



Bickmore Risk Services & Consulting

June 10, 2009

Mr. Jose Henriquez
Executive Officer
El Dorado Local Agency Formation Commission
550 Main Street, Suite E
Placerville, CA 95667

RE: Evaluation of SDRMA and Great American Liability Programs

Dear Mr. Henriquez:

Per our conversation, Bickmore Risk Services and Consulting (BRS) is pleased to present to you our findings with regard to the four questions you posed to us concerning the coverage provide by Special Districts Risk Management Authority (SDRMA) and Great American Insurance Company. We understand that the County has been assuming the liabilities of El Dorado Local Agency Formation Commission (LAFCO) for third party claims as well as actions for injunctive relief. To consider leaving such a broad coverage as that provide by the County for a cost savings requires due diligence to understand not only what is being given up and for what benefit but what other alternatives are available. BRS' broad exposure to many California public entity liability policy and coverage forms enables us to advise LAFCO of what coverages are typically offered to public entities. We also hope to enlighten you to some of the areas where LAFCO has exposures not covered by SDRMA. We hope our comments provide a stronger basis for your decision regarding coverage for the 2009-2010 year.

The four questions asked of you, with our responses, are as follows:

- ***How well does SDRMA's program compare to other insurance programs available to local governments?***

SDRMA liability coverage, compared to other public entity pool program coverage, is fairly standard. It also compares favorably to public entity liability policy forms offered by some insurers. SDRMA policy form provides coverage by defining the coverages as traditionally offered by the insurance industry, i.e. general liability, automobile liability, public officials errors and omissions, etc., allowing the covered party to easily see if the coverage is included versus hunting to see if exclusions for a certain exposure exists.

It should be noted that in SDRMA, as is common with public entity pooling in California, the members of the pool share one limit of liability. This deviates from the insurance companies that would provide a separate limit to each insured. Although the County of El Dorado is not part of

SDRMA's liability pool, other local agencies may be. We could envision an occurrence involving LAFCO and another local agency covered by SDRMA; however, the chances are slight.

SDRMA has some peculiar exclusions generally not found in California public entity liability forms such as law enforcement liability or date recognition errors in computer programs. However, those exclusions do not seem to apply to any of the LAFCO operations or, if they do, the exposure to loss is limited.

Exclusion D, Care, Custody, and Control, does not provide coverage for liability because of property damage to property in one's care, custody, or control. Typically, this exclusion is limited such that it would provide coverage for liability for damage caused to property one has rented but not assumed the liability under contract. If LAFCO rents office space and does not insure the property through a property policy, LAFCO may want to question SDRMA regarding the coverage.

Exclusion H, Inverse Condemnation, may have some application to LAFCO if LAFCO authorizes or is in any way involved with the use of eminent domain laws to obtain property or in land use planning. LAFCO may look to the Great American policy, which does not have this exclusion, for coverage.

In conclusion, we believe the SDRMA liability program is good coverage for LAFCO with policy limitations being minimal compared to other forms available to California public entities. A more detailed evaluation of provisions of SDRMA as it compares to other public entity liability forms is attached for your review. As with any coverage document, SDRMA's policy should be reviewed to apprise LAFCO of areas that may not be covered and take appropriate action to reduce the risk.

- *How well does SDRMA's program compare to the County of El Dorado's program?*

Because the County of El Dorado has no coverage document but offers to defend all civil claims and pay liabilities incurred, no public entity pool or public entity insurance policy would provide as broad of coverage. All public entity pools or insurance policies will limit their coverage through the insuring parameters, such as covering damages, but not injunctive relief, or arising out of a wrongful act during the policy period. All public entity pools and insurance policies will also exclude risks that may otherwise fall into the broad definitions of coverage. Thus, LAFCO will not be able to mirror the coverage provided by the County of El Dorado. LAFCO must weigh the risks of a loss falling outside the scope of the SDRMA and/or Great American policy against the savings of not participating in the County risk management program.

- *Does the additional insurance provide coverage for legal costs that may be incurred by LAFCO defending itself against injunctive/declaratory relief cases where the plaintiff is not seeking to recover actual damages?*

Great American covers a “claim” for a “wrongful act” made during the policy period. “Claim” is defined as any action for a judgment or order for money damages **or other relief**. Injunctive or declaratory relief falls within the other relief provision. Thus, the insuring agreement encompasses injunctive or declaratory relief. Further, there is no exclusion for injunctive or declaratory relief. Thus, it seems the actions are covered.

It should be noted that the “defense costs” are generally outside the limits of liability, meaning that the defense costs do not reduce the amount of limits available for payment of settlement or judgment. The difficulty with injunctive relief is that it is always in the best interest of an insurer to settle because the settlement costs the insurer nothing. The amendment to Section VI B, Cost of Defense and Settlement, probably is intended to cure this. This amendment creates the right to the insured to refuse to settle as requested by Great American and continue to defend the case. Great American will be liable for 70 percent (70%) of the defense costs incurred by the insured after refusal to settle, up to the limits of liability. Thus, LAFCO will be liable for 30 percent (30%) of the defense costs upon Great American’s recommendation to settle. It is highly likely, although open to interpretation, that LAFCO will be liable for 100 percent (100%), rather than 30 percent (30%), of the first \$1,000, the amount of the deductible.

The conclusion is that LAFCO should be prepared to pay 30 percent (30%) of defense costs incurred in an injunctive relief action that is expected to have large defense costs.

Note that the Great American coverage is on a claims-made basis. Thus, the coverage is provided for claims made during the policy period rather than the event causing the claim. If LAFCO were to lose the coverage, or decide not to renew the coverage, acts taken while this coverage is in place but the plaintiffs have not yet brought a claim would not be covered. LAFCO would obtain a period of time, i.e. 90 days after the policy expiration to report claims as well as the right to purchase a twelve-month reporting period after expiration. However, this may cause a gap of coverage should LAFCO ever change carriers or drop the coverage.

