

# TRINDEL INSURANCE FUND BOARD OF DIRECTORS AGENDA

Alpine~Colusa~Del Norte~Lassen~Modoc~Mono~Plumas~San Benito~Sierra~Sutter~Trinity  
A Joint Powers Authority Established in 1980  
[www.trindel.org](http://www.trindel.org)

**PRESIDENT**  
Chester Robertson

**VICE-PRESIDENT**  
Nate Black

**SECRETARY**  
Van Maddox

## SPECIAL MEETING

### Location:

GoToMeeting <https://global.gotomeeting.com/join/339304717>  
Access Code: 339-304-717

**Date :** Monday, June 28<sup>th</sup>, 2021  
**Time:** 9:00 AM to 11:00 AM  
**Call In Number:** 1 (669) 224-3412

## ORDER OF BUSINESS

As to each agenda item, the Board may take action, give direction and/or receive informational reports.

### 9:00 AM Call to Order and establishment of a quorum

#### I. Roll Call

*Article IV, Section 3. Of the Bylaws: Quorum-A majority of the Directors holding office shall constitute a quorum for the transaction of business at any meeting. All actions of the Board shall require the affirmative vote of a majority of the members at a meeting duly held at which a quorum is present.*

#### II. Public Comment

*Matters under the jurisdiction of the Board, whether or not on the posted Final Agenda, may be addressed by the general public at this time. The total amount of time for public comment shall be no more than fifteen minutes. The Chair, with consensus of the Board, may establish reasonable regulations including, but not limited to, limiting the amount of time allocated for a particular issue and for each speaker. No action is to be taken or substantive discussion pursued on matters not on the posted Final Agenda.*

P.O. Box 2069 Weaverville, Calif. 96093 Phone: (530) 623-2322

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## III. 2021-22 Excess Coverage Placement for WC & Liability

- a. Approve excess policy placement with PRISM (Alliant) or Safety National (AON)
- b. Approve MOC for Workers' Compensation Program
- c. Approve MOC for Liability Program

## IV. Adjournment

*Disability Access: The meeting room is wheelchair accessible and disabled parking is available at the meeting location. If you are a person with a disability and you need disability-related modification or accommodations to participate in this meeting, please contact the Executive Director at (phone) 530-623-2322, (fax) 530-623-5019 or (email) [dnelson@trindel.org](mailto:dnelson@trindel.org). Requests for such modifications or accommodations must be made at least two full business days before the start of the meeting.*

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**BOARD OF DIRECTORS**  
**AGENDA**

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**TRINDEL BOARD MEETING**

June 28, 2021

**PROGRAMS**

AGENDA ITEM III.

**SUBJECT:** Risk Treatment for Workers' Compensation & Liability Program

**ACTION FOR CONSIDERATION:** Excess coverage placement for Liability and Worker's Compensation programs.

**Liability Option:**

- A. PRISM GL1 program or AON excess policy (Safety National)

**Workers' Compensation Option:**

- A. PRISM EWC program or AON excess coverage (Safety National).

**BACKGROUND:** Excess premiums have increase 1.2 million in five years, even with retaining 150% more risk by raising our Self-insured level from 100,000 to 250,000. Executive Director provided PRISM with notification of increasing Self-insured retention or possible program withdraw for Liability and WC, and requested quotes from AON for excess layers.

The quote from AON is contingent on including both programs, so Item III.b. & III.c. will apply the appropriate MOC for each program.

**FISCAL IMPACT:** See attached

**RECOMMENDATION:** Place excess coverage for WC and Liability with PRISM for the 2021-22 policy year.

# TRINDEL INSURANCE FUND

STRATEGIC PLANNING WORKSHOP FEBRUARY 1, 2019

WEAVERVILLE, CA

FACILITATOR: BILL CHIAT, ALTA MESA GROUP, LLC



BOARD MEMBERS AND ALTERNATES STARTING WITH THE BACK ROW LEFT TO RIGHT:

NICHOLE WILLAMSON, ALPINE COUNTY; WENDY TYLER, COLUSA COUNTY; RICHARD EGAN, LASSEN COUNTY;

BECCA COOPER, TRINITY COUNTY; JASON CLAUNCH, SUTTER COUNTY; VAN MADDOX, SIERRA COUNTY;

FRONT ROW LEFT TO RIGHT: TODD MANOUSE, COLUSA COUNTY; NATE BLACK, SUTTER COUNTY;

CATHY HAFTERSON, DEL NORTE COUNTY; DAVID NELSON, EXECUTIVE DIRECTOR;

CHESTER ROBERTSON, MODOC COUNTY; JAY SLOANE, MONO COUNTY;

NOT PRESENT: PLUMAS OR SAN BENITO COUNTY

NOT PICTURED SARAH SIMIS

## DISCUSSION STRATEGIC WORKSHOP

8:34am Welcome and introductions

Opening exercise: Quotable Quotes- Everyone participated in a leadership exercise

Most Proud: Achievements of Trindel (progress from 2014, achievements, strengths, attributes)

### ACCOMPLISHMENTS

- WORKERS COMP IN HOUSE
- BRING PROPERTY AND LIABILITY IN HOUSE
- ANALYZE POOL VS BANKING
- BOOTCAMP
- LOSS PREVENTION-ADVANTAGE
- NEW WORKERS COMP DIRECTOR
- HISTORY AND HOW WE GOT HERE OR TRUE VALUE
- CREATED POOLING MECHANISM
- BUILT AN OFFICE
- PROACTIVE NATURE OF WORKPLACE SAFETY
- SAFETY OFFICER
- QUALITY LEVEL OF CUSTOMER SERVICE
- PROUD OF THE NAME-REPUTATION
- DONE WELL FISCALLY
- ABILITY TO STEP BACK
- TEAMWORK-COMMUNICATE WELL
- BENEFITTED OUR MEMBERS WELL FISCALLY
- RETAIN GOOD STAFF
- PROCESS TO HOLD CONTRACTS ACCOUNTABLE
- FOCUS ON OUR DSRS
- BOARD VALUE VARYING INPUT
- DON'T LOSE ACCOMPLISHMENTS AND WORKING WELL NOT JUST EIA
- DIVERSE BOARD-PRESERVE
- ATTENDANCE INCREASE IN SHERIFFS CONFERENCE
- ATTENDANCE AT ALL EVENTS INCREASE-PUSHING OUT
- A BETTER PRODUCT-FLAGSHIP
- SERVICE AND EXPERIENCE
- BEING NIMBLE
- CHANGES T O AUDIT PROCESS IN COUNTIES

- 2018- ALL COUNTIES PASSED AUDIT GREATER THAN 80 PERCENT
- BOARD RESPECTFUL

Changes Which May Influence Members and Organization: (changes in the world which may influence the work of Member Counties and Trindel)

### WORLD AROUND US

- CANNIBUS
- LITIGIOUS
- LACK OF DECORUM
- EXTREMES OF POLITICS
- LIBERALIZATION OF PERB
- IMMENSE SCALE OF PROBLEM BEFORE ADDRESSED
- PERCEPTION OF LAW ENFORCEMENT
- TECHNOLOGY PROVIDING “COLOR”
- MEDICAL COSTS PERUADE EVERTHING
- ECONOMICS CHANGING RADICALLY
- MEDICAL PROFESIONALS ROLE
  - COURTS- ALL LESS FAVORABLY TO GO IT
- STATE TAKING FROM LOCAL- EVERYTHING MORE COSTLY
- IHSS
  - (RESPONSE-COST OF DISASTERS VEROSITY OF THESE EVENTS)
  - (RESOURCES FLOWING TO SOCIAL ISSUES RATHER THAN CORE SERVICES)
- CYBERCRIMES
- IMMIGRATION-UNEASE
- POLITICALLY MINORITY
- LGBT-GENDER- ME TOO MOVEMENT
- CONSOLIDATION TREND
- RETAIL PURCHASES
- SENIORS MOVING IN
- BOOMERS TURNOVER- EXPERTISE OUT THE DOOR
- WORKFORCE CHANGES
- HOUSING-MENTAL HEALTH
- PUBLIC LAND POLICY
- FEDERAL IMPACTS
- METH AND OPIODS

### TRINDEL CHALLENGES

- PRESSURE TO GROW

-PLAN FOR FUTURE: EITHER GROW OR REMAIN THE SAME

- LOOSE MEMBERS/NUMBERS
- EXTERNAL PRICING PRESSURE
- CHANGES TO INSURANCE INDUSTRY
- POOL PERFORMANCE-HOW WE MANAGE CLAIMS
- GEOGRAPHIC- LOCATION OF OFFICE
- POOL AS AN ATTRACTION
- WORKERS COMP-CHANGING REGULATIONS
- CONTRACT OUT VS IN HOUSE
- EDUCATION-STAFF DEVELOPMENT
- SUCCESSION PLANNING- BOARD AND STAFF
- ATTRACT-RECRUIT STAFF
- SALARY COSTS
- LOSSES NOT COVERED

Public Value of Trindel: (The desired role and value Trindel brings to its members and their communities)

#### PURPOSE

- COLLECTIVELY DO MORE
- SAFE WORK PLACE
- STAFF- AVAILABLE TO PROVIDE SERVICE
- BETTER MANAGE CLAIMS= MORE RESONABLE
- COST EFFECTIVE RISK FINANCING
- POOLING OF KNOWLEDGE
- SAFER FACILITIES FOR PUBLIC
- INSURE OUR RISKS
- PREVENT LOSSES FROM OCCURING
- SELF INSURANCE
- LOOK FOR COUNTIES STRUGGLING AND HOW TO HELP
- ACCOUNTABILITY MECHANISM
  - FOR INDUSTRY
  - BLOCK OF VOTES
  - OURSELVES
- GET PEOPLE BACK TO WORK FASTER

Review of 2014 priorities: (In the context of the most significant issues facing Trindel and Members, examine strengths, weaknesses, opportunities and threats)

### DISCUSSED WHAT TO KEEP

- SAFETY PROGRAM
- CUSTOMER SERVICE ASPECT
  - WORK COMP- CARE ABOUT THEM
  - CONTINUITY AND CONSISTANCY
- TRAINING-BRIDGE HUMAN RESOURCES AND RISK MANAGEMENT
- STAFF
- BOARD CULTURE AND RELATIONSHIP
- IMAGE: FAIR; “NOT GIVE AWAY THE FARM”
  - DON’T SETTLE FOR NUSANCE VALUE
- BRING OUTSIDE AGENCIES TO CONFERENCES
- KEEP 11 COUNTIES
  - TRINDEL SEEN AS A BETTER OPTION
- FLEXABILITY FOR INDIVIDUAL MEMBERS
- FISCAL STRATAGY-INVESTMENTS
- TAIL CLAIM APPROACH
- OPEN DIALOGUE WITH CLAIMS ADJUSTERS
- KEEP GOOD ATTORNEYS: RELATIONSHIPS-EDUCATION -HELP
- BRIDGE COUNTY COUNSEL WITH TRINDEL ATTORNEYS

### DISCUSSED WHAT TO DROP

- EAP PROGRAM
- EXPLORE POSSIBILITY OF CHANGING POLICY  
(ALL STRATEGY LIST- ALL IN OR ALL OUT)  
MHN- EIA EAP PROGRAM

### DISCUSSED WHAT TO MODIFY

- METHOD OF PROVIDING TRAINING
  - CENTRAL LOCATIONS
  - REDUCE TRAVEL COSTS
  - REUSE POLICY OF WHERE
  - FREQUENCY
  - INCREASE PARTICIPATON-
- “ROADS CONFERENCE” ~(PUBLIC WORKS)
- REVIEW HOW WE EVALUATE COUNTIES
- INCENTIVES FOR PUBLIC SAFETY PARTICIPATION
- MORE PARTICIPATION FROM SHERIFF/ PROBATION
- EVALUATE POOLING FOR PROPERTY



- SIR FOR PROPERTY
- PREMIUMS
- ALLOCATION OF ADM COSTS

DISCUSSED WHAT TO ADD

- AREAS HAVING LOSSES AND NOT COVERING
  - LEGAL REPRESENTATION FOR NON-COVERED AREAS
- PROGRAMS FOR NON-COVERED LOSSES
  - ADA AND ADA IN JAILS
- LEGISLATIVE PRESENCE
- MARKETING TO INCREASE IMAGE
- BUILD “ALLIANCES” WITH ALIGNED ORGANIZATIONS, I.E. RCRC
  - SEEN AS A RESOURCE

How We See Trindel in 2014-2019: (What is the desired future for Trindel; vision for what Trindel could look like in 2024; internal and external)

2024

- OTHERS TOP IN MIND: TRAIN, JPA
- PUBLIC SAFETY CLAIMS DIMINISH 50%
- WELL PERCEIVED BY SHERIFFS’
- NEW , DIVERSE BOARD
  - CONTINUE TO BE SELF-INTROSPECTIVE
- KEEP IMPROVE, INNOVATIVE SERVICES
- TRANSITIONED SENIOR STAFF
- MEMBERSHIP GROWTH
- NO LEGACY ADM COSTS
- NO WORK COMP CLAIMS
- PROGRAM FOR HHS TRAINING
- INFLUENCE WORKER COMP LEGISLATIVE REFORM
- EXCELLENCE IN WORKER COMP TEAM
- VALUE BANKING LAYER-CORE SERVICE
- SOUND, RELIABLE ACCOUNTING
- BOARD ENGAGEMENT BECAUSE OF PERCIEVED VALUE
- FULLY INTEGRATED INTO PUBLIC SAFETY
- STRATEGEY TO “ADDRESS” -UNCOVERED LOSSES (COVER, DEFEND OR MITIGATE)

- REDUCED LOSS TIME
- PERFORMANCE MEASURES
- ENGAGEMENT OF COUNTY MANAGEMENT IN CLAIMS

Key Strategies: (Identify four key strategies for focus over next 5 years)

#### KEY STRATEGIES

- REMEMBER WHO WE ARE AND WHY IT CAME TO BE
  - TRANSFER OF KNOWLEDGE: BOARD AND COUNTY STAKEHOLDERS
  - KEEPING US AWARE OF WHAT WE ARE ALREADY DOING WELL
- MAINTAIN STRONG RELATIONSHIPS
  - BOARD
  - COUNTY/TRINDEL STAFF
- UNCOVERED LOSSES
  - WAYS FOR MEMBERS TO ADDRESS
- SELF-AWARENESS AND LEARNING
- REVIEW ALL PROGRAMS
  - MANAGEMENT
  - MEASURES
- POLICY DEVELOPMENT; REDEVELOPMENT
  - COUNTY POLICY
  - DISASTER/EMERGENCY
- BRANDING
- QUANTIFIABLE MEASURES
- INCORPORATION OF PUBLIC SAFETY

Top 4 Strategies To Work Towards: (Incorporation of Public Safety, Uncovered Losses, Branding, Relationships)

#### INCORPORATION OF PUBLIC SAFETY

- RECRUIT SHERIFF BOARD MEMBER “CHAMPION”
- TRAINING/EDUCATION-SCHEDULING
  - LAW ENFORCEMENT WORK LONG SHIFTS TRAINING CAN BE OVERTIME-INCENTIVES- W/C PROPERTY (PERFORMANCE INCENTIVE MEASURES-MEDALS)
- ADA AWARENESS TRAINING/ED PROGRAM JAILS/ MEDICAL ISSUES
- ENCOURAGE MEETING RISK MANAGER AND SHERIFF
- SPECIFIC MEETING WITH PUBLIC SAFETY

## UNCOVERED LOSSES

- IDENTIFY THE RISK
  - INQUIRE WITH COUNTY
  - IDENTIFICATION OF UNCOVERED LOSSES
  - LIST OF COVERAGE DENIALS FOR EACH COUNTY
- EXPLORING MITIGATION/PREVENTION OPTIONS
  - BRING YOUR LOSS PREVENTION PROGRAM TO ADDRESS THE RISK
- COVERAGE -ADDITIONAL OPTIONS
  - SELF INSURANCE, POOL, OTHER BROKERS, ACTUAL INSURANCE POLICIES

## BRANDING

- ESTABLISH MEASUREMENTS
  - STAFF INPUT
  - PROGRAMATIC
  - QUALITATIVE VS QUANTITATIVE
- PROMOTIONS
  - CAJPA
  - RCRC-
  - INTERNET
  - SOCIAL MEDIA
- TELL OUR STORY
  - PR WEBSITE MARKETING VS UTILITY
  - TALKING POINTS FOR BOARD MEMBERS

## RELATIONSHIPS

- NEW STAFF-TIMELY EFFECTIVE CONTACT WITH TRINDEL
  - EMPHASIS ON CUSTOMER (W/C)  
(TRAIN COUNTY STAFF ON COMMUNICATION WITH INJURED WORKERS)
  - ALL CLAIMS REVIEW 1 PER YEAR, PROP, LIAB, W/C  
(IN PERSON)
  - BOARD/DEPT HEAD PRESENTATIONS  
TRINDEL, ED AND OR BOARD
- Reflected on the day and adjourned

ADDITIONAL NOTES OR COMMENTS PAGE



# **Bickmore**

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# **Actuarial**

## **Actuarial Review of the Self-Insured Workers' Compensation Program**

*Forecast for Program Year 2021-22  
Comparison of Reinsurance Options*

*Presented to*  
**Trindel Insurance Fund**

June 16, 2021 - DRAFT



Wednesday, June 16, 2021

Mr. David Nelson  
Executive Director  
Trindel Insurance Fund  
P.O. Box 2069  
Weaverville, CA 96093

RE: Reinsurance Evaluation for the Self-Insured Workers' Compensation Program

Dear Mr. Nelson:

As requested, we have completed our review of two reinsurance options for Trindel Insurance Fund's self-insured workers' compensation program. Some considerations in deciding on the appropriate retention for the Fund's self-insurance program include the following:

- Comparison of total costs at various SIRs, including actuarial estimates and excess insurance premiums. Note that expected is a statistical estimate, and actual experience can vary significantly, resulting in either savings or additional costs.
- Comparison of historical experience with expected costs. Note that historical experience is very volatile in excess layers, and as such, is less predictive of future experience for individual insureds. Thus expected costs take into account historical experience of the Fund as well as that of the industry as a whole.
- Actual experience in excess layers is quite often an "all or nothing" event. This means that in some years excess layers (e.g. \$1M - \$2M) will not be pierced, while in other years the entire layer will be completely exhausted by an individual loss.
- Purchase of excess insurance transfers risk of these volatile layers to the insurer completely, making total costs more predictable.

