrators.

Each party shall bear the cost of its selected arbitrator and one-half the cost of the third selected arbitrator. In addition, each party shall be responsible for its own costs and expenses of arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the "parties" and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings.

The procedures set forth in California Code of Civil Procedure Section 1293.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph 9.

Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280).

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

VECTOR CONTROL JOINT POWERS AGENCY
MEMORANDUM OF COVERAGE

POOLED LIABILITY PROGRAM
ENDORSEMENT NO. 1

It is understood that the Named Covered Party of the Declarations is completed as follows:

Vector Control Joint Powers Agency,

Member	Retained Limit
Alameda County Mosquito Abatement District	$ 10,000
Burney Basin Mosquito Abatement District	$ 1,000
Butte County Mosquito and Vector Control District	$ 10,000
Coachella Valley Mosquito and Vector Control District	$ 25,000
Coalinga-Huron Mosquito Abatement District	$ 1,000
Colusa Mosquito Abatement District	$ 1,000
Compton Creek Mosquito Abatement District	$ 2,500
Consolidated Mosquito Abatement District	$ 10,000
Contra Costa Mosquito and Vector Control District	$ 50,000
Delta Vector Control District	$ 5,000
Durham Mosquito Abatement District	$ 1,000
Fresno Mosquito and Vector Control District	$ 5,000
Glenn County Mosquito and Vector Control District	$ 1,000
Greater Los Angeles County Vector Control District	$ 75,000
Kings Mosquito Abatement District	$ 5,000
Lake County Vector Control District	$ 2,500
Los Angeles County West Vector Control District	$ 25,000
Marin-Sonoma Mosquito and Vector Control District	$ 50,000
Mosquito and Vector Management District of Santa Barbara County	$ 2,500
Napa County Mosquito Abatement District	$ 5,000
Northern Salinas Valley Mosquito Abatement District	$ 2,500
Northwest Mosquito and Vector Control District	$ 5,000
Orange County Mosquito and Vector Control District	$ 25,000
Oroville Mosquito Abatement District	$ 1,000
Pine Grove Mosquito Abatement District	$ 1,000
Placer Mosquito and Vector Control District	$ 1,000
Sacramento-Yolo Mosquito and Vector Control District	$ 50,000
San Gabriel Valley Mosquito and Vector Control District	$ 10,000
San Joaquin County Mosquito and Vector Control District	$ 50,000
San Mateo County Mosquito and Vector Control District	$ 10,000
Shasta Mosquito and Vector Control District	$ 2,500
Sutter-Yuba Mosquito and Vector Control District	$ 10,000
Tehama County Mosquito and Vector Control District	$ 1,000
Turlock Mosquito Abatement District	$ 10,000
West Valley Mosquito and Vector Control District	$ 10,000

Attached to and Forming Part of Policy No. VCJPA 2019-1GL

Effective Date: July 1, 2019

Chrissy Mack

Authorized Representative