- *If there are areas of overlap between the SDRMA program and the supplemental insurance from Alliant Insurance Services, what would be the impact to LAFCO. Specifically, would any administrative obstacles/hurdles arise from having two insurance carriers in the event of a multi-area claim being filed against LAFCO?*

We do not see a concern regarding any overlap of coverage between Great American and SDRMA. LAFCO needs to remember that they have two coverages and submit the claim potentially covered to both. Although the specific rights of the parties, i.e. LAFCO, Great American, and SDRMA is a legal question, it basically becomes a legal battle between the two entities providing coverage as to how the “other insurance” clause applies. The underlying claim and the costs of defense and indemnity should be paid by one or both coverage providers with a declaratory action between the two of them to allocate the eventual liabilities to the two coverage providers. We don’t believe that there would be much burden on LAFCO regarding this dispute.

If you have any questions or need further clarification please do not hesitate to contact me by telephone at (800) 541-45941, extension 1120, or by email at rjohnson@brsrisk.com.

Regards,

Robin Johnson

Robin Johnson
Senior Consultant



SDRMA COVERAGE EVALUATION

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<u>EXPOSURE</u>	<u>SDRMA MOC</u>	<u>STANDARD PROVISIONS</u>
<p>COVERAGE AGREEMENT:</p>	<p>SDRMA will pay on behalf of the member and any Covered individual the Ultimate Net Loss which the Member or the Covered Individual shall be come legally obligated to pay as Damages:</p> <p>Under Coverage A because of Personal Injury or Property Damage due to an Occurrence; Under Coverage B because of Personal Injury or Property Damage due to an Auto Accident; Under Coverage C because of Public Officials and Employees Errors and Omissions due to a Wrongful Act; Under Coverage D because of Employee Benefits Liability due to Employee Benefits Acts, Errors and Omissions; Under Coverage E because of Employment Practices Liability due to Wrongful Employment Practices to which this Liability Coverage Agreement applies.</p>	<p>Although it seemed the Coverage Agreement of the SDRMA MOC does refer to occurrences or wrongful acts, it is not until one looks at the coverage term that the occurrence or wrongful act is limited to one that occurs during the policy period. The Employment Practice Liability coverage does not track easily to an occurrence requirement; however, under the limits of liability the MOC does state what practices constitute an occurrence. Thus, the differences in forms are not material.</p> <p>The basic coverages are standard to public entity pools in California and most public entity forms sold by insurance companies. Some forms do not provide employment practices as provided by SDRMA.</p>
<p>DEFENSE AND SETTLEMENT PROVISION/COSTS:</p>	<p>SDRMA shall have the right and duty to defend any Suit seeking Damages covered by the terms and conditions of this agreement and not otherwise excluded. SDRMA shall also have the right, but not the duty to defend any Claim seeking Damages covered by the terms and conditions of the agreement and not otherwise excluded. Defense Costs of a Member or Covered Individual are <i>included in the limit of liability</i> set forth in the Declarations.</p>	<p>It is pretty standard, in coverage offered by public entity pools in California, to include the cost of defense within the limits of liability.</p> <p>The insurance industry is mixed with regard to this, some offering the defense “outside the limits” while other include it “inside the limits” as do the pools. Note that if the defense is “outside the limits” one can recover more. However, generally speaking, if the defense is “outside the limits” as for any self-insured retention, it makes it more expensive before coverage commences.</p>
<p>DEFENSE AND SETTLEMENT PROVISION/COSTS (continued):</p>	<p>A. SDRMA shall have the right and duty to defend any Suit seeking Damages covered by the terms and conditions of this agreement and not otherwise excluded. SDRMA shall also have the right, but not the duty, to defend any Claim seeking Damages</p>	<p>It is pretty typical for a primary public entity pool or insurance company to retain the right and also have the duty to defend the covered party. The specifically listed additional expenses listed are not always listed, but treated as part of the defense costs. Although the effect</p>

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	<p>covered by the terms and conditions of the agreement and not otherwise excluded. Defense Costs of a Member or Covered Individual are included in the limit of liability set forth in the Declarations.</p> <p>B. When SDRMA assumes the defense of any Suit:</p> <ul style="list-style-type: none"> a. SDRMA will defend any such Suit against the Member or Covered Individual even if such Suit is groundless, false, or fraudulent, but SDRMA shall have the right to investigate, defend or settle any Suit as it may deem necessary or expedient. b. SDRMA will pay the following to the extent not covered by any insurance providing coverage to the Member or Covered Individual. Any of the following, if paid by SDRMA, will reduce the total limits of liability as stated in the Member's individual Declarations: <ul style="list-style-type: none"> i. Premiums on bonds to release attachments for amounts not exceeding the limit of liability, but SDRMA is not obligated to apply for or furnish any such bond; ii. Premiums on appeal bonds required by law to appeal any Suit that SDRMA defends, but SDRMA is not obligated to apply for or furnish any such bond; iii. All costs taxed against the Member or Covered Individual in any Suit that SDRMA defends iv. Pre-judgment interest awarded against the Member or Covered Individual on that part of the judgment that SDRMA is obligated to pay. If SDRMA will not pay any pre-judgment interest accruing 	<p>is the same, by SDRMA spelling it out there is no misunderstanding.</p> <p>One interesting right given to covered parties under the SDRMA coverage is a specific right to take control of the claim and to not settle the claim as recommended by SDRMA. Rather, the covered party can continue to defend the claim and to the extent an adverse verdict is obtained, SDRMA will be liable for indemnity up to their originally indicated settlement amount. That usually needs to be negotiated at the time of the dispute.</p>
<p>DEFENSE AND SETTLEMENT PROVISION/COSTS (continued):</p>		