The options being considered, and their estimated costs, are as follows:

- Option A (PRISM) – Trindel self-insures to \$1,000,000 per occurrence, PRISM provides coverage from \$1,000,000 to statutory limits.
  - **Estimated cost \$798,000**
- Option B (Aon) – Trindel self-insures to \$2,000,000 per occurrence for safety claims and to \$1,000,000 per occurrence for non-safety claims. Safety National covers above these retentions to statutory limits.
  - **Estimated cost \$879,000**

Detailed calculation underlying these cost estimates are included in the exhibits attached.

Based upon our estimates, Option A is expected to be the least cost option. Some comments regarding these estimates:

- We note that to date, the Fund has had only one claim in excess of \$1 million, so the Fund's loss experience is not credible for making estimates of losses in these high layers. Therefore our estimates rely in large part upon industry averages.
- These figures do not include any provision for losses below \$1,000,000 per occurrence, only losses above \$1,000,000.
- The principal difference between the options is the coverage of claims for safety employees (police and fire) between \$1,000,000 and \$2,000,000 per occurrence. In Option A these claims are covered by PRISM, while in Option B these claims are self-insured and estimated at the discounted 80% confidence level.

The report that follows outlines the scope of our study, its background, and our conclusions, recommendations, and assumptions. Judgments regarding the appropriateness of our conclusions and recommendations should be made only after studying the report in its entirety, including the graphs, attachments, exhibits and appendices. Our report has been developed for the Fund's internal use. It is not intended for general circulation.

We appreciate the opportunity to be of service to Trindel Insurance Fund in preparing this report. Please feel free to call Mike Harrington at (916) 244-1162 or Greg Beaulieu at (916) 290-4632 with any questions you may have concerning this report.

Sincerely,

Bickmore Actuarial

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Mike Harrington, FCAS, MAAA  
President and Principal, Bickmore Actuarial  
Fellow, Casualty Actuarial Society  
Member, American Academy of Actuaries

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Greg Beaulieu, FCAS, MAAA  
Senior Actuarial Manager, Bickmore Actuarial  
Fellow, Casualty Actuarial Society  
Member, American Academy of Actuaries

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Mary Ann Case, PSM  
Senior Actuarial Analyst, Bickmore Actuarial

Trindel Insurance Fund - Workers' Compensation  
 Comparison of Costs of Reinsurance Above \$1,000,000  
 Fiscal Year 2021-2022

		<u>SIR</u>	<u>Limit</u>	
(A)	Option A - PRISM	\$1,000,000	Statutory	<b>798,000</b>
	Option B - Aon			
	<u>Self-Funded</u>			
(B1)	Safety	\$1,000,000	\$2,000,000 80% CL	325,000
	<u>Insured</u>			
(B2)	Safety	\$2,000,000	Statutory	554,000
	Non-Safety	\$1,000,000	Statutory	
(B3)	Total			<b>879,000</b>
(C)	Option B vs. Option A			+10%

Notes:

- (A) Provided by Trindel Insurance Fund
- (B1) From Exhibit 2
- (B2) Provided by Trindel Insurance Fund
- (B3) = (B1) + (B2)
- (C) = (B3) / (A) - 1.00



Trindel Insurance Fund - Workers' Compensation

Estimate of Cost to Self-Insure Safety Classes in the \$1,000,000 to \$2,000,000 Layer  
Fiscal Year 2021-2022

		<u>Safety</u>	<u>Other Than Safety</u>	<u>Total</u>
(A)	Payroll	17%	83%	100%
(B)	Historical Losses	48%	52%	100%
(C)	Selected Distribution of Costs	40%	60%	100%
(D)	Premium for Layer from \$1M to \$2M	\$ 325,000	\$ 485,000	\$ 810,000

Notes:

- (A) from Bickmore Funding Study
- (B) from historical loss runs
- (C) selected by Bickmore Actuarial
- (D) = (C) x (D) total (Total from Exhibit 3)

Trindel Insurance Fund - Workers' Compensation  
 Estimate of Total Cost of the \$1,000,000 to \$2,000,000 Layer  
 Fiscal Year 2021-2022

(A)	Selected Limited Loss Rate per \$100 Payroll, Discounted	1.785
(B)	Rate for \$1M SIR	3.254
(C)	Rate for \$2M SIR	3.428
(D)	Rate for \$1M to \$2M Layer	0.174
(E)	Trended Payroll	\$ 2,847,425
(F)	Projected Losses at Discounted Expected Confidence Level	\$ 495,000
(G)	Factor to 80% Confidence Level	1.637
(H)	Total Premium for Layer from \$1M to \$2M	\$ 810,000

## Notes:

(A), (B), (C) from Bickmore Funding Study

(D) = (C) - (B)

(E) from Bickmore Funding Study

(F) = (D) x (E)

(G) from Bickmore Funding Study

(H) = (F) x (G)

## Liability Program Premium History & Structure Options for 2021 - 2022

		2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	PRISM Option A 2021-2022	PRISM Option B 2021-2022	AON Option C 2021-2022
<b>BANKING</b>										
	<b>SIR premium</b>	100,000 \$ 2,570,504	100,000 \$ 2,392,919	100,000 \$ 2,570,504	100,000 \$ 2,243,535	250,000 \$ 3,398,138	250,000 \$ 3,337,848	250,000 \$ 3,324,000	250,000 \$ 3,324,000	250,000 \$ 3,324,000
<b>POOL</b>										
	<b>premium 85% conf</b>								750,000 excess of 250,000 (1MIL) \$ 1,831,000	\$ 1,831,000
<b>EXCESS</b>										
	<b>premium</b>	\$ 2,405,353	\$ 2,460,025	\$ 2,941,726	\$ 3,067,000	\$ 3,376,554	\$ 4,132,223	\$ 4,882,655	\$ 2,741,703	\$ 2,800,000
<b>Total</b>										
	<b>premium</b>	\$ 4,975,857	\$ 4,852,944	\$ 5,512,230	\$ 5,310,535	\$ 6,774,692	\$ 7,470,071	\$ 8,206,655	\$ 7,896,703	\$ 7,955,000

## WC Program Premium History & Structure Options for 2021 - 2022

		2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	PRISM Option A 2021-2022	AON Option B 2021-2022
<b>BANKING</b>									
	<b>SIR premium</b>	300,000 \$ 7,566,650	300,000 \$ 8,832,668	300,000 \$ 10,051,876	1 Mil \$ 10,119,885	1 Mil \$ 10,390,922	1 Mil \$ 10,579,000	1Mil \$ 9,578,000	1Mil- 2Mil Safety \$ 9,578,000
<b>POOL</b>									
	<b>premium 85% conf</b>	\$ -	\$ -	\$ -	700,000 excess of 300,000 (1MIL) \$ 1,655,000	\$ 1,758,000	\$ 2,096,000	\$ 2,204,000	\$ 2,529,000
<b>EXCESS</b>									
	<b>premium</b>	\$ 1,439,177	\$ 1,442,797	\$ 1,470,910	\$ 572,093	\$ 596,885	\$ 537,610	\$ 777,859	\$ 553,834
<b>Total</b>									
	<b>premium</b>	\$ 9,005,827	\$ 10,275,465	\$ 11,522,786	\$ 12,346,978	\$ 12,745,807	\$ 13,212,610	\$ 12,559,859	\$ 12,660,834

# GIBBONS & CONLEY

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## MEMORANDUM -- CONFIDENTIAL

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**To:** David Nelson,  
Executive Director  
Trindel Insurance Fund

**Date:** June 21, 2021

**From:** A. Byrne Conley

**Re:** *Comparison of PRISM and Safety National Coverage documents*

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Per your request, I reviewed the Memorandum of Coverage for PRISM alongside the documents supplied by Safety National.

The comparison is a bit complicated because PRISM uses an 18 page Memorandum of Coverage that is developed specifically to apply to California public entities. As such, the PRISM MOC folds together General Liability coverage (Bodily Injury and Property Damage caused by an Occurrence) with Personal Injury coverage broadened to apply to discrimination claims (not just the ISO torts in a standard GL policy, for malicious prosecution, wrongful eviction, etc.) plus Errors and Omissions coverage is added that broadly covers all misstatements or misleading statements or breaches of mandatory duty. The PRISM form is rooted in commercial public entity forms available in the mid-1980s when pools were formed throughout California.

By contrast, Safety National is using forms from ISO that provide separate coverage memoranda for General Liability, Business Auto, Law Enforcement Legal, Errors and Omissions/EPL, Employee Benefits Liability, and finally, a “Commercial Excess Liability Coverage Form.” The forms and endorsements were spread across 47 separate pdfs that you sent.

The Commercial Excess Liability Coverage Form, CX 00 01 04 13, simply incorporates the underlying form and provides limits above the underlying form. I do not know whether Safety National would consider it, but if you issued a primary coverage form copying the PRISM form for the first layer, and Safety National agreed to treat it as the “Controlling Underlying Insurance” under the form, you would have the same coverage as currently.

The most logical way to approach this, I think, is to address the coverage definitions in the PRISM MOC in order, then the Exclusions, in each case comparing them to the Security National comparable language, then to list ISO exclusions in the Security National form that are not in the PRISM form.

## Definitions

- Named Insureds are similar. SN includes officers and board members as insureds by endorsement
- Bodily Injury. PRISM does not include “pure” emotional distress, but only consequential emotional distress to bodily injury. SN by endorsement includes pure emotional distress. But, PRISM E+O and Personal Injury coverage may fill this gap
- Property Damage – definitions are the same
- Personal Injury – PRISM wrongful eviction not tied to landlord status or dwelling; SN adds advertising injury coverage. PRISM adds discrimination coverage. It is not clear that SN coverage is as broad, though its Public Officials and Employment Practices form might treat discrimination claims as Wrongful Acts, which would fill the gap. There is no specific exclusion in SN’s Public Officials coverage excluding ADA claims, but it is not clear that they cover such claims, unless an individual employee is named.
- Errors and Omissions – PRISM covers per definition, SN covers in separate Public Officials coverage form, the definitions (misleading statement, breach of duty, etc.) are similar.
- Self-Insured Retention – SN is clear that the Named Insured must pay the SIR even if there is also coverage from an additional insured endorsement or indemnity is picked up by a third party contract. PRISM is not clear on this and it appears that AI coverage or broad form contractual indemnity could satisfy the SIR for PRISM.

## **Exclusions – I will focus here on exclusions that PRISM has that are not standard ISO exclusions, shared by both**

- D – broad form contractual, but exception for architects and engineers. SN General Liability form is similar, at Exclusion “b” but without this exception.
- G – inverse condemnation except unexpected unintended property damage, but not plaintiff attorney fees or costs or stigma damages. I was most surprised to see that SN did not have an Endorsement applicable to inverse condemnation claims. They only apply to public agencies or public utilities, hence the exclusion is not in the ISO General Liability form, so I would have expected an Endorsement addressing this. The Public Officials E+O does not apply to inverse condemnation claims for damage to property, since Property Damage is excluded by Exclusion 6 and inverse condemnation by name is excluded in Exclusion 12 of the Public Officials E+O form. But, the General Liability coverage should apply to property damage claims that include an inverse condemnation cause of action.

- H – failure to supply, due to capacity or allocation issues. SN by endorsement does not have these limitations but allows coverage where there is accidental injury to transmission facilities or lines
- I – subsidence – this is the biggest advantage I see in the SN form; there is no exclusion for claims arising from land subsidence.
- J – transit fixed route. I did not see a similar exclusion in the SN Business Auto form.
- O – Pollutants. PRISM allows exception for covered perils (explosion, hostile fire, lightning, windstorm, vehicle overturn), discover/reported in 10/31 days. SN ISO General Liability form Exclusion “f” is absolute, where discharge from insured’s premises, but by endorsement, SN allows exception for hostile fire (not other causes PRISM recognizes) without reporting time limit.
- P – injunctive relief, writs, etc. These are not claims for “damages” so the ISO GL would not cover, even without an exclusion. SN Public Officials E+O Exclusion 21 is similar.
- Q – under E+O, breach of contract. Same as SN Public Officials E+O Exclusion 14.A
- R – refunds of taxes, fees or assessments. Again these are not claims for compensatory “damages” so the ISO form should not cover them, even without a specific exclusion. SN Public Officials E+O Exclusion 9.B excludes tax claims.
- S – remuneration or financial gain to which the covered party was not entitled – same analysis as for Q, R. SN Public Officials E+O Exclusion 28 is similar.
- T – willful violation of a penal statute. This is rarely applied because it is not imputed from one covered party to another (county not liable unless it knew or consented).
- U – cost bids or specifications. This is a more precise application of the breach of contract exclusion. The SN forms do not have a similar exclusion that I could find.
- W – damage multipliers. SN Public Officials E+O has similar Exclusion 26. So does the Law Enforcement Liability form at Exclusion 14.
- V, AA – limit on coverage for employee benefit plan administration, for discrimination in benefits, or breach of fiduciary duties; SN has a separate Employee Benefits Liability Coverage form for this. Comparing the forms and Exclusions, I believe the coverage is similar, limited to errors and omissions (such as failure to process an application) but not payment of contractual benefits or improper investment of trust funds.

**SN Exclusions -- focusing on exclusions or coverages not in PRISM form**

- ISO General Liability Exclusion for Liquor Liability not in PRISM form (exclusion only if you supply or furnish alcohol). This exposure is likely not applicable to our members.

- ISO General Liability Exclusions “k” and “l” for Work/Products not in PRISM form but should not apply to public entities in any event.
- SN General Liability coverage not applicable to disclosure of confidential information. Public Officials form Exclusion 1 also excludes this, as does Law Enforcement Liability form Exclusion 1. This is one area where SN coverage is significantly more restrictive. PRISM excludes this at Endorsement U-11.
- By endorsement, no coverage for volunteer firefighters; probably OK as they would be under workers comp anyway
- Business Auto form extends to permissive users. PRISM does not (only covers employees or officials in course and scope, with no auto exclusion).
- SN excludes amphibious vehicles
- SN excludes terrorism; PRISM does not (need to buy coverage for this if going with SN.)
- SN general liability excludes police activity, by endorsement, since Law Enforcement Liability is provided in separate form
- SN has a SAM (sexual assault and molestation) exclusionary endorsement that does cover negligent hiring or supervision or negligent failure to report, but if the first molestation occurred before the coverage period, no coverage applies.
- SN has specific exclusions for lead, silica and fungi, but I believe PRISM’s pollution exclusion would apply to these anyway. PRISM Endorsement U-7 excludes lead.
- SN has an anti-stacking endorsement, PRISM has similar language in its form (no stacking limits across years for a continuous Occurrence)
- PRISM adopted a COVID exclusion for the coming year (just this last month; not in last year’s form). This is being broadly adopted so we should expect SN will add one too, though there was none in the forms provided
- SN Public Officials E+O form at Exclusion 17 would exclude *Rankin v. Murietta*-type claims for failure to ensure that a contractor provided a bond from an admitted surety. PRISM would not exclude this liability.
- SN Law Enforcement Liability Exclusion 5.B exclude contractual indemnity assumptions but allows them for mutual aid agreements.
- SN Law Enforcement Liability Exclusion 6 applies to malicious or criminal acts, where committed by or at the direction of “any” insured; the language is too broad and we need an endorsement indicating this does not apply to employer liability.
- PRISM Endorsement U-10 excludes wrongful incarceration claims unless the incarceration commenced during a pool Coverage Period. SN has a somewhat similar exclusion in the Law Enforcement Liability form, Exclusion 13 for Wrongful Acts beginning before the policy period where the Named Insured knew or had reason to know of the circumstances indicating that a Wrongful Act was or may have been taking place.



**WORKERS' COMPENSATION POOL  
MEMORANDUM OF COVERAGE DECLARATIONS  
Reference Number: WCPMC-2021**

1. MEMORANDUM COVERAGE PROVIDER

TRINDEL INSURANCE FUND, 51 Arbuckle Drive, Weaverville, California 96093

2. MEMORANDUM COVERED PARTIES

Named Covered Parties as Per Endorsement WCPMC-2018-1

3. MEMORANDUM COVERAGE PERIOD

July 1, 2021 (12:01 AM. PST) to June 30, 2022 (12:01 A.M. PST)

4. MEMORANDUM SELF-INSURED RETENTION

\$300,000

5. COVERAGE LIMITS

\$1,000,000

6. EXCESS INSURER

PRISM/ Public Risk Innovation Solutions and Management

Excess Workers' Compensation Memorandum of Coverage (attachment at \$1,000,000 to  
50,000,000) Liberty Insurance Corp. (statutory excess of \$50,000,000)

7. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION

Memorandum of Coverage - WCPMC-2021

Endorsement WCPMC-2018-1

8. INTRODUCTION

Trindel Insurance Fund, a public entity formed pursuant to California Government Code sections 6500 through 6512.1, and the Named Covered Members listed in Endorsement WCPMC-2018-1, enters into this Memorandum of Pooled Workers' Compensation Coverage ("WCPMC").

In consideration of each Named Covered Member's payment of its Contribution, coverage is provided for Workers' Compensation Claims to which this WCPMC and its Endorsements apply. Pursuant to Government Code Section 990.8(c), the coverage provided by this MOC is not "insurance." Laws or regulations pertaining to insurance or insurance companies do not control the Covered Parties' rights and obligations. Such rights and obligations are solely governed by the terms of this WCPMC and any Endorsements hereto.

Issue Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative  
David Nelson, Executive Director  
Trindel Insurance Fund





WORKERS' COMPENSATION POOL  
MEMORANDUM OF COVERAGE  
Reference Number: WCPMC-2021

ADOPTED \_\_\_\_\_

The Trindel Insurance Fund (**Fund**), in consideration for the payment of the contribution and subject to all terms of the Memorandum attached, does hereby agree to provide coverage to the County named in Endorsement No. WCPMC-2018-1 (**County**) subject to the terms and conditions set forth in this Memorandum:



## I GENERAL SECTION

### A. The Memorandum

This Memorandum includes at its effective date the Declaration Page, this Coverage Document and all endorsements listed on the Declaration Page. This Memorandum is the coverage document between the **County** and the **Fund**. The terms of this Memorandum may not be changed or waived except by endorsement issued by the **Fund** to be part of this Memorandum.

### B. Who Is Covered

The **County** is a party named in Endorsement No. WCPMC-2018-1. If the **County** loses its status as a member of the **Fund**, the coverage under this Memorandum of Coverage shall terminate immediately upon such change in status.

### C. Workers' Compensation Law

Workers' Compensation Law means the Workers' Compensation Law and occupational disease laws of the State of California. It includes any amendments to that law that are in effect during the term of this Memorandum. It does not include any federal workers' compensation law, any federal occupational disease law, or the provisions of any law that provide non-occupational disability benefits.

### D. Qualified Self-Insurer

The **County** represents that it is duly qualified to be a Self-Insurer under the Workers' Compensation Law of the State of California and will continue to maintain such qualifications during the term this Memorandum is in effect. If the **County** should fail to qualify or fail to maintain such qualifications, the coverage provided under this Memorandum shall automatically terminate on the first date of such failure.

