



June 17, 2010

**TO:** Members, Primary General Liability Program

**FROM:** Gina Dean, Chief Operating Officer

**SUBJECT:** Proposed Amendments to the Primary General Liability (PGL) Program Memorandum of Understanding (MOU)

The PGL MOU was last amended in 2005. Since then, changes have become necessary due to the EIA/CPEIA restructure. In 2006, when the other Program MOUs were amended for the restructure, we didn't amend the PGL Program MOU because multi-year commitments had been executed by all of the members. Those commitments are set to expire this year. Therefore, the EIA has now done a complete review of the document for necessary changes.

At the May 27, 2010 meeting, the PGL Committee reviewed the proposed amendments to the MOU. At the Committee's direction, the proposed amendments are being distributed with this memorandum to the members and County Counsels for review and comment on the proposed changes. The proposed changes are shown in redline text to indicate insertions and ~~strikeout~~ text to indicate deletions. Since there are so many proposed amendments, it is a bit difficult to read in this format. A clean copy of the document with the proposed changes has also been included for your convenience. Most of the recommended changes are related to the 2006 restructure. We are also recommending additional changes to clean up the document and create uniformity with other EIA documents where possible. Below is a summary of additional recommended changes:

- Provisions for the Program Committee have been amended to include the two alternate seats. A provision has also been added so that if we cannot obtain enough PGL Program members to serve on the Committee, which has been a problem, the Executive Committee can appoint members from the GLI Program to serve on the PGL Committee. We currently have vacancies in both alternate positions. We have made several requests for interest in serving on the Committee, but have not had any volunteers.

75 Iron Point Circle, Suite 200 • Folsom, CA 95630 • 916.850.7300 • FAX 916.850.7800 • [www.csac-eia.org](http://www.csac-eia.org)

EXECUTIVE COMMITTEE:

Lance Sposito President Santa Clara County	Jim Sessions Vice President Riverside County	Peggy Scroggins Colusa County	Larry Moss East Bay Regional Park District	Ron Grassi El Dorado County	Scott Schimke Golden State Risk Mgmt. Authority	Kristin McMenomey Mendocino County	James Brown Merced County	Richard Pietz San Joaquin County	Peter W. Huebner Sierra County	David L. Dolener Stanislaus County
--	--	----------------------------------	--	-----------------------------------	---	--	---------------------------------	--	--------------------------------------	--

- A new section has been added regarding cost allocation. The language is broad and outlines the general parameters. However, the PGL Committee continues to have authority over the cost allocation.
- A new section has been added regarding Dividends and Assessments. There is currently no provision in the PGL MOU and we believe one is necessary, especially since a dividend will be considered by the Committee next year.
- A new section has been added regarding Closure of Policy Periods. This is necessary with the inclusion of the Dividend and Assessment provisions.
- The addition of a new section for Late Payments. In March 2006, the Board of Directors adopted revisions to the Resolution Adopting an Invoicing and Payment Policy, which outlines the policy for late payment of EIA invoices, including a provision that a member may be given a 10-day written notice of cancellation, at the discretion of the Executive Committee. Although this policy is documented elsewhere, this provision has been added to the MOU to ensure the members of the Program are aware of it.
- Added language to the Amendment provision to state that each member must execute amendments to the MOU, and failure to do so will effectively result in withdrawal from the Program. This is a provision that has been added to the other Program MOUs as they have come up for amendment.

The EIA's Legal Counsel, Steve Underwood from Santa Barbara County, has reviewed the proposed amendments and indicated there are no legal issues with the suggested changes.

We are asking the members to review the proposed amendments to the MOU and **provide any comments or suggestions to me no later than Friday, September 17, 2010**. Based upon comments received through this process, it is anticipated that the PGL Committee will make a final decision to approve the amended MOU, as presented or with further modifications, in October 2010.

If you have any questions regarding the proposed amendments or the amendment process, please call me at (916) 850-7300.