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<u>EXPOSURE</u>	<u>SDRMA MOC</u>	<u>STANDARD PROVISIONS</u>
<p>LIMITS OF LIABILITY:</p>	<p>during any period of time following the offer;</p> <p>v. All interest that accrues after entry of judgment and before SDRMA has paid, offered to pay or deposited in court the part of the judgment that is within SDRMA's applicable Limit of Liability;</p> <p>vi. The Member's or Covered Individual's reasonable and necessary expenses incurred with SDRMA's consent or at SDRMA's request.</p> <p>C. SDRMA will not defend any Suit after any applicable Limits of Liability have been exhausted by payment of any costs related to items 2(b)(1)-(6) above, judgments, settlements, Defense Costs or any combination thereof.</p>	
	<p>Regardless of the number of: (A) Members or Covered Individuals under this Liability Coverage Agreement; (B) Persons or organizations who sustain injury or damage, or (C) Claims made or Suits brought on account of Personal Injury, Property Damage, Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions, or Wrongful Employment Practices, SDRMA's Liability is limited as follows with respect to:</p> <ol style="list-style-type: none"> 1. Personal Injury or Property Damage Liability due to an Occurrence; 2. Directors and Officers Errors and Omissions, due to a Wrongful Act; 3. Employee Benefits Liability due to Employee Benefits Acts, Errors and Omissions, or any combination thereof; and/or 4. Employment Practices Liability, due to Wrongful Employment Practices; SDRMA's Liability shall be only for the Ultimate Net Loss as specified in 	

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	<p>the Limits of Liability section of the Declarations as the result of any one Occurrence, Auto Accident, Wrongful Act, Employee Benefits, Act, Error or Omission or Wrongful Employment Practices. SDRMA's Liability shall be only for the Ultimate Net Loss as specified in the Limits of Liability section of the Declarations as the result of any one Occurrence, Auto Accident, Wrongful Act, Employee Benefits Act, Error or Omission or Wrongful Employment Practices SDRMA's Liability shall be only for the Ultimate Net Loss as specified in the Limits of Liability section of the Declarations as the result of any one Occurrence, Auto Accident, Wrongful Act, Employee Benefits Act, Error or Omission or Wrongful Employment Practice.</p>	
<p>LIMITS OF LIABILITY <i>(continued):</i></p>	<p>This Liability Coverage Agreement is subject to a per occurrence limit of liability as stated in the Declarations. This limit of liability is the maximum amount that will be paid by SDRMA under this Liability Coverage Agreement for all Occurrences, Auto Accidents, Wrongful Acts, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices during the term of this agreement applying separately to each Member or Covered Individual covered under this Liability Coverage Agreement arising out of:</p> <ul style="list-style-type: none"> A. The Products Hazard and Completed Operations Hazard combined; B. Public Officials and Employees Errors and Omissions; C. Employee Benefits Acts, Errors and Omissions; Wrongful Employment Practices 	

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<p><u>EXPOSURE</u></p>	<p><u>SDRMA MOC</u></p>	<p><u>STANDARD PROVISIONS</u></p>
<p>LIMIT OF LIABILITY <i>(continued):</i></p>	<p>If any Member of SDRMA not named in the Declarations is covered under a similar Liability Coverage Agreement with SDRMA for any portion of its liability for the same Occurrence, the maximum total limit of liability of SDRMA shall not exceed the group limit of liability set forth in the Declarations, if any. Except to that extent, the SDRMA Member named in the Declarations of this Liability Coverage agreement shall continue to have the same amount of coverage set forth in the Declarations, and such coverage shall not be shared with any other Member of SDRMA not named in the Declarations of this Liability Coverage Agreement, nor shall the limits of the Member named in the Declarations be reduced by reason of the existence of coverage available to another Member of SDRMA separately covered under a similar Liability Coverage Agreement but who is not named in the Declarations page of this Agreement.</p> <p>For the purpose of determining the limit of SDRMA's liability, all Damages and Defense Costs arising from Personal Injury or Property Damage as a result of continuous, repeated, or related exposure to substantially the same general conditions shall be considered as arising out of one Occurrence. With respect to any sexual abuse or molestation incident, all Damages and Defense Costs arising out of any one or more instances of abuse or molestation of any single person at any time shall be deemed one Occurrence.</p>	<p>Many public entity pools in California provide only one limit for an occurrence involving more than one member. Here, that should not be a problem because the County is not a member of SDRMA. Other local agencies in El Dorado County may be and could be involved in an occurrence with LAFCO, most likely a public officials errors and omissions type claim.</p>
<p>LIMIT OF LIABILITY <i>(continued):</i></p>	<p>For purposes of determining SDRMA's liability, all Damages and Defense Costs arising from an Auto Accident as a result of continuous, repeated or related exposure to substantially the same general conditions shall be considered as arising out of one Auto Accident.</p>	

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	<p>For the purpose of determining the limit of SDRMA's liability, all Damages and Defense Costs arising from Public Officials and Employees Errors and Omissions as a result of continuous, repeated, or related exposure to substantially the same general conditions shall be considered as arising out of one Wrongful Act.</p> <p>For purposes of determining the limit of SDRMA's liability, all Damages and Defense Costs arising from Employee Benefits Liability as a result of continuous, repeated, or related exposure to substantially the same general conditions shall be considered as arising out of one Employee Benefits Act, Error or Omission.</p> <p>For the purpose of determining the limit of SDRMA's liability, all Damages and Defense Costs arising from Wrongful Employment Practices as a result of continuous, repeated, or related exposure to substantially the same general conditions shall be considered as arising out of one Wrongful Employment Practices.</p>	
<p>LIMIT OF LAIBILITY <i>(continued):</i></p>	<p>Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions and Wrongful Employment Practices taking place over more than one coverage period during which coverage is afforded through SDRMA shall be deemed to have taken place during each such coverage period and the Member has the right to select which coverage period applies.</p>	<p>This is typical treatment of an ongoing occurrence by the public entity pools, insurance companies are more likely not to have this provision and open themselves to multiple limits from multiple years.</p>
<p>MEMORANDUM PERIOD-TERRITORY:</p>	<p>Broad worldwide coverage if the occurrence is during the policy period.</p>	<p>This is standard for both public entity pools and public entity liability forms offered by insurance companies.</p>
<p>COVERED PARTIES:</p>	<p>A. The Member or Members identified in the Declarations B. All Covered Individuals</p>	<p>Past and present officials and employees and volunteers are covered. This is standard. Some will include permissive users of owned automobiles; however, I don't</p>