## II WORKERS' COMPENSATION COVERAGE

### **Application of Coverage:**

Except as provided otherwise by this Memorandum, the **Fund** will pay on behalf of the **County** benefits required of Workers' Compensation Law in the same content and manner as that of the **Excess Insurance Carrier** named in Item 6 of the Declarations Page, up to the **Fund's** Limit of Liability stated in Item 5 of the Declaration.

Except as provided otherwise by this Memorandum, Exclusions and Conditions of this Memorandum shall mirror that of the **Excess Insurance Carrier** named in Item 6 of the Declarations Page, up to the **Fund's** Limit of Liability stated in Item 5 of the Declaration Page.



This MOU does not extend coverage to peace officers under the circumstances addressed in Labor Code Section 3600.2(4).

For **County** participating in **Fund's** Self-Insured Workers Compensation Program, **Fund** will pay on behalf of the **County** all amounts payable to an employee in response to a workers' compensation claim. The claim must arise from (a) bodily or psychological injury caused by accident, as long as the accident occurs during the coverage period, and (b) bodily or psychological disease caused or aggravated by the conditions of employment during the coverage period. **Fund's** Program does not, however, pay (a) fines, penalties or enhanced damage awards issued against a Member pursuant to Labor Code Section 132a and 4553; (b) final awards or judgments based on an adjudicated finding that the Member engaged in intentional conduct intended or expected to cause harm or injury to the employee, or (c) any amount for which indemnity is barred by governing California public policy.

With respect to all notified claims, including those claims for which no indemnity obligation may ultimately be owed, **Fund** shall pay all costs and expenses associated with the investigation, adjustment, and defense of the claim. The Member will, in turn, (a) cooperate at all times with **Fund's** investigatory, claim evaluation, return to work, claim mitigation, and claim management activities, (b) agree to be represented by counsel and vendors selected and supervised by **Fund**, and (c) proactively assist **Fund** in any subrogation or apportionment efforts.

### III EMPLOYERS' LIABILITY COVERAGE

Except as provided otherwise by this Memorandum, the **Fund** will pay on behalf of the **County** for employers' liability losses in the same content and manner as that of the **Excess Insurance Carrier**, up to the **Fund's** Limit of Liability stated in Item 5 of the Declaration Page. The **Excess Insurance Carrier** shall be that named in Item 6 of the Declarations Page.

### IV THE FUND'S LIMIT OF LIABILITY

The **Fund's** Limit of Liability for Workers' Compensation Coverage under Part One above will not exceed the limit stated in Item 5 of the Declaration Page. The **Fund's** Limit of Liability for Employers' Liability Coverage under Part Two above will not exceed the limit stated in Item 5 of the Declaration Page.

### V CLAIMS

#### A. The County's Claims Reporting Duties

The **County** shall give prompt notice to the **Fund** of any claim for injury, illness, or disease that appears to involve coverage triggered by this memorandum.



The **County** must immediately notify the **Fund** in writing of any claim due to any of the following events: award, verdict, action, suit, proceeding, or judgment involving coverage by the **Fund**.

Notice of accident given to the **Fund** shall contain complete details of the injury, disease, or death. If a suit, claim, or other proceeding commenced because of an injury listed in Part I and Part II above, or of any injury that appears to involve coverage by the **Fund**, the **County** shall give the **Fund**:

1. all notices and legal papers related to the claim, proceeding or suit, or copies of these notices and legal papers; and
2. copies of reports on investigations made by the **County** on such claims, proceedings, or suits.

B. Settlement

Claims in excess of the **County's** retention shall not be settled without the written consent of the **Fund**. **Fund** has the right to control the settlement, defense, or appeal of any claim, suit, or proceeding which might involve a loss to **Fund**.

C. Payments Covered Party Must Make: The Covered Party shall be responsible for any payments in excess of the benefits regularly provided by the Workers' Compensation Act, including but not limited to those required because:

1. of serious and willful misconduct on the part of the Covered Party;
2. the Covered Party knowingly employs an employee in violation of the law;
3. the Covered Party fails to comply with a health or safety law or regulation; however, this does not apply to recommendations promulgated by the Joint Commission for Accreditation of Health;
4. of discharge, coercion, or discrimination against any employee in violation of the Workers' Compensation Act;
5. of claims relating to or in any way arising out of California Labor Code Section 132(a);
6. of the unreasonable delay or failure to make payments of compensation by or on behalf of the Covered Party, including the legal fees associated with defending resulting claims or suits;
7. the Covered Party violates or fails to comply with the Workers' Compensation Act.



If the **Fund** makes any payments on behalf of the **County** in excess of the benefits regularly provided by the Workers' Compensation Act, the **County** will reimburse the Authority promptly.

## VI CONDITIONS

### A. Acceptance

By acceptance of this Memorandum, the **County** agrees that the statements made on the Declaration Page are the **County's** agreements and representations and that this Memorandum is issued in reliance upon the truth of such representations. The **County** understands the coverage provided under this Memorandum is conditioned on the timely reporting of injuries that may become a loss covered under this Memorandum and agrees to report all claims in a timely fashion and cooperate fully in the investigation, defense and settlement of any and all claims.

### B. Inspection

The **Fund** has the right, but is not obligated, to inspect the **County's** workplaces at any time for the purpose of determining insurability of the workplaces and premiums to be charged. The **Fund** may give the **County** reports on the conditions that the **Fund** find and make recommended changes. While they may help reduce losses, the **Fund** does not undertake to perform the duty of any person to provide for the health or safety of the **County's** employees or the public. The **Fund** does not warrant that the **County's** workplaces are safe or healthful or that they comply with law, regulations, codes, or standards.

### C. Subrogation – Recovery from Others

The **Fund** has the **County's** rights to recover the **Fund's** loss from any third party liable for the injury or disease. The **County** will do everything necessary to protect those rights for the **Fund** and to assist in enforcing them.

### D. Transfer of the **County's** Rights and Duties

The **County's** rights and duties under this Memorandum may not be transferred without the **Fund's** written consent.



ENDORSEMENT WCPMC-2018-1

DESIGNATION OF NAMED COVERED MEMBERS

Named Covered Parties of the declaration page amended to include the following Counties:

COUNTY OF:

- ALPINE
- COLUSA
- DEL NORTE
- LASSEN
- MODOC
- MONO
- PLUMAS
- SAN BENITO
- SIERRA
- TRINITY
- SUTTER

Attached to and Forming Part of Memorandum No. **WCPMC-2021**

Endorsement No.: WCPMC-2018-1

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date



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**EXCESS WORKERS' COMPENSATION PROGRAM  
MEMORANDUM OF COVERAGE DECLARATIONS**

- ITEM 1: COVERED PARTY:** Members per endorsement WCPMC-2021-1
- ITEM 2: MEMORANDUM PERIOD:** From July 1, 2021 to June 30, 2022 12:01 a.m. local time of the Covered Party as stated herein
- ITEM 3: STATE:** California
- ITEM 4: RETENTION AND INDEMNITY:**
- A. COVERED PARTY'S RETENTION: \$1,000,000 each occurrence  
\$2,000,000 each occurrence for Police and Firefighters
  - B. LIMIT OF INDEMNITY: Statutory (See attached Schedule of Limits and Coverage Providers)

Trindel's limit of indemnity, as set forth in ITEM 4 B includes pooled limits that apply to all Members and all Covered Parties combined for all losses as a result of any one occurrence.

- ITEM 5: MEMORANDUM NUMBER:** WCPMC-2021
- ITEM 6: ESTIMATED PAYROLL:** \$ 259,293,002
- ITEM 7: DEPOSIT PREMIUM:** \$553,834 (inclusive of all layers & fees) This premium is auditable based on final audited payroll
- ITEM 8: FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:** WCPMC 2121, Endorsement No. 1,2,3,4.

**Notice:** The limits of indemnity shown below include various reinsurance and excess placements with specific limits which are inclusive and not excess of the limits stated above in Item 4.B. The limits of indemnity shown in Item 4.B. apply to all Members and all Covered Parties combined in the Core Tower for all losses as a result of any one occurrence. Each Coverage Provider listed on the Schedule of Limits and Coverage Providers provides coverage on its own form so there may be some coverage variances as a result of different policy language. Please carefully review all coverage forms.

Countersigned by: \_\_\_\_\_  
Trindel Insurance Fund  
Executive Director

Issue Date:



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**EXCESS WORKERS' COMPENSATION PROGRAM  
SCHEDULE OF LIMITS AND COVERAGE PROVIDERS**

**July 1, 2021 to June 30, 2022**

Notice: The limits of indemnity shown below include member self-insured retention, Trindel group pool, and reinsurance and excess placements with specific limits which are inclusive and not excess of the limits stated herein. The limits of indemnity shown below apply to all Members and all Covered Parties and for all losses as a result of any one occurrence. Each Coverage Provider listed below provides coverage on its own form so there may be some coverage variances as a result of different policy language. Please carefully review all coverage forms.

**Employer's Liability and Workers' Compensation**

- A) **Member Self Insured Retention:** \$1 - \$300,000 each member
- B) **Trindel Pool:** \$300,000 - \$1,000,000 for all labor classes except  
\$300,000 - \$2,000,000 for police and fire.
- C) **Excess:** \$1,000,000 to statutory limits all labor classes except  
\$2,000,000 to statutory limits for police and fire.  
Employers Liability per occurrence & aggregate \$1,000,000 /  
\$1,000,000  
With Safety National, Policy # \_\_\_\_\_





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## EXCESS WORKERS' COMPENSATION PROGRAM MEMORANDUM OF COVERAGE

Trindel Insurance Fund agrees with the Covered Party named in the Declarations made a part hereof, in consideration of the payment of the premium and subject to all of the terms of this Memorandum, as follows:

### COVERAGE AGREEMENTS

I. APPLICATION OF MEMORANDUM: This Memorandum applies to loss sustained by the Covered Party because of liability imposed upon the Covered Party by:

A. The Workers' Compensation Act of California or the Workers' Compensation Act of any state other than California, provided that California is the injured employee's normal state of employment or residence, or

B. "Employers' Liability"

on account of bodily injury or occupational disease sustained by employees of the Covered Party, while engaged in operations of the Covered Party, as a result of occurrences taking place during the coverage period and while this Memorandum is in force.

The indemnity afforded by this Memorandum under Coverage Agreement I.B. for loss because of liability imposed by "Employers' Liability" applies only as respects such operations in California including employees who are regularly engaged in such operations in California but who may be temporarily outside California in connection with such operations. As respects liability imposed by "Employers' Liability", Trindel Insurance Fund shall have no obligation to indemnify the Covered Party for damages imposed in any lawsuit brought in, or any judgment rendered by, any court outside of the United States of America, its territories or possession, or Canada, or to any action on such judgment wherever brought.

Trindel Insurance Fund's liability under Coverage Agreement I.B. includes bodily injury or occupational disease to the master and members of the crew of a vessel, subject to the following:

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- A. The bodily injury or occupational disease must occur in the territorial limits of, or the operation of a vessel sailing directly between the ports of the Continental United States of America, Alaska, Hawaii, or Canada.
- B. This coverage does not apply to:
1. Bodily injury or occupational disease covered by a protection and indemnity coverage or similar policy issued to or on behalf of the Covered Party
  2. The duty to provide transportation, wages, and maintenance.
- II. RETENTION AND INDEMNITY: As respects loss, which the Covered Party sustains as a result of each occurrence, the Covered Party shall retain loss in the amount of the Covered Party's Retention specified in the Declarations, and Trindel Insurance Fund agrees to indemnify the Covered Party against loss in excess of such Retention. Notwithstanding the application of this Memorandum to loss sustained by the Covered Party under Coverage Agreements I.A. or I.B., and regardless of the number of entities named in the Declarations, or otherwise qualifying as Covered Parties, the maximum amount of the Covered Party's Retention and the maximum limit of Trindel Insurance Fund indemnity hereunder shall not exceed the amounts specified in the Declarations.

### DEFINITIONS

Wherever used in this Memorandum, the following definition of terms shall apply:

- I. BODILY INJURY: The term bodily injury shall include death resulting therefrom but shall not include occupational disease.
- II. COMMUNICABLE DISEASE shall mean a disease caused by an infectious organism, which is transmissible from one source to another, directly or indirectly.
- III. COVERED PARTY shall include all entities named in the Declarations and any related "employer" as defined by any applicable Workers' Compensation Act.

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IV. EMPLOYEE: The term employee shall mean, as respects liability imposed upon the Covered Party by the Workers' Compensation Act of any applicable state, any person performing work which renders the Covered Party liable under any Workers' Compensation Act, provided such person's normal employment or residence is located in California, for bodily injury or occupational disease sustained by such person.

V. JOINT POWERS AGREEMENT or AGREEMENT shall mean the Joint Powers Agreement, as amended, creating Trindell Insurance Fund

VI. LOSS: The term loss shall mean only such amounts as are actually paid by the Covered Party as benefits under the applicable Workers' Compensation Act, or in payment of amounts imposed upon the Covered Party by "Employers' Liability", in settlement of claims for such benefits or damages, or satisfaction of awards or judgments for such benefits and damages, including court costs, interest upon awards or judgments, and allocated investigation, and legal expenses, but the term loss shall not include as expenses, salaries paid to employees of the Covered Party, nor fees and retainers paid to any service organization.

Notwithstanding the foregoing, loss does not include any amounts paid by the Covered Party as benefits, or in payment of amounts imposed upon the Covered Party by Employers' Liability, deriving solely from any Covered Party's enactment, resolution or other act establishing either a presumption of work-related illness or injury or any other expansion of benefits beyond those prescribed by the applicable Workers' Compensation Act. Despite any such enactment resolution or act, the Covered Party shall retain the burden of establishing loss within the Memorandum of Coverage.

VII. OCCUPATIONAL DISEASE: The term occupational disease shall include death resulting therefrom and cumulative injuries.

VIII. OCCURRENCE: (A) All bodily injury sustained by one or more employees, as a result of a single accident or event, shall be deemed to arise from a single occurrence. (B) Occupational disease sustained by each employee shall be deemed to arise from a separate occurrence, and the occurrence shall be deemed to take place on the last day of the last exposure, in the employment of the Covered Party, to conditions causing or aggravating the disease OR the date upon which the employee first suffered disability and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his or her employment with the Covered Party, whichever comes first. (C) As to any Covered Party who was a member during the July 1, 2019 to June 30, 2020 coverage period, all communicable disease sustained by one or more

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employees due to the outbreak of COVID-19 that began during the July 1, 2019 to June 30, 2020 coverage period shall be deemed to be a part of the same outbreak of a communicable disease that constitutes a single occurrence during the July 1, 2019 to June 30, 2020 coverage period. Otherwise, communicable disease shall be treated like any other occupational disease under Part (B) of this definition.

IX. **WORKERS' COMPENSATION ACT:** The term Workers' Compensation Act shall include any separate occupational disease act, but shall not include the non-occupational disability benefit provisions of any such act. The term Workers' Compensation Act includes the United States Longshore and Harbor Workers Compensation Act (33 USC Sections 901-950). Coverage for loss shall be limited, by amount and time of payment, to the benefits, which would be available under the Workers' Compensation Act of the state where the injured employee is normally employed, if that law applied.

### EXCLUSIONS

Liability under Coverage Agreement I.A. does not apply to:

- I. The Covered Party's obligation to pay salary in lieu of temporary disability benefits as required by Labor Code Section 4850 or the Covered Party's obligation to pay wages or salary as required by Education Code Sections 44984 and 45192, except to the extent that the Covered Party would be obligated to pay temporary disability benefits if Labor Code Section 4850 or Education Code Sections 44984 and 45192 did not apply;
- II. The Covered Party's obligations pursuant to Labor Code Section 4856;
- III. Punitive or Exemplary Damages, fines or penalties assessed against or imposed upon the Covered Party:
  - A. On account of bodily injury or occupational disease sustained by any employee; or
  - B. On account of the conduct of the Covered Party or any of its agents (i) in the investigation, trial or settlement of any claim for benefits under the applicable Workers' Compensation Act or for damages at law, or (ii) in failing to pay or delaying the payment of any such benefits or damages; or

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- C. On account of violation of any statute or regulation; or
- D. On account of bodily injury or occupational disease intentionally caused or aggravated by the Covered Party; or
- E. On account of bodily injury arising out of termination of employment; or
- F. On account of bodily injury arising out of the coercion, demotion, reassignment, discipline, defamation, harassment or humiliation of, or discrimination against any employee.

Liability under Coverage Agreement I.B. does not apply to:

- I. Liability assumed by the Covered Party under any contractual agreement;
- II. Bodily injury or occupational disease to an employee while employed in violation of law with the actual knowledge of the Covered Party;
- III. Any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
- IV. Bodily injury or occupational disease intentionally caused or aggravated by the Covered Party;
- V. Loss arising out of the coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee or any personnel practices, policies, acts or omissions;
- VI. Fines or penalties assessed against or imposed upon the Covered Party on account of violation of any statute or regulation;
- VII. Loss arising out of operations for which the Covered Party has violated or failed to comply with any Workers' Compensation Law;
- VIII. Loss arising out of operations for which the Covered Party has rejected any Workers' Compensation Law;
- IX. Punitive or Exemplary Damages, fines or penalties assessed against or imposed upon the Covered Party:
  - A. On account of bodily injury or occupational disease sustained by any employee; or

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- B. On account of the conduct of the Covered Party or any of its agents (i) in the investigation, trial or settlement of any claim for benefits under the applicable Workers' Compensation Act or for damages at law, or (ii) in failing to pay or delaying the payment of any such benefits or damages; or
- C. On account of violation of any statute or regulation; or
- D. On account of bodily injury or occupational disease intentionally caused or aggravated by the Covered Party; or
- E. On account of bodily injury arising out of termination of employment; or
- F. On account of bodily injury arising out of the coercion, demotion, reassignment, discipline, defamation, harassment or humiliation of, or discrimination against any employee.

### CONDITIONS

- I. **PREMIUMS:** Trindel Insurance Fund shall assess the premium for the Excess Workers' Compensation Program to participating Covered Parties. Such premiums shall be calculated in accordance with Article 14 of the Joint Powers Agreement.
- II. **VOLUNTEERS:** This Memorandum shall apply to loss on account of bodily injury or occupational disease sustained by volunteer workers while acting within the scope of their duties for or on behalf of the Covered Party, provided that, prior to the occurrence, the Governing Board of the Covered Party 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 Covered Party 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.
- III. **ADMINISTRATION AND REPORTING OF CLAIMS:** The Covered Party shall be responsible for the investigation, settlement, defense or appeal of any claim made or suit brought, or proceeding instituted against the Covered Party, and the Covered Party shall have the duty to give immediate notice to Trindel Insurance Fund upon learning of any of the following:

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- A. Any occurrence for which total incurred (paid to date plus remaining reserves) exceeds 50% of the Covered Party's Retention;
- B. Any occurrence which causes serious injury to two or more employees;
- C. Any occurrence which results in:
  - 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. A permanent total disability as defined in the Workers' Compensation Act of the State of California;
- D. The reopening of any case in which a further award might exceed 50% of the Covered Party's retention.