Enclosure

cc: Nazie Arshi, Alliant Insurance Services



Adopted: 10/02/1998  
Amended: 06/05/2003  
Amended: 06/03/2005  
Amended: /2010

**PRIMARY LIABILITY PROGRAM**  
**MEMORANDUM OF UNDERSTANDING**  
**PRIMARY GENERAL LIABILITY PROGRAM**

This Memorandum of Understanding (hereinafter "Memorandum") is entered into by and between the CSAC ~~-~~Excess Insurance Authority (hereinafter ~~referred to as the~~ "Authority") and the participating ~~counties~~ members of the Primary General Liability Program (hereinafter "PGL"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

~~1. CREATION OF PROGRAM.~~

~~a. There is hereby created by this Memorandum an insurance program of the Authority known as the Primary General Liability Program (hereinafter referred to as the "PGL"), consisting of members as provided for herein.~~

~~b. The PGL is established as an insurance program of the Authority pursuant to the provisions of Articles 2 and 3 of the Joint Powers Agreement creating the CSAC Excess Insurance Authority (hereinafter referred to as the "Agreement").~~

~~12. JOINT POWERS AGREEMENT.~~ Joint Powers Agreement. Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the CSAC Excess Insurance Authority (hereinafter "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

~~a. To the extent such provisions are applicable and are not otherwise inconsistent with the provisions of this Memorandum, the provisions as set forth in the Agreement shall apply to this Memorandum.~~

~~b. Except as otherwise provided, all terms used herein shall be as defined in Article 1 of the Agreement.~~

~~23. ESTABLISHING OF GOVERNING COMMITTEE.~~ Program Committee. There is hereby established a PGL Committee (hereinafter referred to as "Committee") comprised of seven (7) members, five (5) of which shall be voting members and two (2) shall be alternates who vote in the absence of the voting members. ~~The PGL Committee~~

~~(hereinafter referred to as "Committee") shall consist of five (5) members. Except as otherwise provided herein, said the Committee shall have full authority to determine all matters affecting the PGL and its members, including, but not limited to, approval of new members, premium/rate setting and review of claims. The Committee has authority to settle all claims affecting the PGL, however, the Committee may delegate any or all of this authority as it deems appropriate to the Chair or staff.~~

The Executive Committee of the Authority shall appoint all Committee members, to be selected from members in the Program. One seat on the Committee shall be designated for a Public Entity representative appointed by the Executive Committee. If there are no Public Entity nominees from the PGL membership for the Public Entity seat, the Executive Committee shall appoint the Committee member from counties participating in the PGL. ~~Four (4) members shall be selected from counties participating in the program. The CPEIA Board of Directors shall nominate the 5<sup>th</sup> member from its membership. Should the CPEIA fail to nominate a Committee member as provided herein, the Executive Committee shall appoint the 5<sup>th</sup> member from counties participating in the program. If there are not sufficient participating counties to fill all committee positions, the Executive Committee may appoint persons from Authority member counties to fill any remaining positions on the Committee.~~ If, for any reason, there are less than seven (7) nominees from members in the PGL, the Executive Committee shall appoint from members in the General Liability I Program sufficient to constitute the Committee.

~~Except as otherwise provided herein, the Committee shall have full authority to determine all matters affecting the program and is authorized to do such acts as are reasonably necessary to further the purposes of this Memorandum and to implement its provisions.~~

The terms of the members of the Committee shall be for two (2) years, except for the Public Entity representative and the alternates whose terms shall be for one (1) year. The expiration dates of the two-year appointments shall be staggered so that terms of no more than three (3) members will expire at any one time. The Committee will annually, at its first meeting of the calendar year, select its officers, consisting of a Chair and Vice-Chair.

~~— b. — The Committee shall, upon commencement of its operations, and each January thereafter, select its officers, consisting of a Chair and Vice-Chair, who shall serve one (1) year terms.~~

~~— c. —~~ The Committee, when necessary to fulfill the purposes of this Memorandum, shall meet on the call of the Chair of the ~~committee~~ Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of the Authority (hereinafter referred to as the "Bylaws").

~~— d. —~~ A majority of the members of the Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the Committee shall require the affirmative vote of a majority of the members of the Committee.

~~— e. —~~ Any meeting of the Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."

3. **Premiums.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium ~~for the purpose of funding~~ the PGL. The Committee shall establish ~~a~~Annual premium contributions, including administrative costs associated with the PGL. ~~shall be established by the Committee.~~

4. **Cost Allocation.** Each member's share of annual premium shall be determined based on their actuarially determined expected losses. If the Committee determines that because of the size of the member, an individual actuarial analysis of the member's loss experience is unavailable or inappropriate, expected losses will be estimated based on the member's estimated payroll and an average program rate. The Committee may from time to time approve adjustments or modifications to the cost allocation formulas.