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<u>EXPOSURE</u>	<u>SDRMA MOC</u>	<u>STANDARD PROVISIONS</u>
		<p>believe that is of concern to LAFCO because it does not own any vehicles. Many public entity pools provide coverage for District or Commissions that are a “subsidiary of the Member. Again, I don’t believe LAFCO has established any subsidiary entities. Thus, the covered parties are plenty broad for the needs of LAFCO.</p>
<p>EXCLUSIONS:</p> <p>A. Intentional Acts:</p> <p>B. Workers’ Compensation:</p>	<p>To Bodily Injury or Property Damage expected or intended from the standpoint of the Member or Covered Individual. This exclusion does not apply to Bodily Injury resulting from the use of reasonable force to protect persons or property.</p> <p>To any obligation for which the Member or Covered Individual or any carrier as the insurer for the Member may be held liable under any workers’ compensation, occupational disease, unemployment compensation, or disability benefits law, or under any similar law including but not limited to the Jones Act (46 U.S.C. App. 688, et seq.) or the Federal Employer’s Liability Act (45 U.S.C. 51, et seq.).</p>	<p>Standard exclusion on all forms</p> <p>Standard exclusion on liability policies.</p>
<p>C. Watercraft:</p>	<p>To liability arising out of the ownership, maintenance, storage, loading or unloading, use or operation of any Watercraft, unless such Watercraft is less than fifty-one (51) feet in length.</p>	<p>This is a standard exclusion. The length of the watercraft varies but the exclusion exists on essentially all liability coverage forms.</p>
<p>D. Employment Related Injury:</p>	<p>SDRMA does not exclude bodily injury to an employee.</p>	<p>This is typically excluded. But because workers’ compensation exclusive remedy laws are rigidly enforced in California, this is a minor exception.</p>

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<p>E. Care, Custody & Control:</p>	<p>To any liability for Property Damage to Real Property owned by, occupied by or leased to the Member or Covered Individual, his agents or subcontractors;</p> <p>Real or Personal Property in the care, custody or control of any Member or Covered Individual or their agents' or subcontractors' or as to which the Member, Covered Individual or their agents or subcontractors is for any purpose, exercising control.</p> <p>However, this exclusion shall not apply with respect to personal property including but not limited to, memorials, headstones, tombstones, tombs and/or similar personal property in the care custody or control of any Member which is a Cemetery District.</p>	<p>Many public entity pools have limited the scope of this exclusion in many ways. The fact that SDRMA still excludes property in the care, custody, or control and not just owned or leased property is somewhat limiting.</p> <p>This limitation may apply to LAFCO if it rents part of a building. LAFCO could be liable if it damaged the real property it rents and has not covered it under its property coverage.</p>
<p>F. Liability Assumed by Contract:</p>	<p>Excludes liability assumed under contract but only if SDRMA is precluded from exercising its right to defend the covered party. Also, it excludes liability assumed from an architect, engineer, or surveyor.</p>	<p>This is a pretty typical exclusions in public entity pool coverage or public entity liability forms sold by insurance companies. Not all pools exclude coverage for liability assumed from an architect or engineer.</p>
<p>G. Aircraft:</p>	<p>Liability arising out of the use of aircraft or airports are excluded.</p>	<p>This is a standard exclusion for public entity coverage whether from a pool or an insurer. Some forms provide coverage for non-owned. Typically, that is provided to schools for military displays on campus.</p>
<p>H. Medical Malpractice:</p>	<p>To Personal Injury or Property Damage due to the rendering of or failure to render:</p> <ol style="list-style-type: none"> 1. Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith; 2. Any service or treatment conducive to health or of a professional nature; 3. The furnishing or dispensing of drugs or medical, 	<p>This exclusion takes on various forms based on the type of public entity involved in the public entity pool. It is probably of no concern to LAFCO because there are no nurses or other professional on staff or under the control of LAFCO.</p>

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	<p>dental or surgical supplies or appliances.</p> <p>However, this exclusion does not apply with respect to ambulance emergency medical technicians, paramedics, or other rescue personnel.</p>	
<p>I. Eminent Domain:</p>	<p>Excludes liability for eminent domain, including inverse condemnation.</p>	<p>Public Entity pools and public entity liability policy forms typically exclude eminent domain and inverse condemnation. However, most are including an exception where there is actual damage to tangible property. The application of this exclusion to LAFCO may require some legal analysis. However, we do not believe LAFCO can actually authorize certain uses of land by local agencies.</p>
<p>J. Failure to provide Fuel, Water or Electricity:</p>	<p>To liability arising out of the failure to supply electrical power, gas or steam, or to liability arising out of the interruption of electrical power or fuel supply.</p> <p>To liability arising out of the failure or inability to supply or provide an adequate supply of water due to liability arising out of your delivery or non-delivery of water based on any administrative act or decision made by your governing body with respect to either obtaining a supply of water for, or allocating the available supply of water amongst your water users. However, this exclusion does not apply to a Claim or Suit arising out of an occurrence for personal injury or property damage, if the failure to supply water results from the sudden and accidental injury to tangible property owned or used by a Member or Covered Individual. <u>In those instances where this exclusion does not apply, there is a limit of \$1,000,000 per occurrence, per member during the Memorandum period</u></p>	<p>This is a typical exclusion which would not apply to LAFCO operations.</p>

