



# Pooled Liability Program Manual

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Prepared by:



Alliant Insurance Services, Inc.  
560 Mission Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105  
415-403-1400

# TABLE OF CONTENTS

## THE LIABILITY PROGRAM

### 1. INTRODUCTION

- A. Liability Program Operation
- B. Liability Program Structure

### 2. CLAIMS HANDLING PROCEDURES

- A. What is a Tort Claim?
- B. Reporting Claims
- C. Government Code Requirements
- D. Claims Against Public Entities
  - 1. General Features of Claims Procedures
  - 2. Claims Subject to Presentation Procedures
  - 3. Preparation, Presentation and Consideration of Claims
  - 4. Time to Commence Lawsuit
  - 5. Avoiding Effect of Noncompliance with Claims Statute
  - 6. Late Claim Proceeding
- E. Claim Deadlines in a Nutshell
- F. Releases
- G. Claim Forms
- H. Approved List of Defense Firms
- I. Instructions for Filing a Claim
- J. Form Letters
  - 1. Notice of Insufficiency Alternative A
  - 2. Notice of Insufficiency Alternative B
  - 3. Rejection of Claim
  - 4. Rejection of Untimely Claim
  - 5. Denial of Application to Present Late Claim
  - 6. Denial of Untimely Application to Present Late Claim
  - 7. Proof of Service by Mail #1
  - 8. Proof of Service by Mail #2

### 3. PROGRAM COMMITTEE

4. **COPY OF POLICY DOCUMENT**
5. **SAFETY PROGRAM**
6. **LIABILITY PROGRAM PARTICIPATION AGREEMENT**
7. **RETROSPECTIVE RATING PLAN**
  - A. **Purpose and Background**
  - B. **Legal Authority**
  - C. **Plan Operation**
8. **POLICIES AND PROCEDURES**
  - A. **Small Property Damage Claim Settlement Policy**
  - B. **Deductible Recovery Process**
  - C. **Employee Driving Standards**
  - D. **Claims Management**
  - E. **Pooled Liability Program Dividend for Retained Funds**
  - F. **Retrospective Rating Plan**
  - G. **Target Equity**
  - H. **Deductible Selection**
  - I. **Residential Sewer Backup Response and Claims Handling**
  - J. **Underwriting**

SECTION - 1  
INTRODUCTION

### **Program Administrator's Contact Information**

The Program Administrators have prepared this manual to serve as a reference for members of the Primary insurance Program. We recommend that it be maintained by the person at your agency who is responsible for insurance matters.

CSRMA has created a manual for each of its programs and one additional manual, which contains the Authority's general documents. Together, these manuals are a valuable resource to your agency's insurance program. Any questions about the Authority or its programs should be directed to the Program Administrators at:

**CSRMA Program Administrators**  
**c/o Alliant Insurance Services, Inc.**  
**560 Mission Street, 6<sup>th</sup>**  
**San Francisco, CA 94105**  
**Telephone: (415) 403-1400**  
**Facsimile: (415) 874-4813**



## Liability Program Operation

### A. **Program Participation Requirements**

Member agencies obtain coverage upon the payment of an application fee, meeting underwriting criteria, and the signing of a Participation Agreement.

### B. **Program Committee**

The Pooled Liability Program Committee advises the Executive Board and the Board of Directors on all operational aspects of the Program. The Committee is responsible for making recommendations on underwriting, coverage issues, claims administration and loss control.

The committee is composed of six members, appointed by the President, one of who is an Executive Board member who serves as Committee Chair.

### C. **Claims Administration**

Claims administration is provided by an Independent Third-Party Claims Administrator. Working with each agency, the Claims Administrator is responsible for advising as to the merit of each claim and the appropriate action to be taken. The Administrator is responsible for providing all necessary investigation of claims, as well as overseeing legal defense. The Administrator provides monthly claims reports containing the status of claims including paid and reserve values.

#### 1. ***Claims Handling***

The Board of Directors has established an optional settlement policy whereby small property damage claims valued at less than \$5,000 per occurrence may be settled at the agency level. Should the agency wish to exercise this option they remain obligated to report such claims to the claims administrator for recording purposes.

#### 2. ***Claims Filing Procedures***

The Claims Administrator provides procedures, and other pertinent information concerning administration, to be followed in reporting liability claims.

#### 3. ***Claims Settlement Authority***

Various levels of settlement authority have been established as CSRMA policy. These levels are as follows:

***\$0-\$25,000*** - Claims Administrator

The Claims Administrator has authority to settle claims up to, and including, \$25,000 in indemnity payment *per claim*. When at all possible, the Claims Administrator shall advise the member agency of the proposed recommended settlement prior to settlement.

Each agency may, at their option, settle *property damage* claims up to \$5,000 per occurrence and as outlined in [Policy and Procedure Memorandum #1](#).

***\$25,001-\$200,000*** – Pooled Liability Program Committee

The Program Committee has the authority to authorize settlement of claims up to and including \$200,000 (per occurrence).

***\$200,001-\$\$IR*** – Executive Board

The Executive Board has authority to authorize claims settlement up to the retained limit.

4. ***Claims Audit***

A biennial claim audit shall be conducted on the Third-Party Administrator in order to ensure that CSRMA members benefit from above average claims handling services, and to allow the JPA to gauge the effectiveness of their work. A report of the audit will be presented to the Pooled Liability Committee and Executive Board for review.