5. **Dividends and Assessments.** As a general rule, the annual premium, as determined by the Committee, shall be established at a level which ~~shall~~ provides adequate overall funding for the purchase of insurance or pooling of risk without the need for adjustments to past policy period(s) in the form of dividends and assessments. Should the Program for any reason not be adequately funded, except as otherwise provided herein, pro-rata assessments to the participating members may be utilized in accordance with the provisions of Article 14(b)(3) of the Agreement. Dividends may also be declared as deemed appropriate by the Committee.

6. **Closure of Policy Periods.** Claims for all program years, rather than individual years, shall be pooled. Notwithstanding any other provision of this MOU, provisions of the General Liability I Program Memorandum of Understanding regarding closure of policy periods is incorporated herein and shall apply to this MOU.

7. **Certificate of Coverage.** The Authority shall issue a Certificate of Coverage to the members setting forth the terms and conditions of coverage under the PGL. The form of the Certificate shall follow, except as otherwise set forth in the Certificate, the coverage of the General Liability I Program Memorandum of Coverage. Except as otherwise provided herein or in the Agreement, the Certificate is controlling with respect to the actions of the members under this Memorandum.

8. **Claims Administration.** The Authority will be responsible for ~~all~~ handling ~~of~~ all claims affecting the PGL. The Committee shall approve at least two (2) third party claims administrators to provide claims services to members of the PGL. Members may select the claims administrator they will utilize from those authorized by the Committee. The agreements with the claims administrators to provide claims administration services may grant rights or impose duties and obligations on the members. Copies of agreements currently in effect or subsequently entered into by the Authority shall be provided to members upon request.

~~f. The terms of the members of the Committee shall be for two (2) years with terms expiring on December 31<sup>st</sup>.~~

94. Application to the Program. All applications to join the PGL will be evaluated and subject to approval by the Committee. Any entity which makes application to become a participating member of the PGL who is not already a participating member in the Authority must also be approved in accordance with the provisions of Article 19 of the Agreement.——

~~a. Entities which are currently in an excess liability program of the Authority may become members in PGL upon application and approval by the Committee. Any entity which makes application to become a member and who is not already a participating member in the Authority must be approved by the participating counties in accordance with the provisions of Article 19 of the Agreement.~~

~~5.——~~10. Withdrawal and/or Cancellation from the Program. Withdrawal of a member from the PGL shall be in accordance with the provisions of Article 20 or 21 of the Agreement. ~~WITHDRAWAL FROM THE PROGRAM.——~~

~~a. Except as is otherwise provided in this MOU or any amendment thereto, a member may withdraw from the program in accordance with Article 20 of the Agreement at the end of a policy period.~~

~~b.~~ The PGL may from time to time enter into multiple year insurance and/or reinsurance agreements. The Committee may require current members and new members to agree to remain in the PGL for the duration of the multiple

year agreements by executing an “Extended Commitment Period” Addendum to this MOU. Any PGL member that fails to execute any “Extended Commitment Period” Addendum will be considered to have withdrawn from the ~~program~~ PGL effective on the next annual renewal date.

11. Late Payments. Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a Program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

~~6.——~~PREMIUMS. Premiums for any program established as part of the PGL shall be as determined by the Committee in conjunction with the insurance carriers, if any.

712. Resolutions of Disputes. Any question or dispute with respect to the rights and obligations of the parties to this Memorandum ~~regarding settlements and coverage~~ shall be determined ~~by the Committee~~ in accordance with Article 31 of the Agreement, Dispute

Resolution. ~~It is the intent of this provision that there will be mutual agreement on settlements and coverage with the underwriter, if any, and the Committee.~~

~~8. **CLAIMS HANDLING.** The Authority will be responsible for all claims handling for the program. The Authority shall designate at least two (2) third party claims administrators [TPA] that are acceptable to the Authority and approved by the Committee to provide claims services to members of the PGL. Each member of the program may choose their desired TPA from the approved list.~~