The Covered Party shall not make any voluntary settlement or voluntarily make a lump sum payment or commutation or one-time payment in lieu of periodic indemnity payments to employees or their dependents involving loss to Trindel Insurance Fund except with the prior written consent of Trindel Insurance Fund.

The Covered Party shall promptly forward to Trindel Insurance Fund any requested information on individual occurrences claims, or cases, and shall provide such information to Trindel Insurance Fund within thirty (30) days in a form satisfactory to Trindel Insurance Fund, including the amounts paid and the estimated future payments or outstanding reserves.

Trindel Insurance Fund, at its own election and expense, shall have the right to participate with the Covered Party in, or to assume in the name of the Covered Party, control over the investigation, settlement, defense, or appeal of any claim, suit, or proceeding, which might involve liability of Trindel Insurance Fund.

# Trindel

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IV. SERVICE ORGANIZATION: As a condition precedent to recovery hereunder, it is agreed that the Covered Party when permitted will engage one or more service organizations and/or in-house staff acceptable to Trindel Insurance Fund to perform on behalf of the Covered Party, and without charge to Trindel Insurance Fund, such services as may be acceptable to Trindel Insurance Fund during the currency of this Memorandum and until the final settlement of all claims arising out of occurrences which take place while this Memorandum is in force. The performance of such services shall not constitute any undertaking on behalf of Trindel Insurance Fund, nor relieve the Covered Party of any of its obligations under the terms of this Memorandum.

V. ASSISTANCE AND COOPERATION: In the event Trindel Insurance Fund elects to participate with the Covered Party in, or to assume in the name of the Covered Party, control over the investigation, defense, or appeal of any claim, suit, or proceeding, the Covered Party shall cooperate to the fullest extent with Trindel Insurance Fund and its representatives.

Upon Trindel Insurance Fund's request, the Covered Party shall direct its service organization and/or other representatives to cooperate with and assist Trindel Insurance Fund in all matters relative to such investigation, settlement, defense, or appeal.

If Trindel Insurance Fund elects to assume control as described above, Trindel Insurance Fund shall give written notice of such election to the Covered Party. Upon receipt of such written notice, the Covered Party shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than such immediate medical or other services at the time of injury as are required by the Workers' Compensation Act or such immediate medical and surgical relief as may become imperative at the time of an occurrence.

VI. LOSS PAYABLE: Trindel Insurance Fund shall pay any loss for which it may be liable under this Memorandum in the following manner:

A. As respects Coverage Agreements I.A., payment shall first be made by the Covered Party in accordance with the provisions of the Workers' Compensation Act, and Trindel Insurance Fund shall reimburse the Covered Party for such loss periodically, at intervals of not less than one (1) month, upon receipt from the Covered Party of proofs of payment which is acceptable to Trindel Insurance Fund in content and form.



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B. As respects Coverage Agreement I.B., liability under this Memorandum with respect to any occurrence shall not attach unless and until Trindel Insurance Fund's liability shall have been fixed and rendered certain either by final judgment against the Covered Party after actual trial or by written agreement of the Covered Party, the claimant, and Trindel Insurance Fund. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this Memorandum.

VII. PAYMENTS THE COVERED PARTY MUST MAKE: The Covered Party shall be responsible for any payments in excess of the benefits regularly provided by the Workers' Compensation Act, including but not limited to those required because:

- A. of serious and willful misconduct on the part of the Covered Party;
- B. the Covered Party knowingly employs an employee in violation of the law;
- C. the Covered Party fails to comply with a health or safety law or regulation; however, this does not apply to recommendations promulgated by the Joint Commission for Accreditation of Health;
- D. of discharge, coercion, or discrimination against any employee in violation of the Workers' Compensation Act;
- E. of claims relating to or in any way arising out of California Labor Code Section 132(a);
- F. of the unreasonable delay or failure to make payments of compensation by or on behalf of the Covered Party, including the legal fees associated with defending resulting claims or suits;
- G. the Covered Party violates or fails to comply with the Workers' Compensation Act.

If Trindel Insurance Fund makes any payments on behalf of the Covered Party in excess of the benefits regularly provided by the Workers' Compensation Act, the Covered Party will reimburse Trindel Insurance Fund promptly.

VIII. SUBROGATION: In the event of any payment under this Memorandum, Trindel Insurance Fund shall be subrogated, to the extent of such payment, to all the Covered Party's rights of recovery therefore, and the Covered Party shall execute all papers

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required and shall do everything that may be necessary to secure such rights. Any amount recovered as a result of such proceedings, together with all expenses necessary to the recovery of any such amount shall be apportioned as follows: Trindell Insurance Fund shall first be reimbursed to the extent of its actual payment hereunder. If any balance then remains, said balance shall be applied to reimburse the Covered Party. The expenses of all proceedings necessary to the recovery of such amount shall be apportioned between the Covered Party and Trindell Insurance Fund in the ratio of their respective recoveries as finally settled. If there should be no recovery in proceedings instituted solely on the initiative of Trindell Insurance Fund, the expenses thereof shall be borne by Trindell Insurance Fund.

However, in the event of any loss payment under this Memorandum for which you have waived the right of recovery in a written contract entered into prior to the loss, we hereby agree to also waive our right of recovery but only with respect to such loss.

IX. INSPECTION AND AUDIT: Trindell Insurance Fund shall be permitted but not obligated to inspect the Covered Party's operations at any time. Neither Trindell Insurance Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Covered Party or others to determine or warrant that such operations are safe or harmful, or are in compliance with any law, rule or regulation. Trindell Insurance Fund may examine and audit the Covered Party's books and records at any time during the currency hereof and until three (3) years after the final settlement of all claims or payments made on account of accident or disease occurring during the term of this Memorandum as far as such books and records relate to the subject matter of this Memorandum.

X. OTHER COVERAGE: If the Covered Party has other coverage against a loss covered by this Memorandum, Trindell Insurance Fund's coverage shall apply in excess of any other coverage.

XI. BANKRUPTCY AND INSOLVENCY: In the event of the bankruptcy or insolvency of the Covered Party or any entity comprising the Covered Party, Trindell Insurance Fund shall not be relieved thereby of the payment of any claims under this Memorandum because of such bankruptcy or insolvency.

XII. ASSIGNMENT: No assignment of the Covered Party's interest hereunder shall be binding upon Trindell Insurance Fund unless its consent is endorsed hereon.

# Trindel

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XIII. NOTICE OR PAYMENT: If more than one entity qualifies as a Covered Party under the definition of Covered Party or by endorsement to this Memorandum, all notices, stipulations and payments to or by the entity first named in the Declarations shall be binding upon all other Covered Parties.

XIV. CHANGE OR WAIVER: The terms of this Memorandum shall not be waived or changed except by endorsement issued to form a part hereof, signed by a duly authorized representative of Trindel Insurance Fund.

XV. CANCELLATION: This Memorandum may be canceled by the Covered Party only at the end of the Memorandum Period and pursuant to the provisions of the Joint Powers Agreement. Trindel Insurance Fund may cancel this agreement pursuant to the provisions of the Joint Powers Agreement or Trindel Insurance Fund's invoice and premium payment policy as established. This Memorandum does not apply to any loss as a result of any occurrences taking place at or after the effective date of any such cancellation. Any return of unearned premium in the event of cancellation by Trindel Insurance Fund shall be determined pursuant to the Joint Powers Agreement.

XVI. ACCEPTANCE: By acceptance of this Memorandum, the Covered Party agrees that each of the persons, firms or organizations named in the Declarations as the Covered Party is, or upon learning of the necessity therefore will become, qualified to operate with the permission of the proper authorities as a self-insurer under the Workers' Compensation Act of California; that the statements in the application for this Memorandum are the Covered Party's agreements and representations; that this Memorandum embodies all agreements existing between the Covered Party and Trindel Insurance Fund or any of its agents relating to this coverage; and that full compliance by the Covered Party with all the terms of this Memorandum is a condition precedent to Trindel Insurance Fund's liability hereunder.

XVII. CONFORMANCE WITH WORKERS' COMPENSATION ACT: Any term of this Memorandum which conflicts with any provision of the California Workers' Compensation Act is changed by this provision to conform to said law.

XVIII. CARVE OUTS: In the event a Covered Party is considering entering into a labor management agreement that establishes an alternative dispute resolution process pursuant to Labor Code Section 3201.7, with one or more bargaining unit(s), to amend any portion of the Workers' Compensation claims process, that proposed carve out agreement must be submitted to Trindel Insurance Fund for review prior to

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implementation. Failure to provide such documentation prior to implementation may result in the benefits provided under such carve out agreement, and any expenses related thereto, not being covered under the Memorandum of Coverage.

IN WITNESS WHEREOF, Trindel Insurance Fund has caused this Memorandum to be executed and attested, but this Memorandum shall not be valid unless countersigned by an authorized representative of Trindel Insurance Fund.



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ENDORSEMENT WCPMC-2021-1

DESIGNATION OF NAMED COVERED MEMBERS

Named Covered Parties of the declaration page amended to include the following Counties:

COUNTY OF:

ALPINE  
COLUSA  
DEL NORTE  
LASSEN  
MODOC  
MONO  
PLUMAS  
SAN BENITO  
SIERRA  
TRINITY  
SUTTER

Attached to and Forming Part of Memorandum No. **WCPMC-2021**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date

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### ENDORSEMENT WCPMC-2021-2

#### EXCESS WORKERS' COMPENSATION WAR AMENDATORY ENDORSEMENT

It is understood and agreed that this Memorandum shall not apply to loss directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of/ or amounting to an uprising, military or usurped power, regardless of any other cause or event contributing concurrently or in any sequence to the loss.

This Memorandum shall also not apply to loss directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

It is further agreed that nothing herein shall act to increase Trindel Insurance Fund's limit of indemnity.

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

Attached to and Forming Part of Memorandum No. **WCPMC-2021**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date

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ENDORSEMENT WCPMC-2021-3

EXCESS WORKERS' COMPENSATION  
LOSSES INVOLVING MULTIPLE MEMBERS

It is understood and agreed that this Memorandum shall apply, as follows, to losses involving multiple members:

Each member's final retention allocation will be calculated based on its pro rata percentage share of the "final loss valuation" times its retention specified in the Declarations of this Memorandum. The retention specified in the Declarations of this Memorandum will be applied until the "final loss valuation" is determined, as outlined below.

The total incurred for all members in a particular tower involved in the loss will be evaluated five years from the end of the coverage period in which the loss occurs, and will be used as the "final loss valuation" for determination of the final retention and limits allocations.

If the total loss for all members in a particular tower involved in a single occurrence exceeds the maximum Program limit of indemnity, allocation of liability for the excess amount will also be determined based on each member's pro rata percentage share of the "final loss valuation".

Attached to and Forming Part of Memorandum No. **WCPMC-2021**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date



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ENDORSEMENT WCPMC-2021-4

EXCESS WORKERS' COMPENSATION

OFF-DUTY, OUT-OF-STATE PEACE OFFICER INJURY (AB 1749) ENDORSEMENT

It is understood and agreed that this Memorandum shall not apply to bodily injury or occupational disease sustained by a peace officer who was at the time of the occurrence:

- a. off-duty,
- b. not acting under the immediate direction of his or her employer, and
- c. outside the state of California.

However, this exclusion shall not apply to bodily injury or occupation disease sustained by a peace officer under such circumstances if:

- a. the peace officer was engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace; and
- b. prior to the occurrence, the Governing Board of the Covered Party has adopted a resolution, as provided for in California Labor Code Section 3600.2, subdivision (b)(4), accepting liability for such injury under the Workers' Compensation Act.

"Peace officer" for purposes of this Endorsement has the definition stated in Section 50920 of the California Government Code.

It is further agreed that nothing herein shall act to increase Trindel Insurance Fund's limit of indemnity.

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

Attached to and Forming Part of Memorandum No. **WCPMC-2021**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date

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# Trindel

## Insurance Fund

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### GENERAL LIABILITY POOL MEMORANDUM OF COVERAGE DECLARATIONS

1. MEMORANDUM COVERAGE PROVIDER

TRINDEL INSURANCE FUND, 51 Arbuckle Drive, Weaverville, California 96093

2. MEMORANDUM COVERED PARTIES

Named Covered Parties as Per Endorsement GLPMOC-2021-1

3. MEMORANDUM COVERAGE PERIOD

July 1, 2021 (12:01 AM. PST) to June 30, 2022 (12:01 A.M. PST)

4. MEMORANDUM NUMBER

Trindel Insurance Fund GLPMOC - 2021

5. SELF-INSURED RETENTION

\$250,000

6. TRINDEL INSURANCE FUND GENERAL LIABILITY POOL LIMIT OF LIABILITY

\$1,000,000 Inclusive of self-insured retention in item 5

**Ultimate net loss** excess of the self-insured retention as the result of: any one **occurrence**, offense, **wrongful act** or any combination thereof, and annual aggregate as respects the **completed operations hazard**.

7. EXCESS INSURER

Public Risk Innovation Solutions and Management (PRISM) - Limit of Liability: \$25,000,000  
Inclusive of Trindel Insurance Fund General Liability Pool Limit of Liability in item 6, and self-insured retention in item 5. **Ultimate net loss** excess of the self-insured retention, and Trindel Insurance Fund General Liability Pool Limit of Liability, as the result of: any one **occurrence**, offense, **wrongful act** or any combination thereof, and annual aggregate as respects the **completed operations hazard**.

FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION

Memorandum of Coverage - GLPMOC-2021, Endorsement GLPMOC-2021 -1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

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GENERAL LIABILITY POOL  
MEMORANDUM OF COVERAGE  
Reference Number: GLPMOC-2021

ADOPTED \_\_\_\_\_

In consideration of the payment of the premium, if paid, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this General Liability Pool Program Memorandum of Coverage (Memorandum), Trindel Insurance Fund (**Fund**) agrees with the County (**Member**) as follows:

## **COVERAGE AGREEMENT**

The Fund will reimburse the **covered party** for **ultimate net loss** in excess of the self-insured retention hereinafter stated which the **covered party** shall become legally obligated to pay as **damages** by reason of liability imposed by law or liability assumed by contract because of:

Coverage A.                    **Bodily injury and property damage**

to which this Memorandum applies, caused by an **occurrence**;

Coverage B.                    **Personal injury**

to which this Memorandum applies, caused by an offense;

Coverage C.                    **Public officials errors and omissions liability** or

Coverage D.                    **Employment practices liability**

to which this Memorandum applies, caused by a **wrongful act**.

## **DEFENSE AND SETTLEMENT COSTS**

After the amount of the **covered party's** self-insured retention has been exhausted by payment of judgments, settlements and/or **defense fees and costs**, the Fund will reimburse the **covered party** for **excess defense fees and costs** the **covered party** incurs on covered losses. A final coverage determination will be made at the conclusion of a claim or **suit**, and if deemed not covered, then the associated defense costs will not be covered. The Fund's liability for **excess defense fees and costs** is subject to, and not in addition to, the Fund's limit of liability.

The Fund has no duty to defend under the Memorandum. The Fund; however, shall have the right, but not the duty, to associate itself, at its own cost, with the **covered party**, in the control, investigation, defense or appeal of any claim or **suit** which, in the opinion of the Fund, is or may be covered by the Memorandum. The **covered party** shall fully cooperate in all matters pertaining to such claim or **suit**.

No claim or **suit** shall be settled for an amount in excess of the **covered party's** self-insured retention without the prior written consent of the Fund.

## **SELF-INSURED RETENTION – THE FUND'S LIMIT OF LIABILITY**

Regardless of the number of (1) **covered parties** under this Memorandum, (2) persons or organizations who sustain injury or **damage**, (3) claims made, or (4) **suits** brought on account of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, the Fund's liability is limited as follows:

- A. With respect to **bodily injury, property damage, personal injury, public officials errors and omissions liability, and employment practices liability**, or any combination thereof, the Fund's liability shall be only for the **ultimate net loss** in excess of: (1) the self-insured retention as specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**, (2) collectible insurance available to a **covered party** also covering a loss hereunder, whether on a primary, excess or contingent basis; and then for an amount not exceeding the Fund's limit of liability specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**.
- B. For the purpose of determining the limit of the Fund's liability, as respects Coverages A and B, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence** under Coverage A or one offense under Coverage B. For the purpose of determining the limit of the Fund's liability, as respects Coverages C and D, all **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. There is no limit of the number of **occurrences** during the Memorandum Period for which claims may be made, except that the liability of the Fund arising out of the **Completed Operation Hazard** because of all **occurrences** shall not exceed the amount specified in the Declarations for each twelve months, commencing with the first day of the Memorandum Period.
- C. An **occurrence, offense, or wrongful act** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period, but no later than the Memorandum Period in effect at the filing of the claim or **suit**, whichever filing occurs first, and only that limit shall apply.

Notwithstanding the foregoing, if a claim or **suit** names more than one Member, a separate self-insured retention and a separate limit shall apply to each Member.

## **MEMORANDUM PERIOD, TERRITORY**

This Memorandum applies to **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, which occur anywhere in the world during the Memorandum Period.

## COVERED PARTY, COVERED PERSONS OR ENTITIES

- A. The Member;
- B. Those individuals, including volunteers, who were or are now elected or appointed officials of the Member, whether or not compensated, including members of the Member's governing body or any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member;
- C. All special districts **governed directly** by the Member's governing board and other districts or agencies which are named on the Memorandum;
- D. Past or present employees of the Member, including volunteers, or other covered entities, whether or not compensated, while acting for or on behalf of the Member or other covered entity;
- E. Notwithstanding sub-paragraphs (A) through (D) above, the determination and findings made in good faith by the Member pursuant to California Government Code Section 995.2 or any other similar provision of law shall be conclusive and binding on PRISM and all other persons for the purposes of coverage under the Memorandum; and
- F. 1937 Act Retirement Association of the Member County and the San Luis Obispo County Pension Trust.