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<p>K. Subsidence:</p>	<p>To liability arising out of, caused by, resulting from, contributed to, aggravated by, or concurrently caused by the subsidence of land or earth movement, including landslide, earthquake, mud flow, earth sinking, earth rising, and earth shifting. However, this exclusion does not apply if the subsidence or earth movement is the direct result of or occurs subsequent to the Member's or Covered Individual's water lines breaking or leaking.</p>	<p>Subsidence is a typical exclusion on public entity liability policy forms. This may only be of concern to LAFCO if LAFCO actually authorizes certain uses of land, here it would be adjacent land. See comments about the eminent domain exclusion.</p>
<p>M. Nuclear Material</p>	<p>Nuclear is excluded if covered under special federally issued policy forms.</p>	<p>We have never seen a form that does not exclude this.</p>
<p>N. ERISA Act of 1974:</p>	<p>Excluded</p>	<p>Standard exclusion. ERISA does not apply to public entities.</p>
<p>O. Dams:</p>	<p>Dam failure is excluded.</p>	<p>Dam failure is typically excluded. However, many define dams to be something of substantial size. Here the definition could include a curb or trench.</p>
<p>P. Asbestos:</p>	<p>To any liability arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to, asbestos, asbestos products, asbestos fibers, or asbestos dust, or, To any liability to any party arising out of Personal Injury, Property Damage, Public Officials and Employees Errors and Omissions, Employee Benefits Liability or Wrongful Employment Practices due to an Occurrence, Auto Accident, Wrongful Act, Employee Benefits Act, Error or Omission, Wrongful Employment Practices, Claim or Suit at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or</p>	<p>This is a standard exclusion on public entity liability coverage forms.</p>

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	<p>To any liability to defend any Suit or Claim against the Member or Covered Individual alleging Personal Injury, or Property Damage, or Public Officials and Employees Errors and Omissions, Employee Benefits Liability or Wrongful Employment Practices, if such Claim or Suit results from or is contributed to any combination of the following: manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or</p> <p>To any loss, cost, expense, fine or penalty arising out of any of the foregoing</p>	
<p>Q. War</p>	<p>To Personal Injury, Property Damage, Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.</p>	<p>This is a standard exclusion.</p>
<p>R. Pollutants:</p>	<p>To any Claim for Personal Injury, Property Damage, or Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices arising out of the discharge, dispersal, release or escape of pollutants, anywhere in the world;</p> <p>To any obligation to defend any Suit or Claims against the Member or Covered Individual alleging Personal Injury, or Property Damage, or Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices and seeking Damages, if such Suit or Claim arises from</p>	<p>This is a standard exclusion on public entity liability coverage forms.</p>

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<u>EXPOSURE</u>	<u>SDRMA MOC</u>	<u>STANDARD PROVISIONS</u>
	<p>Personal Injury, Property Damage, or Wrongful Acts, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices arising out of the discharge, dispersal, release or escape of pollutants, anywhere in the world;</p> <p>To any loss, cost, or expense arising out of any governmental direction or request that the Member or Covered Individual test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants;</p> <p>To any loss, cost or exercise incurred by a governmental unit or other third party, including but not limited to costs of investigation and monitoring, and attorney's fees, relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize pollutants.</p>	
<p>R. Pollutants (continued):</p>	<p>However, this exclusion shall not apply to the following:</p> <ol style="list-style-type: none"> 1. Liability arising out of Personal Injury, Property Damage or Public Officials and Employees Errors & Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices if such discharge, disposal, release or escape of pollutants is caused by heat, smoke, or fumes from a hostile fire involving a building or its contents which are owned, rented, or occupied by the Member or Covered Individual or upon which the Member or Covered Individual is performing on behalf of the Member or Covered Individual or caused by lightning or vehicle collision. 2. Liability arising from the loading, unloading or transportation of hazardous materials by auto. 3. Liability arising from sewage that emanated from a 	

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<u>EXPOSURE</u>	<u>SDRMA MOC</u>	<u>STANDARD PROVISIONS</u>
	<p>sewer line or sewer system or back up from a sewer line or a sewer system incurred by the Member during the Memorandum period.</p> <p>4. Liability arising from the release or discharge of pollutants resulting from, the use of fire fighting equipment in response to hostile fire or, other emergencies that involve the use of firefighting equipment.</p>	
<p>R. Pollutants (continued):</p>	<p>5. Liability arising out of the use, handling, storage, discharge, dispersal, release, or escape of chlorine or disinfectants.</p> <p>6. Liability arising out of the use, handling, storage, discharge, dispersal, release, or escape of Member's products.</p> <p>7. As respects operations involving pesticide or herbicide application at or from any site or location not owned or controlled by the Member on which the Member or any contractors or subcontractors working directly or indirectly on its behalf, is performing operations if:</p> <p>The pollutants are brought on or to the site or location in connection with such operations, and</p> <p>The operations performed meet all standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government which apply to those operations.</p> <p>This exception applies only to direct and immediate Bodily Injury or to direct and immediate Property Damage sustained on those particular premises upon which operations are being performed, by or on behalf of the Member, or those premises immediately adjoining.</p>	

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<p>U. Public Officials Errors and Omissions Liability <i>(continued):</i></p>	<p>Refunds or improper allocations of taxes, fees, or assessments;</p> <p>Liability of a Member or Covered Individual arising in whole or in part, out of any Member or Covered Individual obtaining remuneration or financial gain to which the Member or Covered Individual was not legally entitled or liability arising out of the willful violation of a penal code or ordinance committed by or with the knowledge or consent of any Member; except that any fact pertaining to any other Member or Covered Individual shall not be imputed to any other Member or Covered Individual for the purpose of determining application of these exclusions;</p> <p>Liability of any Member or Covered Individual arising out of estimates of probable costs or cost estimates being exceeded, arising out of faulty preparation of bid specifications or plans or, arising out of failure to award contracts in accordance with any statute, ordinance, or regulation which require that such contracts be submitted for bids;</p>	<p>Refunds are typically excluded from Public Officials Errors and Omissions coverage.</p> <p>Financial gain is typically excluded from Public Officials Errors and Omissions coverage.</p> <p>Liability from cost estimates is typically excluded from Public Officials Errors and Omissions coverage.</p>
<p>U. Public Officials Errors and Omissions Liability <i>(continued):</i></p>	<p>Failure to perform and/or breach of a contractual obligation;</p> <p>Fraud, knowingly wrongful acts, or criminal acts for which there has been a final determination that the Covered Individual and/or Member is liable. However, if the Suit seeks Damages covered by the terms and conditions of this Agreement, SDRMA will furnish a defense until such time as there has been a final determination of liability for fraud, a knowingly wrongful act or acts, or a criminal act or acts;</p>	<p>Breach of contract is typically excluded from Public Officials Errors and Omissions coverage.</p> <p>Intentional acts are a standard exclusion.</p>