~~9. **MEMORANDUM OF COVERAGE.** The Authority will issue an endorsement to the Excess Liability Memorandum of Coverage evidencing membership in the program and setting forth the terms and conditions of coverage under the PGL. The form of the endorsement shall follow, except as otherwise set forth in the endorsement, the coverage of the Excess Liability Memorandum of Coverage. Except as otherwise provided herein or in the Agreement, the endorsement is controlling with respect to the actions of the members under this Memorandum.~~

130. **Amendment of Memorandum.** This Memorandum may be amended by a majority vote of the Committee and signature on the Memorandum by the member's designated representative who shall have authority is authorized to execute this Memorandum. Should a member of the program-PGL fail to execute any amendment to this Memorandum within the time provided by the Committee, the member will be deemed to have withdrawn from the PGL as of the end of the policy period. on the next annual renewal date which is beyond any applicable commitment period.

144. **Complete Agreement.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

152. **Severability.** Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

163. **Effective Date.** This Memorandum, ~~as amended,~~ shall become effective on the date of coverage for the member or upon approval by the Committee of any amendment, whichever is later. ~~upon approval by the Committee, and the signing of this agreement by the members and General Manager/Secretary/Treasurer of the Authority.~~

174. **Execution in Counterparts.** \_\_\_\_\_ This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**In Witness Whereof**, the undersigned have executed this Memorandum as of the date set forth below.

Dated: \_\_\_\_\_  
CSAC Excess Insurance Authority

Dated: \_\_\_\_\_  
Member Entity

\_\_\_\_\_  
~~CSAC Excess Insurance Authority~~

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Chief Executive Officer/Secretary

\_\_\_\_\_  
County of \_\_\_\_\_

Dated \_\_\_\_\_ By \_\_\_\_\_  
Authorized Representative



Adopted: 10/02/1998  
Amended: 06/05/2003  
Amended: 06/03/2005  
Amended: /2010

## MEMORANDUM OF UNDERSTANDING PRIMARY GENERAL LIABILITY PROGRAM

This Memorandum of Understanding (hereinafter "Memorandum") is entered into by and between the CSAC Excess Insurance Authority (hereinafter "Authority") and the participating members of the Primary General Liability Program (hereinafter "PGL"), consisting of counties and other public entities (hereinafter "Public Entity") who are signatories to this Memorandum.

1. **Joint Powers Agreement.** Except as otherwise provided herein, all terms used herein shall be as defined in Article 1 of the Joint Powers Agreement Creating the CSAC Excess Insurance Authority (hereinafter "Agreement"). Provisions of any applicable coverage agreement and all other provisions of the Agreement not in conflict with this Memorandum shall be applicable.

2. **Program Committee.** There is hereby established a PGL Committee (hereinafter referred to as "Committee") comprised of seven (7) members, five (5) of which shall be voting members and two (2) shall be alternates who vote in the absence of the voting members. Except as otherwise provided herein, the Committee shall have full authority to determine all matters affecting the PGL and its members, including, but not limited to, approval of new members, premium/rate setting and review of claims. The Committee has authority to settle all claims affecting the PGL, however, the Committee may delegate any or all of this authority as it deems appropriate to the Chair or staff.

The Executive Committee of the Authority shall appoint all Committee members, to be selected from members in the Program. One seat on the Committee shall be designated for a Public Entity representative appointed by the Executive Committee. If there are no Public Entity nominees from the PGL membership for the Public Entity seat, the Executive Committee shall appoint the Committee member from counties participating in the PGL. If, for any reason, there are less than seven (7) nominees from members in the PGL, the Executive Committee shall appoint from members in the General Liability I Program sufficient to constitute the Committee.

The terms of the members of the Committee shall be for two (2) years, except for the Public Entity representative and the alternates whose terms shall be for one (1) year. The expiration dates of the two-year appointments shall be staggered so that terms of no more than three (3) members will expire at any one time. The Committee will annually, at its first meeting of the calendar year, select its officers, consisting of a Chair and Vice-Chair.

The Committee, when necessary to fulfill the purposes of this Memorandum, shall meet on the call of the Chair of the Committee as provided in Article 12 of the Agreement and Article VI of the Bylaws of the Authority (hereinafter referred to as the "Bylaws").

A majority of the members of the Committee shall constitute a quorum for the transaction of business. Except as otherwise provided herein, all actions of the Committee shall require the affirmative vote of a majority of the members of the Committee. Any meeting of the Committee shall be subject to the applicable provisions of Government Code § 54950 et seq., commonly known as the "Brown Act."