## EXCLUSIONS

As respects **ultimate net loss**, this Memorandum does not apply:

- A. To any obligation for which any **covered party** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- B. To **bodily injury** to any employee of any **covered party** arising out of and in the course of his/her employment by such **covered party**; but this exclusion does not apply to **employment practices liability** or liability assumed by the **covered party** under any written contract;
- C. To injury to or destruction of (1) property owned by a **covered party**, or (2) property rented or leased to the **covered party** where the **covered party** has assumed liability for damage to or destruction of such property unless the **covered party** would have been liable in the absence of such assumption of liability, or (3) **aircraft** or **watercraft** in the care, custody or control of any **covered party**;
- D. As respects liability assumed by the **covered party** under any contract:
  1. To any claim, judgment or agreement from any arbitration proceeding wherein the Fund is not entitled to exercise with the **covered party**, the **covered party's** rights in the choice of arbitrators, and in the conduct of such proceedings; or
  2. To any obligation for the rendering or failure to render professional services for the **covered party**, if the indemnitee of the **covered party** is an architect, engineer or surveyor, arising out of:
    - a.) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications; or
    - b.) The giving or the failure to give directions or instructions by the indemnitee, the indemnitee's agents or employees, provided such giving or failure to give directions or instructions is the primary cause of **bodily injury** or **property damage**;
- E. To **bodily injury** and **property damage** arising out of any **covered party's** ownership, maintenance, loading or unloading, use or operation of any:
  1. **Aircraft**;
  2. Airfields;
  3. Runways;
  4. Hangars; or
  5. Buildings or other properties in connection with aviation activities.

This exclusion shall not apply; however, (1) to liability arising out of the ownership,

operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned or operated by the **covered party**; or (2) to **non-owned aircraft** operated by or on behalf of the **covered party**;

This exclusion does not apply to liability arising out of the ownership, operation, use, maintenance or entrustment to others of any **Unmanned Aerial Vehicle (UAV)** that is owned or operated by or on behalf of, or rented to, or loaned by, any **covered party**.

F. To liability arising out of the rendering of or failure to render the following medical professional services:

1. Medical, surgical, dental, x-ray or nursing, service or treatment, to any person, including the furnishing of food or beverages in connection therewith;
2. Service or treatment related to physical or mental health;
3. Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
4. Handling of or performing post-mortem examination on human bodies;
5. Service by any person as a member of a formal accreditation or similar professional board or committee of the **Member** or as a person charged with the duty of executing directives of any such board or committee; or
6. Any cosmetic or tonsorial service or treatment.

This exclusion shall not apply; however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or preventative health services related to: alcoholism, drug abuse, well child healthcare, California children services, immunizations, sexually transmitted diseases, tuberculosis, and family planning.

Notwithstanding such exceptions to this exclusion as are set forth immediately above; however, if any collectible insurance or other coverage, including but not limited to coverage afforded by any other Fund program, is available to the **covered party**, for liability for loss, **damage** or injury arising from the operation of any clinic or other established health care facility (whether on a primary, excess or contingent basis), any coverage afforded hereunder shall apply in excess of, and shall not contribute with, such insurance or other coverage; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations;

G. To liability, directly or indirectly, arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, whether grounded in federal or state law, 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**.

This exclusion does not apply to any aspect of inverse condemnation liability directly arising out of physical injury to, or destruction of, tangible property neither expected nor intended from the standpoint of the **covered party**; provided; however, this exception does not apply to any nonphysical consequential **damages** or to expert or attorney fees claimed by or awarded to a claimant or a plaintiff in a **suit**.

- H. To liability arising out of the failure to provide an adequate supply of fuel, water or electricity; however, this exclusion applies only if such failure to provide results from any decision by the Member's governing body with respect to (1) obtaining such fuel, water or electricity, or (2) allocating such fuel, water or electricity among the users thereof;
- I. To **property damage** arising out of **subsidence**;
- J. To liability for **bodily injury** or **property damage** arising out of any transit authority, transit system or public transportation system owned or operated by any **covered party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped person's transportation;
- K. To liability arising out of the hazardous properties of **nuclear material**;
- L. To liability imposed upon a **covered party** (or which is imputed to a **covered party**) under the "Employment Retirement Income Security Act of 1974" and any law amendatory thereof;
- M. To liability arising out of the rupture, bursting, overtopping, accidental discharge, or partial or complete failure of any **dam(s)**;
- N. To any liability for past, present, or future claims or **suits** arising in whole or in part, either directly or indirectly, out of the mining, manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos, whether the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever;
- O. To liability arising out of the **contamination** of the **environment** by **pollutants** introduced at any time into or upon the **environment**. This exclusion applies whether the **contamination** is introduced into the **environment** intentionally, accidentally, gradually or suddenly, and whether the **covered party** or any other person or organization is responsible for the **contamination**.



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

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

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

- a.) It was accidental and was neither expected nor intended by the **covered party**; and
- b.) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this Memorandum; and
- c.) Its commencement became known to the Member within ten days; and
- d.) Its commencement was reported in writing to PRISM within thirty-one days of becoming known to the Member; and
- e.) Reasonable effort was expended by the Member to terminate the situation as soon as conditions permitted.

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

- P. To injunctions, equitable relief, writs of mandate or any other form of relief other than the payment of **damages**.

However, this exclusion shall not apply to writs of mandate where **damages** are recoverable. Where this exception to the exclusion applies, coverage is afforded solely for those causes of action under which **damages** are recoverable.

- Q. Under Coverage C, **public officials errors and omissions liability**, to:

1. **Bodily injury, property damage, personal injury, or employment practices liability** as defined in the Memorandum;

2. Injury to, destruction or disappearance of any tangible property (including money) or the loss of use thereof; or
3. Failure to perform, or breach of, a contractual obligation.

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under Coverages A, B, and D of this Memorandum;

- R. To the refund of taxes, fees or assessments;
- S. To liability of a **covered party** arising in whole or in part, out of any **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- T. To liability arising out of the willful violation of a penal statute, code, or ordinance committed by or with the knowledge or consent of any **covered party** except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- U. To liability of any **covered party** arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids;
- V. To benefits payable under an employee benefit **plan** (whether the **plan** is voluntarily established by the **covered party** or mandated by statute) because of unlawful discrimination;
- W. To any liability arising out of or in connection with any claim for punitive, exemplary or multiples of **damages/penalties**;
- X. Under Coverage D, **employment practices liability**, to:
  1. Strikes and lockouts. This Memorandum does not apply to any claim or **suit** for loss arising out of a lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations;
  2. W.A.R.N. Act. This Memorandum does not apply to any claim or **suit** for loss arising out of the Workers Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law;
  3. Any cost incurred by the **covered party** to modify or purchase any building or property in order to make said building or property more accessible or accommodating to any disabled person; or
  4. **Property damage, personal injury, and public officials errors and omissions liability**;

- Y. To liability arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment or vehicle, including any motorized **watercraft**, while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice in preparation for any such contest or activity, if such contest or activity is sanctioned or permitted by a **covered party**, or (2) the operation or use of any snowmobile or trailer designed for use therewith when used for recreational, stunting or racing activities;

However, this exclusion shall not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any non-motorized **watercraft**.

For the purpose of this exclusion, "non-motorized **watercraft**" shall mean **watercraft** without power motors and **watercraft** with power motors, which are not in use during an event otherwise excluded hereunder;

- Z. Under Coverage A, **bodily injury** and **property damage**, to **personal injury** as defined in the Memorandum.

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under Coverage B.

- AA. To liability arising out of any breach of fiduciary duty with respect to a retirement **plan**. As used in this exclusion, breach of fiduciary duty means:

1. Violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by:

a.) The Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto; or

b.) The common or statutory law of the United States of America, or of any state or other jurisdiction therein; and

2. Negligent acts, errors or omissions in administration.

Administration as used herein shall mean:

a.) Giving counsel to participants and beneficiaries with respect to a **plan**; b.) Interpreting a **plan**;

c.) Providing or failing to provide benefits under a **plan**;

d.) Funding of a **plan**;

e.) Handling the records connected with a **plan**; and

f.) Effecting enrollment, termination or cancellation of participants under a plan.

## DEFINITIONS

The following definitions shall govern the meaning of the defined terms for the purposes of this Memorandum. The defined terms are set forth in **bold face** type where used herein.

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

**“Bodily injury”** means bodily harm, sickness, disability or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** includes mental injury, mental anguish, humiliation, shock or death if resulting directly from **bodily injury**. **Bodily injury** shall include care, loss of services, loss of consortium, or death resulting at any time from the **bodily injury**.

**“Completed operations hazard”** includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occur away from premises owned by or rented to the **covered party**. “Operations” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. When all operations to be performed by or on behalf of the **covered party** under the contract have been completed;
- B. When all operations to be performed by or on behalf of the **covered party** at the site of the operations have been completed; or
- C. When the portion of the work out of which the injury or **damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

Operations, which may require further service or maintenance work or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include liability arising out of:

- A. Operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- B. The existence of tools, uninstalled equipment or abandoned or unused materials.

**“Contamination”** includes any unclean, unsafe or unhealthful condition either actual or potential, which arises out of the presence in the **environment** of any **pollutant**, whether permanent or transient.

**“Covered party”** means any person or organization qualifying as a **covered party** under

the “COVERED PARTY, COVERED PERSONS OR ENTITIES” section of this Memorandum. The coverage afforded applies separately to each **covered party** against whom claim is made or **suit** is brought, except with respect to the limits of the Fund’s liability.

“**Dam**” means any artificial barrier together with appurtenant works which:

- A. Is twenty-five feet or more in height from the foot of a natural bed of stream or watercourse; or
- B. Has water impounding capacity of fifty acre feet or more.

Except that 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 monetary compensation resulting from: (a) **bodily injury** or **property damage**, (b) **personal injury**, (c) **public officials errors and omissions liability**, or (d) **employment practices liability**.

“**Defense Fees and Costs**” means

- a) Reasonable fees charged by an attorney, including expenses of a claims servicing organization the **covered party** has engaged, and all other reasonable fees and costs, including expenses attributable to the investigation, defense, administration or appeal of a claim or **suit** within the scope of coverage afforded by this Memorandum; and
- b) Third-party attorney’s fees and costs as authorized by law or under a contract, interest of any kind, and any other costs taxed against a **covered party**, attributable to a claim or **suit** within the scope of coverage afforded by this Memorandum.

**Defense Fees and Costs** shall not include any allocated claims expenses, salaries, or overhead incurred by employees of the **covered party**.

**Defense Fees and Costs** shall not include any fees, costs, or expenses incurred in connection with administrative proceedings where a claimant does not seek **damages**.

“**Employment practices liability**” means liability, except as related to **property damage**, **personal injury**, or **public officials errors and omissions liability**, arising out of an actual or alleged **wrongful act** in connection with any person’s prospective employment, actual employment or termination of employment by a **covered party**, including but not limited to wrongful termination, discrimination or sexual harassment.

“**Environment**” includes land, bodies of water, underground water or water table or aquifer, the atmosphere and any other natural feature of the earth, whether or not altered, developed or cultivated.

“**Excess defense fees and costs**” means **defense fees and costs** incurred by the **covered party** with the written consent of the Fund after the self-insured retention has been exhausted by payment of judgments, settlements and **defense fees and costs**.

**“Governed directly”** means the special district is governed by the Member’s governing board.

**“Non-owned aircraft”** means any **aircraft** other than:

- A. **Aircraft** owned in whole or in part by or registered in the name of the **covered party**;
- B. **Aircraft** having a seating capacity in excess of forty-five passenger seats; or
- C. **Aircraft** which are the subject of a lease or service agreement with the **covered party** for a period in excess of thirty days.

**“Nuclear material”** means source material, special nuclear material, or byproduct material. “Source material”, “special nuclear material”, and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

**“Occurrence”** means an accident, including injurious exposure to conditions, during the Memorandum Period, which results, in **bodily injury** or **property damage**, neither expected nor intended from the standpoint of the **covered party**. All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

**“Personal injury”** means injury, including consequential **bodily injury** or **property damage**, arising out of one or more of the following offenses: (a) false arrest, detention or imprisonment or malicious prosecution; (b) the publication or utterance of libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property, or publication or utterance in violation of rights of privacy; (c) wrongful entry or eviction, or other invasion of the right of private occupancy; (d) assault and battery, not committed by, at the direction of or with the consent of the **covered party**, unless committed or directed for the purpose of protecting persons or property from injury or death; (e) discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, age, nature of employment, or disability, but excluding unlawful discrimination intentionally committed by, at the direction of, or with consent of the **covered party**.

**“Plan”** means the written instrument, which sets forth specific benefits and eligibility under a named trust.

**“Pollutants”** include smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal **pollutants** and all other irritants or contaminants.

**“Property damage”** means (1) physical injury to, or destruction of, tangible property, which occurs during the Memorandum Period, including the loss of use thereof at any time resulting therefrom; 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 Memorandum Period.

**“Public officials errors and omissions liability”** means any actual or alleged error or

misstatement or act of omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the **covered parties** in the discharge of their duties with the public entity individually or collectively, or any matter claimed against them solely by reason of their being or having been **covered parties**.

**“Subsidence”** means any **property damage** directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, or any other movement of land or earth.

**“Suit”** means a civil or administrative proceeding, including arbitration and other alternative dispute resolution procedures, in which **damages**, because of **bodily injury, property damage, personal injury, public official’s errors and omissions liability, or employment practices liability** to which this coverage applies, are alleged.

**“Ultimate net loss”** means the total sum, which the **covered party** becomes legally liable to pay as **damages** by reason of judgments or by reason of settlements made with the written consent of the **covered party** and the Fund. **Excess defense fees and costs**, which are paid as a consequence of any **occurrence**, offense, or **wrongful act** covered hereunder are reimbursed by the Fund as part of the **ultimate net loss** as defined herein.

**“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, as defined by the Federal Aviation Administration (FAA) Small Unmanned Aircraft Regulations (Part 107).

**“Watercraft”** means a vehicle designed for the transport of persons or property principally on water.

**“Wrongful act”** means any actual or alleged negligent act, error or omission arising out of conduct or performance of the **covered party** in the performance of his or her or their duties or any actual or alleged act in connection with any person’s prospective employment, actual employment or termination of employment by a **covered party**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. **Wrongful acts** do not include willful acts committed by a **covered party**. Willful act means a deliberate act committed by a **covered party** with the intent to cause harm or with knowledge that injury is highly probable or substantially certain to result.

## CONDITIONS

### 1. PREMIUM

The premium designated in the Declarations as “risk premium” is a deposit premium only, and shall be adjusted annually in accordance with the provisions for “risk premium adjustments” as adopted by the Board of Directors of the Fund.

### 2. INSPECTION

The Fund shall be permitted, but not obligated to, inspect the **covered party's** property and operations at any time. Neither the Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **covered party** or others, to determine or warrant that such property or operations are safe. The Fund may examine the **covered party's** books and records at any time during the Memorandum Period and extensions thereof and within three years after the final termination of this Memorandum, as far as they relate to the subject matter of this coverage.

### 3. CLAIM REPORTING REQUIREMENTS

It is agreed that with respect to claim reporting, the **covered party**, in addition to the terms set forth in this Memorandum, must report an **occurrence**, offense, or **wrongful act** in which the amount incurred has reached 50 percent or more of their individual self-insured retention or \$500,000, whichever is lower. The **covered party** must also give the Fund immediate written notice for any claims or **suits** which the **covered party** becomes aware of that include injury of the following types:

- A. Death;
- B. Paralysis, paraplegia, or quadriplegia;
- C. Loss of eye(s) or limbs;
- D. Spinal cord or brain injury;
- E. Dismemberment or amputation;
- F. Sensory organ or nerve injury or neurological deficit;
- G. Serious burns;
- H. Severe scarring;
- I. Sexual assault or battery, including, but not limited to, rape, molestation, or sexual abuse;
- J. Substantial disability or disfigurement;
- K. Any class action;
- L. Any claim or **suit** in which PRISM is named as a defendant; or
- M. Any injury caused by lead.

### 4. COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, WRONGFUL ACT, CLAIM OR SUIT

- A. In the event of an **occurrence**, offense, or a **wrongful act** reasonably likely to involve the Fund, 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 injured and of available witnesses, shall be given by or for the **covered party** to



the Fund or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence**, offense, or **wrongful act**.

- B. If claim is made or **suit** is brought against the **covered party** which appears likely to involve the Fund, the **covered party** shall forward to the Fund every demand, notice, summons or other process received by him/her or his/her representative, immediately or within a reasonable amount of time after the individual responsible for coverage at the Member or his/her designee has knowledge of the claim or **suit**. The Member shall be responsible for the investigation, settlement, defense and appeal of any claims made, **suits** brought or proceeding instituted against the **covered party**. The Member shall also be responsible for timely periodic reporting developments in the claim, **suit**, or proceeding to the Fund sufficient to allow the Fund to fairly assess coverage under the Memorandum for the claim, **suit**, or proceeding at its conclusion.
- C. The **covered party** shall cooperate with the Fund and upon its request, assist in making settlements, in the conduct of **suits** and in enforcing any right to contribution, subrogation, or indemnity against any person or organization who may be liable to the **covered party** because of liability 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. The **covered party** shall not, except at its own costs, voluntarily make any payment, assume any obligation, or incur any expense; however, in the event that the amount of **ultimate net loss** becomes certain either through trial court judgment, arbitration award, or agreement among the **covered party**, the claimant and the Fund, then the **covered party** may pay the amount of **ultimate net loss** to the claimant to effect settlement and, upon submission of due proof thereof, the Fund shall indemnify the **covered party** for that part of such payment which is in excess of the self-insured retention.
- D. The Fund, at its option, shall have the right at its own expense to investigate any claim or **suit** and/or negotiate the settlement thereof, as it deems expedient, but the Fund shall not commit the **covered party** to any settlement without the **covered party's** consent. Should the claimant or plaintiff, as the case might be, tender a bona-fide, good faith settlement demand which when added to the incurred **defense fees and costs** is in excess of the **covered party's** retention, the payment of which would result in the full and final disposition of said claim or **suit**, then if such settlement demand is acceptable to either (1) the **covered party**, or (2) the Fund (but not both), then with regard to that settlement demand:
1. If such settlement demand is not acceptable to the Fund and the **covered party** tenders to the Fund an amount equal to the **covered party's** retention less incurred **defense fees and costs**, if any, the Fund shall then reimburse the **covered party** all sums which the **covered party** shall be legally obligated to pay as **damages**, including without limitation, the **covered party's** retention, plus future investigation, adjustment, appraisal, appeal, post judgment interest and **defense fees and costs**. However, in no event shall the Fund's agreement to reimburse the **covered party** exceed the limit

of liability as stated in the Declarations in addition to such investigation, adjustment, appraisal, appeal, post-judgment interest and **defense fees and costs**. Should the full and final disposition of the claim, including judgments, settlements, investigation, adjustment, appraisal, appeal, post-judgment interest and **defense fees and costs** be less than the amount tendered by the **covered party**, the unused portion of the tendered amount shall be returned to the **covered party** by the Fund.