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	<p>Liability for Damages from the actual or alleged use, misuse or loss of funds, grants or appropriations or for the return of such funds, grants or appropriations for any reason;</p> <p>To any liability for Damages arising out of or by reason of:</p> <ol style="list-style-type: none"> 1. The purchase or sale, or offer of sale, or solicitation of any security, debt, bank deposit, of financial interest or instrument; or 2. Any representations made at any time in relation to the price or value of any security, debt, bank deposit of financial interest or instrument; or 3. Any depreciation or decline in price or value of any security debt, bank deposit or financial interest or instrument. 	<p>Misuse of funds is a standard exclusion.</p> <p>Generally, there is an exclusion for security transactions. They take various forms. This form seems a little more restrictive than others. Many only limit the exclusion to issuance of securities.</p>
<p>V. Employee Benefits Plan:</p>	<p>Under Coverage D, for Employee Benefits Acts, Errors and Omissions, this coverage does not apply to:</p> <ol style="list-style-type: none"> B. any dishonesty, fraudulent, criminal or malicious act; C. any Claim for failure of performance of contract by an insurer or any other party, including any insurers obligation to afford the benefits; D. Any obligation of the Member or Covered Individual under a Workers' Compensation, Social Security, Disability Benefits or Unemployment Compensation law or any similar law; E. Any Claim based upon: <ol style="list-style-type: none"> 1. Failure to stock, bonds, or other securities to perform as represented by the Member or Covered Individual, including but not limited to 	<p>The following exclusions are typical to employee benefit liability. Many public entity pools just have the coverage under public officials errors and omissions without separating the coverage.</p>

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	<p>its failure to produce financial gain, profit or growth;</p> <p>2. Counsel given by a Member or Covered Individual to an employee to participate or not to participate in stock subscription plans.</p>	
<p>W. Punitive Exemplary or Multiple Damages:</p>	<p>To any fines, penalties, punitive or exemplary damages or the multiplied portion of multiplied Damages for which the Member or Covered Individual may be legally obligated to pay whether under common law or statute. The above exclusion also applies to any liability assumed under any contract.</p>	<p>Punitive damages are typically excluded. They cannot be covered under public policy and by statute.</p>
<p>Z. Liquor:</p>	<p>To Personal Injury or Property Damage for which the Member or Covered Individual or its/their indemnitee may be held liable: As an owner or lessor of premises used for such purposes, by reason of the selling, serving, or giving of any alcoholic beverage in violation of any statute, ordinance, or regulation.</p> <p>However, this exclusion does not apply with respect to the liability of the Member or his indemnitee arising out of the giving, serving, or selling of alcoholic beverages at functions incidental to the Member's business, provided that the Member is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.</p>	<p>Although this would probably not apply to LAFCO, it is typically left out of a public entity liability policy form. See the coverage is provided for "host liquor".</p>
<p>AB. Recreation Equipment and Facilities:</p>	<p>To any Claim or Suit arising out of the use of trampolines or rebound tumbling Services or bungee jumping.</p>	<p>Typically excluded. It may only apply to LAFCO if they rent a bounce house for a company function.</p>
<p>AC. Selenium</p>	<p>To any and all liability for past, present, or future Claims arising, in whole or in part, either directly or indirectly out of selenium, or any compound containing selenium.</p>	<p>Typically excluded by insurance companies. Many public entity pools do not include this exclusion.</p>

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<p>AD. Law Enforcement:</p>	<p>To any Claim or Suit arising out of Law Enforcement Liability. However, this exclusion shall not apply to the use of a Covered Auto.</p>	<p>This is a unique exclusion for SDRMA. Generally, law enforcement is covered. It probably has no application to LAFCO.</p>
<p>AE. Failure of Computer Equipment or Electronic Equipment to Interpret or Accept one or more Dates or Time:</p>	<p>The failure, malfunction, or inadequacy of:</p> <p>Computer or certain electronic equipment due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times (such as the Year 2000 and beyond) or;</p> <p>Advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify, or test for potential or actual problems to computers or other electronic equipment.</p> <p>However, if loss or damage from certain causes of loss results, there may be coverage for that resulting loss or damage, subject to the terms and conditions of the Liability Coverage Agreement.</p>	<p>This was a standard exclusion about nine years ago. Most public entity pools and insurers have dropped the exclusion.</p>
<p>AF. Mold:</p>	<p>For purposes of this exclusion, fungus and fungi include, but are not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll and including molds, rusts, mildews, smuts, and mushrooms.</p> <p>For purposes of this exclusion "molds" includes but is not limited to superficial growth produced on damp or decaying organic matter or on living organisms and fungi that produce molds.</p> <p>For purposes of this exclusion, "spores" means any dormant or reproductive body produced by or arising or emanating out of any fungus, fungi, mold, mildew plants, organisms, or micro organisms.</p>	<p>Mold is a standard exclusion.</p>