3. **Premiums.** The participating members, in accordance with the provisions of Article 14 of the Agreement, shall be assessed an annual premium to fund the PGL. The Committee shall establish annual premium contributions, including administrative costs associated with the PGL.

4. **Cost Allocation.** Each member's share of annual premium shall be determined based on their actuarially determined expected losses. If the Committee determines that because of the size of the member, an individual actuarial analysis of the member's loss experience is unavailable or inappropriate, expected losses will be estimated based on the member's estimated payroll and an average program rate. The Committee may from time to time approve adjustments or modifications to the cost allocation formulas.

5. **Dividends and Assessments.** As a general rule, the annual premium, as determined by the Committee, shall be established at a level which provides adequate overall funding for the purchase of insurance or pooling of risk without the need for adjustments to past policy period(s) in the form of dividends and assessments. Should the Program for any reason not be adequately funded, except as otherwise provided herein, pro-rata assessments to the participating members may be utilized in accordance with the provisions of Article 14(b)(3) of the Agreement. Dividends may also be declared as deemed appropriate by the Committee.

6. **Closure of Policy Periods.** Claims for all program years, rather than individual years, shall be pooled. Notwithstanding any other provision of this MOU, provisions of the General Liability I Program Memorandum of Understanding regarding closure of policy periods is incorporated herein and shall apply to this MOU.

7. **Certificate of Coverage.** The Authority shall issue a Certificate of Coverage to the members setting forth the terms and conditions of coverage under the PGL. The form of the Certificate shall follow, except as otherwise set forth in the Certificate, the coverage of the General Liability I Program Memorandum of Coverage. Except as otherwise provided herein or in the Agreement, the Certificate is controlling with respect to the actions of the members under this Memorandum.

8. **Claims Administration.** The Authority will be responsible for handling all claims affecting the PGL. The Committee shall approve at least two (2) third party claims administrators to provide claims services to members of the PGL. Members may select

the claims administrator they will utilize from those authorized by the Committee. The agreements with the claims administrators to provide claims administration services may grant rights or impose duties and obligations on the members. Copies of agreements currently in effect or subsequently entered into by the Authority shall be provided to members upon request.

9. **Application to the Program.** All applications to join the PGL will be evaluated and subject to approval by the Committee. Any entity which makes application to become a participating member of the PGL who is not already a participating member in the Authority must also be approved in accordance with the provisions of Article 19 of the Agreement.

10. **Withdrawal and/or Cancellation from the Program.** Withdrawal of a member from the PGL shall be in accordance with the provisions of Article 20 or 21 of the Agreement. The PGL may from time to time enter into multiple year insurance and/or reinsurance agreements. The Committee may require current members and new members to agree to remain in the PGL for the duration of the multiple year agreements by executing an "Extended Commitment Period" Addendum to this MOU. Any PGL member that fails to execute any "Extended Commitment Period" Addendum will be considered to have withdrawn from the PGL effective on the next annual renewal date.

11. **Late Payments.** Notwithstanding any other provision to the contrary regarding late payment of invoices or cancellation from a Program, at the discretion of the Executive Committee, any member that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

12. **Resolutions of Disputes.** Any question or dispute with respect to the rights and obligations of the parties to this Memorandum shall be determined in accordance with Article 31 of the Agreement, Dispute Resolution.

13. **Amendment.** This Memorandum may be amended by a majority vote of the Committee and signature on the Memorandum by the member's designated representative who is authorized to execute this Memorandum. Should a member of the PGL fail to execute any amendment to this Memorandum within the time provided by the Committee, the member will be deemed to have withdrawn from the PGL on the next annual renewal date which is beyond any applicable commitment period.

14. **Complete Agreement.** Except as otherwise provided herein, this Memorandum constitutes the full and complete agreement of the members.

15. **Severability.** Should any provision of this Memorandum be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

16. **Effective Date.** This Memorandum shall become effective on the date of coverage for the member or upon approval by the Committee of any amendment, whichever is later.

17. **Execution in Counterparts.** This Memorandum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**In Witness Whereof**, the undersigned have executed this Memorandum as of the date set forth below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CSAC Excess Insurance Authority

Dated: \_\_\_\_\_

\_\_\_\_\_  
Member Entity