2. If such settlement demand is not acceptable to the **covered party** and the Fund tenders to the **covered party** an amount equal to the difference between the **covered party's** retention, less incurred **defense fees and costs**, and said settlement demand, or the applicable amount specified in the limits of liability section of the Declarations, whichever is less, then the Fund's agreement to reimburse the **covered party** for the **ultimate net loss** hereunder shall be discharged and terminated and the Fund shall have no further obligations with respect thereto.

E. The Member shall be solely responsible for exhausting all collectible insurance and group coverage through another Joint Powers Authority, interlocal cooperative agreement, self-insurance, or other public entity group coverage available to a **covered party** also covering a loss hereunder, whether on a primary, excess or contingent basis.

## 5. APPEALS

When a **suit** has proceeded to trial court judgment and neither the **covered party** nor the Fund have invoked the provisions of Condition 4.D.1. or 2. above and the **covered party** elects not to appeal a judgment in excess of the self-insured retention, the Fund may elect to do so at its own expense, but in no event shall the liability of the Fund for **ultimate net loss** exceed the applicable amount specified in the limits of liability section of the Declarations inclusive of all **defense fees and costs** necessary and incident to such appeal.

## 6. ACTION AGAINST THE FUND

No action shall lie against the Fund with respect to any one **occurrence**, offense, or **wrongful act** unless, as a condition precedent thereto, the **covered party** shall have fully complied with all the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay an amount of **ultimate net loss** in excess of the self-insured retention shall have been finally determined either by judgment against the **covered party** after actual trial, arbitration award, or by written agreement of the **covered party**, the claimant and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement, shall thereafter be entitled to recover under this Memorandum the extent of the coverage afforded by this Memorandum. Nothing contained in this Memorandum shall give any person or organization any right to join the Fund as a co-defendant in any action against the **covered party** to determine the **covered party's** liability.

Bankruptcy or insolvency of the **covered party** shall not relieve the Fund of any of its obligations hereunder.

## 7. OTHER COVERAGE

If collectible insurance with an insurer is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such insurance; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for **damages** is available under this Memorandum and under PRISM's Medical Malpractice Program, it shall be conclusively presumed that the coverage afforded under the Medical Malpractice Program shall be primary and any coverage available under this Memorandum shall be excess only. For claims to which this provision applies, the exhaustion of PRISM's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

## 8. SUBROGATION

The Fund shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. The Fund shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Fund, it shall bear the expenses thereof.

## 9. CHANGES

Notice to the Fund or any agent of the Fund or knowledge possessed by the Fund or any agent of the Fund or by any other person shall not effect a waiver or change in any part of this Memorandum or stop the Fund from asserting any right under the terms of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by endorsement issued to form a part of this Memorandum.

## 10. ASSIGNMENT

Assignment of interest under this Memorandum shall not bind the Fund until its consent is endorsed hereon; if, however, the **covered party** shall die, such coverage as is afforded by this Memorandum shall apply (a) to the **covered party's** legal representative, as the **covered party**, but only while acting within the scope of his/her duties as such, and (b) with respect to the property of the **covered party**, to the person having proper temporary custody

thereof, as **covered party**, but only until the appointment and qualification of the legal representative.

#### 11. FUNDING OF MEMBER'S SELF-INSURED RETENTION

The Member agrees to maintain a loss fund in an amount to be determined by mutual agreement among the Member, the servicing organization designated in the Memorandum Declarations (if any), and the Fund for the payment of all claims and expenses falling within the Member's self-insured retention.

This fund shall be reimbursed as necessary to maintain a balance in accordance with the terms of the servicing agreement between the Member and the servicing organization (if any).

In the event of cancellation, expiration or revision of the contract between the Member and the servicing organization, the Member shall notify the Fund thereof within thirty days of the effective date of such cancellation, expiration or revision; but failure to notify the Fund shall not invalidate the coverage.

#### 12. CANCELLATION AND NON-RENEWAL

This Memorandum may be canceled by the **covered party** only at the end of the Memorandum Period and pursuant to the provisions of Article XVII of the Joint Powers Agreement. The Fund may cancel this agreement pursuant to the provisions of Article XVIII of the Joint Powers Agreement or the Fund's Invoicing and Payment Policy established by the Board of Directors. This Memorandum does not apply to any **occurrence**, offense, or **wrongful act** taking place at or after the effective date of any such cancellation.

#### 13. MEMBER

The Member named in the Declarations is authorized to act on behalf of all **covered parties** with respect to the giving and receiving of notice of cancellation and receiving any return premium that may become payable under this Memorandum. The Member named in the Declarations is responsible for the payment of all premiums but the other **covered parties** jointly and severally agree to make such premium payments in full if the Member fails to pay the amount due within thirty days after the Fund gives a written demand for payment to the Member.

#### 14. 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 Fund's liability.

## ENDORSEMENT GLPMOC - 2021-1

### DESIGNATION OF NAMED COVERED MEMBERS

Named Covered Parties of the declaration page amended to include the following Counties:

#### COUNTY OF:

ALPINE  
COLUSA  
DEL NORTE  
LASSEN  
MODOC  
MONO  
PLUMAS  
SAN BENITO  
SIERRA  
TRINITY  
SUTTER

#### ADDITIONAL COVERED PARTIES:

Alpine County First 5 Commission  
Alpine County Local Agency Formation Commission  
Colusa County Transit Agency Colusa  
County Transportation Commission  
Del Norte County Children and Families Commission  
Del Norte County Local Agency Formation Commission  
Del Norte Solid Waste Management Authority  
Lassen County Air Pollution Control District  
Lassen County Local Agency Formation Commission  
Lassen County Public Improvement Corporation  
Lassen County Transportation Commission  
Lassen Transit Service Agency  
Lassen – Modoc Flood Control and Water Conservation District  
County of Mono Economic Development Corporation  
Plumas County Child Abuse Prevention Council  
Plumas County Children and Families Commission (AKA: First 5 Plumas)  
Plumas County Local Agency Formation Commission  
San Benito County Local Agency Formation Commission  
Calpine Improvement Association  
Sierra County Historical Society  
Sierra County Local Agency Formation Commission  
Sierra County Transportation Commission

Sierraville Recreation Association  
Sutter County Children and Families First Commission  
Sutter County Local Agency Formation Commission  
Sutter-Yuba Behavioral Health Services  
Trindel Insurance Fund  
Trinity County Children and Families First Commission  
Trinity County Local Agency Formation Commission

**Attached to and Forming Part of Memorandum No. Trindel  
Insurance Fund GLPMOC-2021**

**Endorsement No.: GLPMOC-2021-1**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date

## ENDORSEMENT GLPMOC – 2021 - 2

### **ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT**

It is agreed that the “COVERED PARTY, COVERED PERSONS OR ENTITIES” section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

#### **Additional Covered Party:**

NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF COVERAGE

#### **As Respects:**

PER ATTACHED CERTIFICATE OF COVERAGE

It is further agreed that nothing herein shall act to increase the Fund’s limit of liability.

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

**Effective Date:**

**Memorandum No.:** GLPMOC - 2021

**Issued to:** ALL MEMBERS

**Issue Date:** June 29, 2021

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021- 3

### **VIOLATION OF COMMUNICATIONS OR INFORMATION LAW EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state, or local government, including any amendment or addition to such laws, which prohibits or limits the sending, transmitting or communicating of material or information by unsolicited sending of faxes, emails or other means of electronic transmission.

It is understood that to the extent any coverage may otherwise be available under this Memorandum or any of its endorsements, the provisions of this exclusion will supersede.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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Authorized Representative  
Trindel Insurance Fund



## ENDORSEMENT GLPMOC – 2021 - 4

### STRIP SEARCH EXCLUSION

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising out of or in connection with a strip search or body cavity search of a detained person or persons. As used in this exclusion, strip search means a search, which includes a physical or visual inspection of the underclothing, breasts, buttocks, or genitalia of the searched person. As used in this exclusion, body cavity search means a visual or physical inspection of the stomach, rectal cavity and/or vagina.

This exclusion shall apply only to strip search or body cavity search activity that is alleged in a class action. As used in this exclusion, “class action” means a certified class action or a **suit** that includes class action allegations; provided however, “class action” does not include any **suit** in which class certification has been denied or withdrawn.

It is further agreed that nothing herein shall act to increase the Fund’s limit of liability.

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

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 5

### ECONOMIC OR TRADE SANCTIONS

If coverage for a claim or **suit** under this Memorandum is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or **suit** will be null and void.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 6

### FAIR LABOR STANDARDS EXCLUSION

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising from the failure to pay wages earned by an employee of a **covered party**, or to payment of expenses incurred by an employee of a **covered party**, including but not limited to any claim or **suit** brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation, minimum wage, or payment of expenses. However, this exclusion does not apply to any claim or **suit** brought pursuant to the Equal Pay Act, 29 U.S.C.S. 206 (d).

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 7

### INVESTMENT RISK AMENDATORY ENDORSEMENT

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising, in any way, from any act, error, omission or breach of duty, whether in a **covered party's** capacity as a trustee or fiduciary or otherwise, in connection with any investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing any public funds.

However, subject to the special limits of liability set forth in subparagraphs A and B below, this exclusion shall not apply:

1. To liability for the loss of funds belonging to or held for the benefit of individuals or entities who are not **covered parties** hereunder, provided that the Fund's liability shall be limited as set forth in the special limits of liability, sub-paragraph (A) below.
2. To excess **defense fees and costs** incurred on account of the actual or alleged loss of public funds belonging to, or held for the benefit of, any **covered party**, provided that such claim or **suit** is not brought by or on behalf of a **covered party** hereunder, and further provided that the Fund's liability for such **excess defense fees and costs** shall be limited as set forth in the special limits of liability, sub-paragraph (B) below.

### Special Limits of Liability

Regardless of the number of (A) **covered parties** under this Memorandum, (B) persons or organizations who sustain injury or damage, or (C) claims made or **suits** brought within the meaning of subparagraphs (1) and (2) above, the Fund's liability under this endorsement shall be limited as follows:

- A. As respects liability arising under subparagraph (1) above, the Fund's liability, as a result of any one **wrongful act**, and in the aggregate, shall be only for **ultimate net loss** not exceeding \$1,000,000, less the self-insured retention, as specified on the Declarations.
- B. As respects liability arising under subparagraph (2) above, the Fund's liability, as a result of any one **wrongful act**, and in the aggregate, shall be limited to **excess defense costs**, not exceeding \$1,000,000, less the self-insured retention as specified on the Declarations.
- C. There is no limit to the number of **wrongful acts** during the Memorandum Period for which claims hereunder may be made, except that the liability of the Fund because of all **wrongful acts** during each Memorandum Period shall not exceed the difference between \$1,000,000 and the self-insured retention, as specified on the Declarations.

- D. For the purpose of determining the limit of the Fund's liability, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **wrongful act**.
- E. **Wrongful acts** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period, and only that limit shall apply.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

**Effective Date:**

**Memorandum No.:** GLPMOC -2021

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 8

### LEAD EXCLUSION-FIRST PARTY EXPENSES ENDORSEMENT

Any costs associated with the removal, remediation, encapsulation, abatement, monitoring, assessment or testing for the presence of lead or any materials containing lead, including but not limited to lead based paint, on, at, under or within any property owned, leased, rented or occupied by any **covered party**.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

**Effective Date:**

**Memorandum No.:** GLPMOC - 2021

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 9

### AMENDATORY ENDORSEMENT - WAIVER OF SUBROGATION

It is understood and agreed that Condition 8. SUBROGATION, of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

#### 8. SUBROGATION

The Fund shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. The Fund shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Fund, it shall bear the expenses thereof.

Notwithstanding the above, the Fund waives its rights of subrogation against any person or organization with whom the **covered party** has entered into a written agreement that includes a waiver of subrogation, but only if the agreement is in effect before the injury, damage or liability occurs.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

**Effective Date:**

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 10

### AMENDATORY ENDORSEMENT-PRIMARY/NON-CONTRIBUTORY

It is understood and agreed that Condition 7. OTHER COVERAGE of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

#### 7. OTHER COVERAGE

If collectible insurance with an insurer, or collectible group coverage through another joint powers authority, interlocal cooperative agreement, self-insurance or other public entity group coverage is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be: (a) in excess of, and shall not contribute with, such insurance; and (b) shall contribute only with any excess group coverage available through another joint powers authority according to a pro-rata, time on the risk basis. However, this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations. However, if the **covered party** has entered into a written agreement, prior to any loss event, in which it is agreed that this coverage shall be primary and/or non-contributory with respect to an additional **covered party** as specified in Endorsement U-1 of this Memorandum, then this coverage shall respond as primary and/or non-contributory, but shall be limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by the written agreement.

Notwithstanding the foregoing paragraph, if coverage for a claim or **suit** is available under this Memorandum and a memorandum of coverage issued in connection with PRISM's Medical Malpractice Program, this Memorandum shall afford primary coverage only where the gravamen of the claim or **suit** involves liability covered hereunder. PRISM staff will preliminarily assess the gravamen of the claim or **suit** and refer it to the committee responsible for the coverage believed to be applicable under this paragraph. Where that committee disputes PRISM's assessment of the gravamen of the claim or **suit** and rejects primary coverage, PRISM will thereafter refer the claim or **suit** to the committee responsible for the other applicable coverage. If that committee also rejects the primary coverage responsibility, the Executive Committee will determine which of PRISM's coverages is primary under this paragraph.

If the Member disputes the acceptance of primary coverage by a committee of PRISM responsible for the coverage, the Member may appeal that decision to the Executive Committee. Appeal must be requested within 60 days of the coverage acceptance by PRISM.

If the Member is not satisfied with the outcome of the Executive Committee appeal or the determination by the Executive Committee as to which of PRISM's coverages is primary where no committee agreed to accept primary responsibility, the Member may invoke Section (d) and (e) of Article 31 of PRISM's Joint Powers Agreement and proceed to arbitration and, if necessary, litigation. For purposes of this paragraph, the Member must request to invoke Article 31 dispute resolution process within 60 days of the Executive Committee's determination as to which of PRISM's coverages is primary.



Where a memorandum of coverage issued in connection with PRISM's Medical Malpractice Program is determined to afford primary coverage pursuant to this section, the exhaustion of PRISM's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

Coverage for the additional **covered party** under this endorsement is limited to the written contract or agreement as specified on the Certificate of Coverage and Endorsement U-1 of this Memorandum.

It is further agreed that nothing herein shall act to increase the Fund's limit of liability.

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

**Effective Date:**

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 11

### WRONGFUL INCARCERATION ENDORSEMENT

It is agreed this endorsement addresses the scope of coverage afforded, if any, for **wrongful incarceration claims**, as defined below, notwithstanding any provisions of the Memorandum to the contrary.

As respects **ultimate net loss**, this Memorandum does not apply to **wrongful incarceration claims** where the arrest and conviction occurred while the member was not a participant in one of the Fund's General Liability Programs.

For a **wrongful incarceration claim** that is afforded coverage, only the memorandum in effect at the time the claimant is found factually innocent or his or her conviction is set aside, whichever occurs earlier, shall be deemed to have been triggered and only that limit shall apply. Where the member is not participating in one of the Fund's General Liability Programs at the time the claimant is found factually innocent or his or her conviction is set aside, then only the last memorandum in effect prior thereto shall be deemed to have been triggered and only that limit shall apply.

As used herein, **wrongful incarceration claim** means a claim or suit against a **covered party** alleging **personal injury** arising out of the claimant being arrested and incarcerated for a crime of which he or she was later found factually innocent or which his or her conviction was later set aside.

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

**Effective Date:**

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Authorized Representative  
Trindel Insurance Fund

## ENDORSEMENT GLPMOC – 2021 - 12

### CYBER EXCLUSION

As respects ultimate net loss, this Memorandum does not apply:

To liability arising out of, or related to, either directly or indirectly, in whole or in part, by:

1. The unauthorized access, theft, alteration, corruption or disclosure of confidential, intellectual, proprietary or personal information and data, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.
2. The following non-exhaustive list of events regardless of any other cause or other event contributing concurrently or in any other sequence to the loss, liability, cost, damage, expense, fine or penalty:
  - a) Damage to or loss of data occurring on computer systems;
  - b) An unauthorized access of computer systems;
  - c) Computer malware on computer systems;
  - d) Human error affecting computer systems;
  - e) System failure occurring on computer systems;
  - f) A defect of computer systems;
  - g) Social engineering; or
  - h) Cyber extortion.

This exclusion applies even if loss, damages or expenses are claimed for notification costs, credit monitoring and repair expenses, forensic expenses, public relation expenses or any other loss, damage or expense incurred arising out of any access to or disclosure of any person's or organization's confidential, intellectual, proprietary or personal information and data.

However, this exclusion shall not apply to any liability for **bodily injury** or **property damage**.

It is further agreed that nothing herein shall act to increase the Funds's limit of liability.

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

**Effective Date:**

**Memorandum No.:** GLPMOC - 2021

**Issued to:** ALL MEMBERS

**Issue Date:** June 29, 2021

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Authorized Representative  
Trindel Insurance Fund

# Trindel

## Insurance Fund

*Alpine - Colusa - Del Norte - Lassen - Modoc - Mono - Plumas - San Benito - Sierra - Sutter - Trinity*

A Joint Powers Authority Established in 1980

[www.trindel.org](http://www.trindel.org)

### GENERAL LIABILITY POOL MEMORANDUM OF COVERAGE DECLARATIONS

1. MEMORANDUM COVERAGE PROVIDER:

TRINDEL INSURANCE FUND, 51 Arbuckle Drive, Weaverville, California 96093

2. COVERED PARTIES:

Named Covered Parties as Per Endorsement GLPMOC-2021-1

3. COVERAGE PERIOD: July 1, 2021 to June 30, 2022

4. MEMORANDUM NUMBER: Trindel Insurance Fund GLPMOC - 2021

5. SELF-INSURED RETENTION: \$250,000

6. TRINDEL INSURANCE FUND LIMIT OF LIABILITY: \$26,000,000 Inclusive of self-insured retention in item 5.

A. POOL LAYER: \$750,000

B. EXCESS LAYERS:

\$5,000,000 **ultimate net loss** excess of \$ 1,000,000 as the result of any one **occurrence**, offense, **wrongful act** or any combination thereof, and annual aggregate. Insured by Safety National.

\$5,000,000 **ultimate net loss** excess of \$6,000,000 as the result of any one **occurrence** offense, **wrongful act** or any combination thereof, and annual aggregate. Insured by Hallmark.