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AG. Lead:	To any Claim or Suit arising out of the presence, ingestion, inhalation or absorption of or exposure to lead in any form or products containing lead.	Lead is a standard exclusion.
AH. Failure to Procure Bond or Insurance:	To any Claim or Suit arising out any Member's failure to procure or maintain any insurance, bond, or self insurance.	Failure to insure is a standard exclusion.
AI. Liability of Member in Insolvency or Guarantee Fund:	To any Claim or Suit arising out of any Member's or Covered Individual's participation or membership, whether voluntary or involuntary, in any insurance or risk financing pool, or in any insolvency fund, including any guarantee fund, association, pool, plan, or other facility which provides for the assessment of, or payment by, or assumption by the Member or Covered Individual of a part or the whole of any claim, debt, charge, fee, or other obligations of any insurer or risk financing entity or syndicate, or their successors or assigns, which has been declared insolvent by any authority having jurisdiction.	This is a very unusual exclusion for public entity liability coverage documents. However, it likely has no application to LAFCO's operations.
AJ. Internet Exclusion:	To any Claim or Suit against a Member or Covered Individual arising out of any act, error, or omission or other conduct as a: (1) Internet Service Provider, meaning any person or entity providing access to the Internet, content over the Internet or connection to the Internet; or (2) Internet Consulting Firm, which shall include but not be limited to, any person or entity engaged for another person or entity in the design, construction, or management of an Internet site, chat room, or bulletin board, including advertising on the Internet; or (3) Application Service Provider, meaning any person or entity that provides software and associated services to a	This is also an exclusion somewhat unique to SDRMA. However, it probably does not apply to LAFCO.

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	<p>subscriber base across an area network; or (4) Internet Backbone Provider, meaning any person or entity that routes or provides channels for packets that transport data from point to point on the Internet; or (5) Entity or individual that derives ninety percent or more of gross revenue or conducts or executes ninety percent or more of business transactions on or through the Internet; or (6) Entity or individual that is in the business of providing electronic mail services; or (7) Entity or individual that is in the business of developing, supplying and/or installing encryption software for use on the Internet. “Internet” as utilized in this exclusion shall mean the international computer network of interoperable packet switched data networks, also known as the worldwide web or worldwide network of computers.</p>	
<p>AM. Additional Exclusions Applicable to Coverage D, Employee Benefits Acts, Errors and Omissions:</p>	<p>E. Any Claim based upon: 1. Failure of stock, bonds or other securities to perform as represented by the Member or Covered Individual, including but not limited to its failure to produce financial gain, profit or growth; 2. Counsel given by a Member or Covered Individual to an employee to participate or not to participate in stock subscription plans. F. Any liability of a Member or Covered Individual as a fiduciary under the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as respects any employee benefit plan.</p>	<p>This is a typical exclusion where employee benefits is provided separately from public officials errors and omissions.</p>
<p>DEFINITIONS:</p>	<p>When used in this policy (including endorsements forming a part hereof):</p>	

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Abuse or Sexual Molestation Incident:	Any actual or alleged negligent or intentional act, error or omission, amounting to or resulting in sexual abuse or molestation or threatened sexual abuse or molestation.	
Dam:	Dam means any artificial barrier, including a dam, dike, levee, or similar structure, together with appurtenant works, which is designed to and does or may impound or divert water.	Many public entity forms limit a dam to something that retains a substantial amount of water or is so many feet high.
Damages:	Means monetary compensation and includes such compensation for loss of services resulting from Personal Injury, Property Damage, and damage resulting from Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices. Damages do not include injunctive relief, declaratory relief, restitution, attorney's fees, fines or penalties.	This is somewhat of an unusual definition of damages because it goes back to the coverages but the coverages are defined liability as damages. However, here it is clear that injunctive relief is not covered.
Defense costs:	Means reasonable attorney's fees, costs, and expenses and other fees, costs and expenses incurred in connection with the investigation, adjustment, defense, and appeal of a Claim or Suit covered hereunder. However, Defense Costs do not include the office or administration expenses of SDRMA or the Member or Covered Individual, nor the salaries of employees or officials of SRMA, the Member or Covered Individual.	It is typical to exclude employees salaries from defense costs.
Public Officials Errors and Omissions:	Public Officials Employees Errors and Omissions means any and all Wrongful Acts by a Member or Covered Individual arising from misfeasance, malfeasance or nonfeasance including any actual or alleged negligent action or inaction, mistake, misstatement, error, neglect, inadvertence, or omission by the Member or Covered Individual in the discharge of duties on behalf of the member.	This is a standard definition.

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<p>Ultimate Net Loss:</p>	<p>Means the sums for which, after making deductions for all recoveries from valid and collectible insurance the Member or Covered Individual is legally liable to pay as Damages by reason of either a judgment or a settlement made with the written consent of the claimant, the Member or Covered Individual, and SDRMA. The term Ultimate Net Loss also includes Defense costs.</p>	<p>Recoveries are treated differently by some public entity pools. Essentially this is a standard definition.</p>
<p>Unfair Employment Practices:</p>	<p>Wrongful Employment Practices means any act resulting in Damages to:</p> <ol style="list-style-type: none"> A. Any person arising out of any: <ol style="list-style-type: none"> 1. refusal to employ that person; 2. termination of that person's employment, either actual or constructive; or 3. employment-related practices, acts, or omissions such as coercion, demotion, evaluation, reassignment, discipline, retaliation, defamation, harassment, humiliation or discrimination directed at that person; B. The spouse, child, parent, brother, or sister of that person as a consequence of loss to the person at whom any of the employment-related practices described in paragraph 1, 2, 3 above is directed. <p>Any Wrongful Employment Practice must take place solely in or arise out of the conduct of the Member's operations.</p>	<p>This is a standard definition.</p>