\$5,000,000 **ultimate net loss** excess of \$11,000,000 as the result of any one **occurrence** offense, **wrongful act** or any combination thereof, and annual aggregate. Insured by Berkley Public Entity.

\$5,000,000 **ultimate net loss** excess of \$16,000,000 as the result of any one **occurrence** offense, **wrongful act** or any combination thereof, and annual aggregate.

\$5,000,000 **ultimate net loss** excess of \$21,000,000 as the result of any one **occurrence** offense, **wrongful act** or any combination thereof, and annual aggregate.

**Sublimits:** Rented premises fire damage, \$1,500,000

7. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION

Memorandum of Coverage - GLPMOC-2021, Endorsement GLPMOC-2021 -1, 2.

*P.O. Box 2069 Weaverville, Calif. 96093 Phone: (530) 623-2322*



*Alpine - Colusa - Del Norte - Lassen - Modoc - Mono - Plumas - San Benito - Sierra - Sutter - Trinity*  
A Joint Powers Authority Established in 1980  
[www.trindell.org](http://www.trindell.org)

GENERAL LIABILITY POOL  
MEMORANDUM OF COVERAGE  
Reference Number: GLPMOC-2021

ADOPTED \_\_\_\_\_

**TRINDEL INSURANCE FUND**

**GENERAL LIABILITY MEMORANDUM OF COVERAGE**

**PROGRAM YEAR: 2021 – 2022**

This coverage document shall be in effect from July 1, 2021 through June 30, 2022. In consideration of the payment of the deposit premium, the *Authority* (Trindel Insurance Fund) agrees with the *covered parties* (Members) as follows:

**SECTION I - COVERAGES**

The *Authority* will pay up to the *limit of coverage* those sums for *ultimate net loss* in excess of the *retained limit* that the *covered parties* become legally obligated to pay as *damages* because of *bodily injury, property damage, personal injury, public officials errors and omissions* or *employment practices liability* as those terms are herein defined and to which this agreement 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 self-insurance pursuant to California Government Code section 990.8. This Memorandum is a negotiated agreement among the *members* of the *Authority* 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 *Authority*, acting through the Board of Directors in adopting this Memorandum. As the *Authority* is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide "Cumis" counsel to a *covered party* in disputed coverage situations under California Civil Code section 2860. Finally, failure to provide notice to a *covered party* of any coverage dispute shall not operate to waive any of the provisions of this Memorandum.

**SECTION II – DEFINITIONS**

- 1) **Aircraft** means a vehicle designed for the transport of persons or property principally in the air. Aircraft does not include Small Unmanned Aircraft as defined in 14 Code of Federal Regulations Section 107.3.
- 2) **Airport** means an area of land or water used or intended to be used for the landing and taking off of *aircraft*; including an appurtenant area used or intended to be used for *airport* buildings or other *airport* facilities or right of way; and *airport* buildings and facilities located in any of these areas. "*Airport*" includes a heliport.
- 3) **Authority** shall mean the California Joint Powers Risk Management Authority created by the JPA Agreement.
- 4) **Automobile** means a land motor vehicle, trailer or semi-trailer.
- 5) **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*.
- 6) **Care, Custody or Control Hazard** includes all *property damage* to: (1) property that the *covered party* rents or occupies; (2) premises the *covered party* sells, gives away or abandons, if the *property damage* arises out of any part of those premises; (3) property loaned to the *covered party*; and (4)

personal property in the care, custody or control of the *covered party*.

7) **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 liability that would be imposed by law in the absence of any contract or agreement, arising out of an *occurrence* to which this Agreement applies. Routine governmental operations include the *Covered Party's* lease of premises, easement or license agreement, use of facilities or equipment, mutual aid agreement, or other agreement approved by Authority staff in advance of the loss.

8) **Covered party** means:

(a) A *member entity* of Trindel Insurance Fund. 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 entity's direction or control, or for which the entity's board members sit as the governing body, except a hospital board or commission, regardless of how such body is denominated.

(b) A member of a joint powers authority that is a *member entity* 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 entity's direction or control, or for which the entity's board members sit as the governing body, except a hospital board or commission, regardless of how such body is denominated.

(c) Any person or entity identified as a *covered party* holding a certificate of coverage duly issued by the *Authority*, for *occurrences* during the coverage period identified in the certificate of coverage; if a particular activity is identified in the certificate of coverage, the person or entity is a *covered party* only for *occurrences* arising out of the described activity. *Coverage will not be broader than what the Member Entity is required to provide by the contract or agreement, nor for higher limits than required by the contract, nor broader than the coverage provided under this Memorandum.*

(d) Any person who is an official, *employee* or volunteer of a person or entity covered by (a), (b), or (c) herein, whether or not compensated, while acting in an official capacity for or on behalf of such person or entity, including while acting on any outside board at the direction of such person or entity, except a hospital board or commission, regardless of how such body is denominated. *Covered party* shall not include any person whose conduct is not within the course and scope of his or her employment or office with the *covered party* at the time of the act or acts that give rise to liability.

(e) With respect to any *automobile* owned or leased by a *covered party* (described in (a), (b) or (c) above), or loaned to or hired for use by or on behalf of the *covered party*, 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 *covered party*, but this protection does not apply to:

1) 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

2) The owner or any lessee, other than the *covered party*, of any *automobile* hired by or loaned to the *covered party* or to any agent or *employee* of such owner or lessee.

This agreement does not provide uninsured or underinsured motorist coverage.

(f) Notwithstanding sections (d) and (e) above, the defense and indemnity coverage afforded by this agreement to a past or present official, *employee* or volunteer of a *member entity* (described in (a) or (b) above) is not broader than the *member entity's* duty to defend and indemnify its official, *employee* or volunteer pursuant to California Government Code sections 815 to 815.3, 825 to 825.6, and 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 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 agreement shall not provide for any such defense or indemnity coverage to said official, *employee* or volunteer.

All immunities, defenses, rights and privileges afforded to a *member entity* under Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof, shall be afforded to the *Authority* to bar any defense or indemnity coverage under this agreement to that *member entity's* official, *employee* or volunteer.

(g) No person or entity is a *covered party* with respect to the conduct of any current or past partnership, joint venture or joint powers authority unless all members are *covered parties* under (a) or (b) herein. However, for any person (1) who is an official, *employee*, or volunteer of an entity covered by (a) or (b) herein, (2) who participates in the activities of any partnership, joint venture or joint powers authority (or any separate agency or entity created under any joint powers agreement by the named entity), and (3) who is acting for or on behalf of an entity covered by (a) or (b) herein at the time of the *occurrence*, then coverage is afforded by this agreement. 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 entity.

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

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

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to a levee on the bed of a natural lake the primary purpose of which levee is to control floodwater, no railroad fill or structure, and no road or highway fill or structure, no circular tank constructed of steel or concrete or both, 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.

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*.

The levee of an island adjacent to tidal waters in the Sacramento-San Joaquin Delta, as defined in California Water Code section 12220, even when used to impound water, shall not be considered a dam and the impoundment shall not be considered a reservoir if the maximum possible water storage elevation of the impounded water does not exceed four feet above mean seal level, as established by the United States Geological Survey 1929 datum.



No noncircular tank, constructed of steel or concrete, or both, that is constructed in a county of the third class by a public agency, under the supervision of a civil engineer registered in the state, that does not exceed 75 acre feet in capacity or 30 feet in height, and no barrier that is not across a stream channel, watercourse, or natural drainage area and that has the principal use as a sewage sludge drying facility shall be considered a *dam*.

Nor shall any impoundment constructed and utilized to hold treated water from a sewage treatment plant be considered a *dam*. Nor shall any wastewater treatment or storage pond exempted from state regulation and supervision by California Water Code section 6025.5 be considered a *dam*.

10) **Damages** means compensation in money recovered by a 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 *Authority*, if the fees, interest or costs arise from an *occurrence* to which this coverage applies.

*Damages* 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.

*Damages* shall not include those sums owed by a *covered party* to any employee or former employee as contract *damages*, any wages, salary, or benefit owed for work actually performed, or (whether prospective or retrospective) resulting from promotion or reinstatement, or any *damages* owing under an express contract of employment or an express obligation to make severance payments in the event of termination of employment.

*Damages* with respect to *employment practices liability* also shall not include amounts awarded under a labor grievance or arbitration pursuant to a collective bargaining agreement, nor sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct, or any non-monetary relief.

11) **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 fees. *Defense costs* shall include adjusting expenses of a third party claims administrator which are specifically identifiable with a claim subject to this coverage.

*Defense costs* shall not include:

(a) the office expenses, salaries of *employees* or officials, or expenses of the *covered party* or the *Authority*;

(b) any fee or expense relating to coverage issues or disputes between the *Authority* and any *covered party*; or

(c) attorney fees, interest on judgments, or costs awarded to a prevailing plaintiff against the *covered party*.

12) **Discrimination** means an act or failure to act with respect to any present or former *employee* or applicant for employment with regard to compensation, terms, conditions, privileges or opportunities of employment because of race, color, religion, age, sex, disability, pregnancy,

national origin, sexual orientation, or other protected category or characteristic established pursuant to any applicable federal, state or local statute or ordinance.

13) **Employee** means a person whose labor or services is engaged and directed by a *covered party* described in definition 8 (a), (b) or (c) above. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial or confidential position. *Employee* shall not include an independent contractor, volunteer or agent, and shall not include any person performing work pursuant to a court order in lieu of a fine or jail sentence.

14) **Employment Practices Liability** means liability arising from *discrimination, harassment, sexual harassment, retaliation* and/or *wrongful termination* claimed by an *employee, former employee* or applicant for employment of a *covered party*.

15) **Limit of coverage** shall be the amount of coverage stated in the declaration page or certificate of coverage 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. If the *covered parties* have different limits of coverage, the highest limit for any party found liable by a final judgment will apply.

16) **Marina** means facilities which include floating docks, boat berthing spaces, marine fueling operations, marine repair facilities, storage facilities for boats and other related marine materials, and other related facilities in which berthing spaces are leased or rented to members of the public for berthing of their private boats. *Marina* includes all of such facilities beyond locking gates, fences or barriers barring access to non-lessees and within waterways enclosed by any breakwater or similar structure, and any repair and storage facilities wherever located.

17) **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 first aid administered by *employees*, nor does it include advice or services rendered by a 911 emergency dispatcher.

18) **Member Entity** means a signatory to the JPA Agreement creating Trindel Insurance Fund.

19) **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.

20) **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*. *Property damage* that is 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, public officials errors and omissions liability* and *employment practices liability*, respectively: an offense described in the definitions of those terms in this coverage

agreement.

21) **Personal injury** means injury, other than *bodily injury*, arising out of one or more of the following offenses:

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

(b) wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;

(c) publication or utterance of material 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.

(d) *discrimination* or violation of civil rights.

(e) injury resulting from the use of reasonable force for the purpose of protecting persons or property.

22) **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, asbestos, lead and waste. Waste includes material 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.

23) **Property damage** means:

(a) physical injury to 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.

24) **Public officials errors and omissions** means any 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*.

25) **Retained limit** means the amount, identified in the applicable declaration or certificate of coverage, of *ultimate net loss* which the *member entity* must incur or become liable for before the *Authority* is obligated to make any 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. If the *covered parties* have different *retained limits*, the lowest *retained limit* of any party found liable will apply. Payment of the *retained limit* shall be apportioned among the *covered parties* in accordance with their proportionate shares of liability.

(b) 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 arbitration the *covered parties* will pay all costs of Trindel Insurance Fund in seeking such determination, including its attorney's fees in proportion to the court's determination of liability.

(c) 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 determining satisfaction of the *covered party's retained limit*.

(d) The amount which the *covered party* must "incur or become liable for" so that the *retained limit* is satisfied and this coverage attaches may include sums paid on behalf of the *covered party* by:

- 1) A commercial insurance carrier because of a policy purchased by the *covered party*;
- 2) A commercial insurance carrier because of an additional insured endorsement issued to the *covered party*;
- 3) A self-insurance pooling joint powers authority which provides coverage to the *covered party*; or
- 4) A party making payment because of a contractual indemnity agreement with the *covered party*.

In the event that one of the sources listed above provides indemnity coverage to the *covered party* and other defendant(s) in the claim or suit, only those sums paid on behalf of the *covered party* shall be used to satisfy the *retained limit*. If payment is for a settlement, payment will be allocated between the *covered party* and the other defendant(s) in accordance with their court-determined shares of liability, or in an allocation according to liability as agreed upon by the *covered party* and the *Authority*. In the event that the *covered party* and the *Authority* are unable to agree upon an allocation, the matter will be submitted binding arbitration for a determination of the respective shares of liability. This determination will be according to the procedures set forth in the California Code of Civil Procedure, each side to bear its own costs.

26) **Retaliation** means any adverse employment action taken against a present or former employee because the employee engaged in legally protected conduct.

27) **Sexual harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that: (1) are made a condition of employment; and/or (2) are used as a basis for employment decisions; and/or (3) create a work environment that is intimidating, hostile or offensive, or interfere with performance.

28) **Ultimate net loss** means the total of all *defense costs* incurred by the *covered parties* and all *damages* for which the *covered parties* are liable either by adjudication or by compromise with the written consent of the *Authority*, arising from an *occurrence* to which this coverage applies. *Ultimate net loss* also does not include attorney's fees or costs awarded to the prevailing party in a suit.

29) **Wrongful termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment.

### **SECTION III - DEFENSE AND SETTLEMENT**

The *Authority* shall have no duty to assume charge of investigation or defense of any claim. However, the *Authority*, at its own expense, shall have the right to assume the control of the negotiation, investigation, defense, appeal or settlement of any claim which the *Authority* determines, in its sole discretion, to have a reasonable possibility of resulting in an *ultimate net loss* in excess of the applicable *retained limit*. The *covered party* shall fully cooperate in all matters pertaining to such claim or proceeding.

If the *Authority* assumes the control of the handling of a claim, the *covered parties* shall be obligated to pay at the direction of the *Authority* any sum necessary for the settlement of a claim, or to satisfy liability imposed by law, up to the applicable *retained limit*.

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.

In the alternative, if a settlement demand acceptable to the *Authority* is not acceptable to the *covered party*, and the *Authority* tenders to the *covered party* an amount equal to the difference between the remainder of the *retained limit* and said settlement demand (or up to the applicable Limit of Coverage, whichever is less), then the *Authority's* agreement to indemnify or to pay on behalf of the *covered party* for the *ultimate net loss* hereunder shall be discharged and terminated, and the *Authority* shall have no further obligations with respect thereto.

#### **SECTION IV - THE AUTHORITY'S LIMIT OF COVERAGE**

The *limit of coverage* is the most the *Authority* will pay for *ultimate net loss* arising out of any *occurrence*, and the amount payable for *ultimate net loss* under this agreement shall be reduced by the amount of the *retained limit*. (For example, if the *covered party* has a \$26,000,000 *limit of coverage* and a \$250,000 *retained limit*, the *Authority* will pay not more than \$25,750,000 after exhaustion of the *retained limit*.) 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.

For any person or entity that is a covered party under Definition 8(c), or 8(c) and (d), pursuant to a certificate of coverage duly issued by the Authority, the limit of coverage will be the lower of: (1) the Limit stated in the Declarations page for the Member Entity; (2) any limit stated in the Additional Covered Party certificate or (3) the amount required to be provided by contract or agreement with the Member Entity.

Where this Agreement, or an endorsement or declaration, lists a "sublimit," that sublimit operates as the *limit of coverage*. (For example, if the *covered party* has a \$2,000,000 sublimit and a \$1,000,000 *retained limit*, the *Authority* will pay not more than \$1,000,000 after exhaustion of the *retained limit*.)

#### **SECTION V - COVERAGE PERIOD AND TERRITORY**

This agreement applies to *bodily injury, personal injury, property damage, public officials errors and omissions* and *employment practices liability* which occurs anywhere in the world during the coverage period identified in the applicable declaration or certificate of coverage.

#### **SECTION VI – EXCLUSIONS**

(Captions provided for the exclusions are descriptive only and do not serve to either expand or limit coverage.)

This agreement does not apply to:

##### **1) Aircraft**

Claims arising out of the ownership, operation, use, maintenance or entrustment to others of any *aircraft* by a *covered party*. "Ownership, operation, use or maintenance" as used herein does not include static displays of *aircraft* in a park or museum setting.

##### **2) Airports**

Claims arising out of ownership, maintenance, management, supervision or the condition of any *airport*. However, this exclusion does not apply to *public officials errors and omissions* or *employment practices liability* coverage arising from the ownership, maintenance, management, supervision or the condition of any *airport*.

### 3) **Airshows**

Claims arising out of any air show sponsored or controlled by the *covered party*.

### 4) **Bid Specifications/Cost Overruns**

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

(b) Mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided; this exclusion extends to such claims however denominated, including claims of breach of oral or written contract, third-party beneficiary claims, quantum meruit claims, and/or open account claims.

### 5) **Contractual Obligations**

Claims arising out of:

(a) a failure to enter into a contract, or failure to perform or breach of a contractual obligation; or

(b) *bodily injury* or *property damage* for which the *covered party* is obligated to pay *damages* by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for *damages*:

1) assumed in a contract or agreement that is a *covered insurance contract*, provided the *bodily injury* or *property damage* occurs subsequent to the execution of the contract or agreement; or

2) that the *covered party* would have in the absence of the contract or agreement.

Notwithstanding this exclusion, the Executive Director (or Board President or Vice President, in the absence of the Executive Director) is granted authority to approve settlements involving promises to indemnify a co-defendant as part of the settlement. Any funds recovered from a co-defendant under such an agreement must be applied to *ultimate net loss* in addition to the *retained limit* before Trindel Insurance Fund coverage is triggered.

### 6) **Damages Other Than Money**

*Ultimate net loss* arising out of relief, or redress, in any form other than money *damages*.

### 7) **Defamation**

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.

### 8) **Employment Liability**

*Bodily injury* to:

(a) an *employee* of the *covered party* arising out of and in the course of:

1) employment by the *covered party*; or

2) performing duties related to the conduct of the *covered party's* business.

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

This exclusion applies to any obligation to share *damages* with or repay someone else who must pay *damages* because of the injury except under a *covered insurance contract*.

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

#### 9) **Employment Practices – Labor Disputes**

Under *employment practices liability*, to any potential or actual liability arising out of a lockout, strike, picket line, replacement or other similar action in connection with labor disputes or labor negotiations; or any liability arising from the failure to pay wages earned by an employee of a Covered Party, including but not limited to any claim or suit brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation or minimum wage.

#### 10) **Employment Practices – Workers' Adjustment and Retraining**

Under *employment practices liability*, to any liability arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law.

#### 11) **Elected Officials – Employees - Restitution**

Claims by any *covered party* against its own past or present elected or appointed officials, *employees* or volunteers, where such claim seeks *damages* or restitution payable to the *covered party*.

#### 12) **Employee Benefit Plans**

Benefits payable under any *employee* benefit plan (whether the plan is voluntarily established by the *covered party* or mandated by statute) because of unlawful *discrimination*.

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

#### 13) **Employment Benefits**

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

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

#### 14) **ERISA**

Claims arising out of the Employee Retirement Income Security Act of 1974 or any law amendatory thereof, or any similar law or liability arising out of fiduciary activities as respects *employee* benefits plans.

#### 15) **Failure to Supply**

Claims arising out of the failure to supply or provide an adequate supply of gas, water, electricity, storm drainage or sewage capacity when such failure is a result of the inadequacy of the *covered party's* facilities to supply or produce sufficient gas, water, electricity, storm drainage or sewage capacity to meet the demand. This exclusion does not apply if the failure to supply results from direct and immediate accidental damage to tangible property owned or used by any *covered party* to procure, produce, process or transmit the gas, water, electricity, storm drainage or sewage.

#### 16) **Fines, Penalties, Punitive Damages**

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*.

#### 17) **Hospitals**

Claims arising out of ownership, maintenance, management, supervision or the condition of any hospital.

#### 19) **Intentional Conduct**

Claims for injury or *damages* caused by intentional or criminal 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*.

#### 20) **Jumping/Propelling Activities**

Claims arising out of bungee jumping or propelling activities sponsored, controlled or authorized by a *covered party*.

#### 21) **Land Use**

Claims arising out of or in connection with land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called, 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*. Land use planning and land use regulation include the approval or disapproval of any land-use entitlement including but not limited to general plan amendments, zoning amendments, variances, permits, tract maps, development agreements, owner-participation agreements, or disposition-and-development agreements; the approval or disapproval of any rent control ordinance, outdoor advertising ordinance, or adult bookstore ordinance, taxi ordinance; or the approval or disapproval of the operation of a marijuana dispensary whether medical, recreational or otherwise, any ordinances governing that activity, and any and all enforcement efforts. However, property damage arising out of claim under the principles of inverse condemnation, by whatever name called, shall not be excluded under coverage for property damage.



## 22) **Marinas**

Claims arising out of:

(a) or connected with *property damage* to private vessels or craft while present at or in a *marina* owned, operated or controlled by a *covered party* whether or not the vessel or craft is docked, moored or underway; or

(b) *bodily injury* or *property damage* occurring on, in or about any boat owned or operated by the *covered party* (whether such vessel is being operated or has broken away from any dock or mooring) while present at or in a *marina* owned, operated or controlled by a *covered party*.

## 23) **Medical Malpractice**

Claims arising out of any professional *medical malpractice* (1) committed by a doctor, osteopath, chiropractor, dentist or veterinarian, or (2) 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. This exclusion shall not apply, however, to any injury arising out of emergency medical services rendered or which should have been rendered to any person or persons during the coverage period by any duly certified emergency medical technician, paramedic, or nurse who is employed by or acting on behalf of any *member entity* to provide such services, but is not employed at a hospital, clinic or nursing home facility.

## 24) **Nuclear Material**

Claims arising out of the hazardous properties of *nuclear material*.

## 25) **Pollution**

Claims which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants* at any time.

(a) This exclusion does not apply to firefighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or the discharge of *pollutants* for the purpose of controlling a fire; or to police use of mace, oleoresin capsicum (O.C.), pepper gas or tear gas; or to weed abatement or tree spraying.

(b) This exclusion does not apply to claims arising from sudden and accidental sewer backups into a home or business, but this extension of coverage does not apply to backups, overflow or runoff into public waterways.

(c) This exclusion does not apply to claims arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine and other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or wastewater treatment or in water used in swimming pools, wading pools or decorative fountains.

(d) This exclusion does not apply to claims arising from materials being collected as part of any drop-off or curbside recycling program implemented and operated by the *covered party*; if the materials have not been stored by the *covered party* or *parties* for a continuous period exceeding ninety (90) days.

(e) This exclusion does not apply to sudden and accidental discharges of *pollutants* occurring during the transportation or deposit of materials as part of garbage collection activities. However, the exclusion does apply after *pollutants* have been deposited at a landfill or garbage dump.

(f) This exclusion does not apply to *bodily injury* or *property damage* arising from activities of the *covered party* to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*, but this exception will not apply to *bodily injury* or *property damage* caused by *pollutants* on or arising from premises, equipment or locations under the control of the *covered party*.

(g) This exclusion does not apply to sudden and accidental discharges of *pollutants* from premises owned or controlled by a *Covered Party* as described in Definition 8(a) or (b) if the discharge is discovered within ten (10) days of the *occurrence* and reported to the *Authority* within thirty (30) days of discovery.

As used in paragraphs (b), (c), (e) and (g) above, "sudden" means abrupt or immediate, and occurring within a period not exceeding twenty-four (24) hours; "accidental" means causing harm neither expected nor intended by a *covered party*.

Notwithstanding what is stated in the applicable declarations, any liability arising out of the actual, alleged or threatened exposure to asbestos or lead, which is covered by an exception within this exclusion, shall be subject to a sublimit of \$5,000,000.

## 26) **Pollution Clean Up**

Any loss, cost or expense, including *defense costs*, arising out of any:

(a) request, demand or order that any *covered party* or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*; or

(b) claim or suit by or on behalf of a governmental authority for *damages* because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of *pollutants*; or

(c) claim or suit brought under the Clean Water Act, including state or federal enforcement actions under 33 U.S. Code sections 1319, et seq.; citizen suits brought under sections 1365, et seq.; or state enforcement actions brought under the California Water Code sections 13385, et seq.; or claims or suits brought under any similar law relating to discharge permit violations.

## 27) **Property of a Covered Party**

*Property damage* to:

(a) property owned by the *covered party*;

(b) property rented to or leased to 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; or

(c) *aircraft* or *watercraft* in the *covered party's* care, custody or control.

## 28) **Public Officials Errors & Omissions – Fiduciary Liability**

Under *public officials errors and omissions* coverage, claims (including emotional distress claims) arising from the *covered party's* activities in a fiduciary capacity including but not limited to those with respect to: (a) property, including related operations, in which the *covered party* is acting in a fiduciary or representative capacity; (b) a pension, welfare, profit sharing, mutual or investment trust fund or trust, benefit plan or similar activity in a fiduciary capacity; (c) the issuance, management of proceeds or repayment of bonds, notes or other debt instruments by any insured or any agent acting on behalf of such insured; or (d) the purchase, transfer or sale of any securities by any insured or agent acting on behalf of such insured.

## 29) **Public Officials Errors & Omissions – Bodily Injury or Property Damage**

Under *public officials errors and omissions* coverage, *bodily injury, personal injury*, or physical injury to tangible property, including all resulting loss of use of that property.

## 30) **Racing Contests**

Claims arising out of *automobile* or motorcycle drag racing, speed racing, or similar speed contests sponsored, controlled or participated in by a *covered party*.

## 31) **Reasonable Accommodation**

Any expense or cost incurred by a *covered party* arising from reasonable accommodation of any disabled person, including any *employee*.

## 32) **Refunds/Restitution**

Refund or restitution of taxes, fees or assessments.

## 33) **Reimbursement of Money**

Claims for refund, reimbursement or repayment of any monies to which a *covered party* was not legally entitled.

## 34) **Transit Authorities**

Claims arising out of the operation of vehicles by or on behalf of any transit authority, transit system, or public transportation system owned or operated by a *covered party*, unless the vehicles are owned or leased by the *covered party* and driven, maintained, and supervised by *employees* of the *covered party*. However, this exclusion does not apply to *public officials' errors and omissions* coverage arising from the operation of any transit authority, transit system, or public transportation system.

## 35) **Tumbling Devices**

Claims arising out of the ownership, maintenance or use of any trampoline or any other rebound tumbling device.

## 36) **Uninsured/Underinsured Motorists**

Uninsured or underinsured motorist coverage.

### 37) **Watercraft**

For any motorized watercraft owned, operated, rented, or loaned to a *covered party*, to (1) *bodily injury* or *property damage* arising out of the use of watercraft unless such use is by an entity *employee* acting within the course and scope of employment; and (2) to watercraft being used to carry persons or property for a charge. Charge, as used herein, includes any payment or fee, including a donation. Use includes operation and loading or unloading. Use does not include static displays of watercraft.

### 38) **Willful Violation of Statute**

Claims arising out of the willful violation of a statute or ordinance committed by the *covered party* or with its consent.

## **SECTION VII – CONDITIONS**

### **1) Covered party's Duties in the Event of Occurrence, Claim or Suit**

(a) The *covered party* shall notify the *Authority* within 30 days upon receipt of notice of a claim, or the setting 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 USC 1983 cases in which a complaint has been served and the plaintiff is represented by legal counsel or with reserves of fifty percent or more of the *retained limit*, or regardless of reserve, any claim involving:

- 1) one or more fatalities;
- 2) loss of a limb;
- 3) loss of use of any sensory organ;
- 4) quadriplegia or paraplegia;
- 5) third degree burns involving ten percent or more of the body;
- 6) serious facial disfigurement;
- 7) paralysis; or
- 8) closed head injuries.

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 by or for the *covered party* to the *Authority* or any of its authorized agents as soon as possible.

(b) The *covered party* shall notify the *Authority* within 30 days upon receipt of lawsuit containing allegations involving *employment practices liability*.

(c) If claim is made or suit is brought against the *covered party* and such claim or suit falls within the description in paragraph (a) above, the *covered party* shall be obligated to forward to the *Authority* every demand, notice, summons or other process received by it or its representative.

(d) The *covered party* shall cooperate with the *Authority* 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 Agreement; and the *covered party* shall attend hearings and trials and assist in

securing and giving evidence and obtaining the attendance of witnesses.

(e) The *Authority* shall be entitled to complete access to 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 *Authority*, and to provide the *Authority* with simultaneous copies of all correspondence provided to the *covered party* by its defense attorneys and/or agents.

## 2) **Action Against Authority/Subrogation**

(a) No action shall lie against the *Authority* with respect to the coverages and related provisions defined in the Memorandum of Coverage (Memorandum) for the *Automobile/General Liability* Program unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Memorandum, nor until the amount of the *covered party's* obligation 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 recover under said Memorandum to the extent of the coverage afforded by said Memorandum. No person or entity shall have any right under said Memorandum to join the *Authority* as a party to any action against the *covered party* to determine the *covered party's* liability, nor shall the *Authority* be impleaded by the *covered party* or its legal representative.

(b) The *Authority* shall be subrogated to the extent of any payment hereunder (including all *ultimate net loss* incurred) to all the *covered party's* rights of recovery thereof, and the *covered party* shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amount so recovered shall be apportioned as follows:

1) The *Authority* shall be reimbursed first to the extent of its actual payment thereunder. If any balance then remains unpaid, it shall be applied to reimburse the *covered party*.

2) The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted by the *Authority*, it shall bear the expenses thereof.

## 3) **Bankruptcy or Insolvency**

Bankruptcy or insolvency of the *covered party* shall not relieve the *Authority* of any of its obligations hereunder.

## 4) **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 designed to cover the operator of an *automobile* or *watercraft*. 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.

## 5) **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 *Authority's* liability or the *retained limit* applicable per *occurrence*.

#### 6) **Accumulation of Limits**

An *occurrence* which extends 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.

#### 7) **Termination**

This Agreement may be terminated at any time in accordance with the Bylaws of the *Authority*.

#### 8) **Changes**

Notice to any agent or knowledge possessed by any agent of the *Authority* or by any other person shall not affect 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.

#### 9) **Reduction of Limits**

In the event of reduction or exhaustion of the *retained limit* applicable to the *covered party* by reason of losses paid thereunder, this coverage shall (a) in the event of reduction pay the excess of the reduced underlying *retained limit*, or (b) in the event of exhaustion continue in force as underlying coverage. In no event shall the coverage apply until the *retained limit* is exhausted through the payment of *defense costs*, judgments and/or settlements to which the *Authority* has agreed.

#### 10) **Coverage Disputes**

The Executive Director shall make the initial determination whether to deny coverage on all or part of a claim, or to reserve the *Authority's* right to deny coverage on all or part of a claim, if a loss subsequently exceeds the *retained limit*.

A decision by the Executive Director to deny coverage can be appealed to the Board of Directors. Notice of such appeal shall be submitted in writing within thirty (30) calendar days of the date of the Executive Director's written notice of decision.

The appeal shall be considered by the Board of Directors at the next regular or special meeting following receipt of the written appeal; if the appeal is received too late for inclusion in the agenda packet, it can be postponed to the next following Board meeting. The Executive Director and the *covered party* will have the right to submit written materials and present oral argument to the Board, subject to reasonable time constraints.

Within sixty (60) days following any denial of coverage by the Board, the *covered party* may request, in writing, that the *Authority* initiate a declaratory relief action in Superior Court for a determination of the coverage matter. The declaratory relief action shall be initiated in the County of the *Authority's* home office, unless the *Authority* and *covered party* agree on a different venue.

Any determination by the Executive Committee, and by the Board of Directors if the matter is appealed to the Board of Directors, whether a Covered Party has breached parts (1) (a) or (b) of these Conditions concerning notice of a claim, and any determination whether the *Authority* has been prejudiced by that breach, so that this coverage does not apply, comes within the sole discretion of the Executive Committee and Board of Directors, respectively. Such determinations shall be conclusive, final and binding and shall not be the subject of any further review, whether by

declaratory relief action or otherwise.

Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Section I – Coverages, plus interest at the same rate as the Authority earned on investments for the time period involved.

## 11) **Arbitration of Coverage Disputes**

### (a) **Coverage Determinations**

Determinations regarding allocation of funds spent in settlement or defense of claims, for purposes of determining satisfaction of the Retained Limit under Definition 25, shall be subject to binding arbitration as set forth below. Additionally, the *Authority* and *covered parties* by mutual agreement may agree to submit any other coverage dispute to binding arbitration in the alternative to the procedure set forth in Section VII (10) above.

#### 1) **Selection of Arbitrators**

If an appeal of a Board decision is submitted to arbitration, each side shall, within ten (10) calendar days, select one (1) arbitrator and submit his or her name in writing to the other side. Within ten (10) calendar days after their selection, these two arbitrators shall select a third independent arbitrator. If the two sides cannot agree on the selection of the third arbitrator within ten (10) calendar days, either side may petition the Alameda County Superior Court for the appointment of the third arbitrator pursuant to the provisions of section 1281.6 of the California Code of Civil Procedure. The third arbitrator shall be an attorney and preside as the Chairperson of the arbitration panel. No arbitrator shall be employed or affiliated with the *Authority* or the *covered party* or *parties*.

The arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the Chairperson, unless both sides agree to an extension.

Each side shall pay the cost of its selected arbitrator and one-half of the cost of the third selected arbitrator. In addition, each side shall be responsible for its own cost and expense 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.

#### 2) **Discovery**

The procedures set forth in Code of Civil Procedure section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph (b).

#### 3) **Testimony Under Oath**

The testimony of witnesses shall be given under oath.

#### 4) **Length of Hearing**

The panel will endeavor to confine the length of the hearing to two (2) days. A decision of the panel shall be reported in writing. The written decision of the panel shall be given to both sides within thirty (30) calendar days of the close of the hearing.

5) **Certified Shorthand Reporter**

Either side wishing a certified shorthand reporter record shall make arrangements directly with a certified shorthand reporter and notify the other side of such arrangements in advance of the hearing. The requesting side shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

(b) **Funding of Defense and Payment of Claims Pending Resolution of Dispute**

During the course of the arbitration proceedings provided herein, the *covered party* will be responsible for all fees and expenses for investigation, defense or litigation of a claim or lawsuit. In the event the arbitration panel determines that coverage applies for such *defense costs*, the *Authority* will reimburse the *covered party* as directed by the panel.

(c) **Effects of Arbitration Decisions**

All decisions on appeals, whether by the Board of Directors (after the time to request arbitration has expired) or by the arbitration panel, shall be final and binding upon the parties and shall not be subject to any further appeal or court action, except as provided in Code of Civil Procedures sections 1286.2 and 1286.4 (relating to fraud or corruption, etc.).

(d) **General Law**

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



## ENDORSEMENT GLPMOC - 2021-1

### DESIGNATION OF NAMED COVERED MEMBERS

Named Covered Parties of the declaration page amended to include the following Counties:

#### COUNTY OF:

ALPINE  
COLUSA  
DEL NORTE  
LASSEN  
MODOC  
MONO  
PLUMAS  
SAN BENITO  
SIERRA  
TRINITY  
SUTTER

#### ADDITIONAL COVERED PARTIES:

Alpine County First 5 Commission  
Alpine County Local Agency Formation Commission  
Colusa County Transit Agency Colusa  
County Transportation Commission  
Del Norte County Children and Families Commission  
Del Norte County Local Agency Formation Commission  
Del Norte Solid Waste Management Authority  
Lassen County Air Pollution Control District  
Lassen County Local Agency Formation Commission  
Lassen County Public Improvement Corporation  
Lassen County Transportation Commission  
Lassen Transit Service Agency  
Lassen – Modoc Flood Control and Water Conservation District  
County of Mono Economic Development Corporation  
Plumas County Child Abuse Prevention Council  
Plumas County Children and Families Commission (AKA: First 5 Plumas)  
Plumas County Local Agency Formation Commission  
San Benito County Local Agency Formation Commission  
Calpine Improvement Association  
Sierra County Historical Society  
Sierra County Local Agency Formation Commission  
Sierra County Transportation Commission

Sierraville Recreation Association  
Sutter County Children and Families First Commission  
Sutter County Local Agency Formation Commission  
Sutter-Yuba Behavioral Health Services  
Trindel Insurance Fund  
Trinity County Children and Families First Commission  
Trinity County Local Agency Formation Commission

**Attached to and Forming Part of Memorandum No. Trindel  
Insurance Fund GLPMOC-2021**

**Endorsement No.: GLPMOC-2021-1**

ON BEHALF OF TRINDEL INSURANCE FUND.

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Authorized Signature/ Date

## ENDORSEMENT GLPMOC – 2021 - 2

### **ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT**

It is agreed that the “COVERED PARTY, COVERED PERSONS OR ENTITIES” section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

#### **Additional Covered Party:**

NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF COVERAGE

#### **As Respects:**

PER ATTACHED CERTIFICATE OF COVERAGE

It is further agreed that nothing herein shall act to increase the Authority’s limit of liability.

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

**Effective Date:**

**Memorandum No.:** GLPMC - 2021

**Issued to:** ALL MEMBERS

**Issue Date:** June 29, 2021

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Authorized Representative  
Trindel Insurance Fund