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Wrongful Act:	<p>Wrongful Act means any actual or alleged negligent act, error or omission, including but not limited to those constituted by:</p> <ul style="list-style-type: none"> a. Any violation of antitrust statutes; b. Any negligent ministerial act; c. Any faulty preparation or approval of maps, plans, reports, surveys, designs, bid documents, or specifications only for services provided by any Member or Covered Individual for another Member or Covered Individual. 	<p>This definition is more descriptive than some by specifically including faulty preparation of maps. This is probably advantageous to LAFCO.</p>
Administration:	<p>Means giving counsel to employees with respect to employee benefit plans; interpreting the employee benefit plans; handling of records in connection with the employee benefit plans; effecting enrollment, termination, or cancellation of employees under the employee benefit plans, provided all are acts which are authorized by you.</p>	<p>Standard definition if employee benefit liability coverage is separated.</p>
Auto:	<p>Auto means a land motor vehicle, trailer, or semi-trailer.</p>	
Auto Accident:	<p>Means an accident for which a Member or Covered Individual is legally liable for conduct arising out of the ownership, maintenance, or use of a Covered Auto.</p>	<p>Generally, this is not defined.</p>
Bodily Injury:	<p>Bodily Injury means, physical injury, sickness, disease, disability, mental anguish, mental injury, or death.</p>	<p>It is interesting to include mental anguish not resulting from bodily injury because that could presumable extend bodily injury coverage further than typically provided.</p>
Claim:	<p>Claim(s) means a demand for Damages.</p>	<p>Many do not define a claim.</p>
Covered Auto:	<p>Covered Auto means an owned auto as defined herein as well as any auto which is not owned by the Member or Covered Individual but which is hired or borrowed by the</p>	<p>This is a broad definition, typical of coverage.</p>

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<p>Covered Individual(s):</p>	<p>Member or Covered Individual. Covered Auto also includes any other auto for which the Member may be liable because of its ownership, maintenance or use.</p> <p>Covered Individual(s) means:</p> <ul style="list-style-type: none"> A. Those individuals who were or now are elected or appointed officials of the Member, including members of its governing body or any other committees, trustees, boards or commissions of the Member, while acting for or on behalf of the Member. B. Past or present individual employees of the Member while acting for or on behalf of the Member. C. Any of the Members' individual Volunteers while acting within the course and scope of their service or duties as Volunteers. 	<p>This is standard extension of coverage. It may be provided by definition as here or in a Persons Covered section.</p>
<p>Hostile Fire:</p>	<p>Hostile Fire means a fire that becomes uncontrollable or breaks out from where it was intended to be.</p>	<p>If defined, this is a typical definition. It applies to the exception from the pollution exclusion.</p>
<p>Law Enforcement Liability:</p>	<p>Law Enforcement Liability means any claims for Personal Injury or Property Damage or Suit arising out of the operations of the Member from:</p> <ul style="list-style-type: none"> A. Police officers who are armed or have the power of arrest including but not limited to school crossing guards and meter attendants; B. Auxiliary, volunteer, or reserve police officers; C. Other employees of any police agency, including but not limited to stenographic, clerical, court security personnel, court security, and civil process personnel; D. Administrative employees while operating for or on behalf of any police agency, including crime prevention officers; and E. Members of the governing body, including but not limited to county commissioners, city council, mayor, city managers, coroner, and human officers. 	<p>Generally, in California, law enforcement liability is not defined because it is not excluded. This is more standard outside of California.</p>

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Member:	Member means the District(s), Agency(s) or Entity(s) identified in the Declarations.	
Member's Product:	Member's Product means any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by the Member, including, but not limited to, water or waste water. Member's Product also includes containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products. Further, Member's Products includes warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of such product and the providing of or failure to provide warnings or instructions. Member's Product does not include vending machines, or other property rented to or located for use of others but not sold.	Only important for aggregate limits. LAFCO probably only has brochures or other trinkets that would be considered products.
Owned Auto:	Owned Auto means an auto owned by the Member at the commencement of the period of coverage for this Liability Coverage Agreement or acquired by the Member during the period of coverage afforded by this Liability Coverage Agreement, provided that the Member shall notify SDRMA within 30 days of its acquisition of ownership.	Typically coverage is automatic and most public entity pools do not require 30-days notice of acquisition.
Personal Injury:	It includes: A. Bodily injury; B. False arrest, detention, or imprisonment; C. Malicious prosecution; D. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; E. Oral or written publication, in any manner, of material	Typical definition.

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	<p>that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;</p> <p>F. Oral or written publication, in any manner, or material that violates a person's right of privacy;</p> <p>G. A publication including a publication placed on the internet or on similar electronic means of communication, or an utterance that slanders or libels a person or organization or violates a person's right of privacy or disparages a person's or organization's goods, products or services, except with respect to advertising, publishing, broadcasting or telecasting done by or for the Member or Covered Individual;</p> <p>H. Assault and battery, not committed by, at the direction of, or with the consent of the Member or Covered Individual. However, this limitation does not apply if committed or directed for the purpose of protecting persons from injury or death, or property from damage.</p>	
<p>Pollutants:</p>	<p>Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste material. Waste material, includes materials which are intended to be or have been recycled, reconditioned, or reclaimed.</p>	<p>Typical definition.</p>
<p>Suit:</p>	<p>Suit means a civil proceeding in which Damages are alleged because of Personal Injury or Property Damage or Wrongful Act is alleged from Public Officials and Employees Errors and Omissions, Employee Benefits Acts, Errors and Omissions or Wrongful Employment Practices to which this coverage applies. Suit includes:</p> <p>A. An arbitration proceeding in which such Damages are claimed and to which the Member or Covered Individual must submit or does submit with SDRMA's consent; or</p> <p>B. Any other alternative dispute resolution proceeding in</p>	<p>Suit is generally not defined.</p>

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	<p>which such Damages are asserted and to which the Member or Covered Individual submits with SDRMA's consent.</p>	
<p>Uninsured Motor Vehicle:</p>	<p>Uninsured Motor Vehicle means a land motor vehicle or trailer for which no liability bond or policy at the time of an accident provides at least the amounts required by the applicable law where a Covered Auto is principally garaged.</p>	<p>Many public entity pools do not provide uninsured motorists coverage. It is expected that workers compensation will take care of their employees while driving during the course of their employment.</p>
<p>Volunteer:</p>	<p>Volunteer means any non-compensated individual, who pursuant to prearrangement with and under the general direction of the Member and/or Covered Individual performs a service for the Member.</p>	<p>Volunteers are generally not defined.</p>
<p>Conditions</p>	<p>Conditions of coverage</p>	<p>Typical of public entity pools.</p>