**D. Loss Control**

CSRMA has hired a full-time Risk Control Advisor to provide loss control services to assist members in establishing a loss control program. The Program Committee develops and recommends loss control standards which if adopted, members are expected to meet. Specific Standards for individual members are contained in the Risk Control Advisor's member audit reports.

**E. Policy and Procedure**

Policy and Procedures have been developed to assist in operation of the Program. As policy is established notification to members is made by way of a Policy and Procedure Memorandum.

## **Liability Program Structure**

### **A. Risk Sharing**

The Pooled Liability Program is currently structured with a \$750,000 self-funded risk-sharing first layer. Individual members choose deductibles between \$2,500 to \$500,000 per occurrence based upon specific coverage type within the Program, the size and financial strength of the agency. Each year, the level of the risk sharing layer is evaluated and may be adjusted upward or downward.

### **B. Coverage**

The CSRMA risk sharing layer provides coverages for General and Automobile Liability as a result of Bodily Injury, Property Damage, Personal Injury, Employment Practices Liability and Public Entity Errors & Omissions Liability as stated in the Memorandum of Coverage. Coverage is on an occurrence basis.

Reinsurance is purchased above the \$750,000 self-insured layer to \$25.5 Million in limits. In some instances, the reinsurance coverage may be either narrower or broader in scope than the underlying memorandum of coverage.

### **C. Program Financing**

The cost to each member agency for program participation is determined by the Executive Board upon the basis of a cost allocation plan and rating formula. The premium for each participating agency includes the agency's share of expected losses, program insurance costs, and program administrative costs for the year, plus the agency's share of Authority general expense allocated to the program by the Board.

The rating structure for General Liability uses the following factors to determine an equitable charge for each individual member agency:

1. Existence
2. Treatment
3. Miles of sewage collection line excluding lateral.

The Automobile Liability rating portion is based on per vehicle charges using the following categories:

1. Heavy vehicles (Gross Vehicle Weight of 10,000 lbs. or more)
2. Light vehicles (Gross Vehicle Weight under 10,000 lbs.)

### **D. Actuarial Report**

An actuarial report shall be obtained annually to determine estimated outstanding losses for each open program year and funding rates for future program years based on the experience of the Pooled Liability Program.

**E. Retrospective Rating**

A retrospective rating plan is utilized to determine that sufficient funds are maintained in the Pool to cover all losses penetrating the Pool.

## SECTION - 2

# CLAIMS HANDLING PROCEDURES

### **What is a Tort Claim?**

A tort is an act or omission by one party that causes harm or damage to another party, including their property or reputation.

A claim is a demand by the injured party for compensation from the person who committed the tort.

## Reporting Claims

Any successful organization incorporates a number of systems and guidelines, which help promote quality and efficiency.

The CSRMA program has a policies and procedures for settlement of small property damage claims. The policy statement is as follows:

Participants in the California Sanitation Risk Management Authority Liability Program shall have the option of settling or denying any claim covered by the Liability Program, which meet *all* the following conditions:

1. The claim is for Property Damage only;
2. The claim has no apparent potential for related Bodily Injury;
3. The entire occurrence from which the claim arises appears to have settlement value of no more than \$5,000, or less if participant's SIR is less;
4. The claim settlement or denial can be concluded within no more than 30 days of the date the agency becomes aware that a claim may exist.

If the option to settle or deny is exercised by a CSRMA Liability Program participant under the guidelines above, they shall still report all such claims to the Claims Administrator for recording purposes.

The Program Administrator will be better able to serve you with more accurate and complete claims information. The data is reviewed and analyzed to assist members in identifying past problem areas and future solutions. We are also able to distinguish the legal and adjusting fees from the loss payments.

The data are also used by actuaries and the Program Administrator in determining trends, projected losses and cost allocations. Identifying trends, types of claims and number of occurrences will allow members to learn from their claims history. Prevention includes a saving in future liability and promotes positive community relations.

### **Government Code Requirements**

On September 20, 1963, the California Legislature enacted the California Tort Claims Act. Prior to this time, the procedures and rules governing claims against public entities were confusing and uncertain. The California Tort Claims Act developed a more coherent claims procedure.

With few exceptions, liability under the Tort Claims Act for monetary damages is conditioned upon the timely filing with the public entity of a written claim in proper form. This mandatory compliance with the claims presentation requirements is a condition precedent to an action against a public entity or employee. As a general rule, a claim relating to a cause of action for death, personal injury or damage to personal property or growing crops must be presented not less than six months after the accrual of the cause of action and within one year for all other causes of action.

The purpose of the claims presentation requirements is twofold: First, to give the public entity an opportunity to make early investigation of the facts upon which the claim is based; second, to allow the entity an opportunity to settle just claims prior to the initiation of a lawsuit. Tactically the filing of a claim gives a public entity an additional edge over private individuals and entities who may not receive first notice of a lawsuit until the one-year statute of limitations or later.

## General Features of Claims Procedures

### **1. *Notice of Claim***

As a general statutory requirement, subject to certain exceptions, an action for "money or damages" may not be maintained against the state or any public entity unless a written claim has first been timely presented to the defendant and rejected in whole or in part. (Gov. Code, ' '905, 905.2 and 945.4.) Compliance with this procedure is a mandatory prerequisite to stating a cause of action and must be alleged by the plaintiff in his or her complaint. (*Mazzola v. Feinstein* (1984) 154 Cal.App.3d 305.)

### **2. *Scope: Claims for "Money or Damages"***

Compliance with the claims procedure is limited to cases in which the claimant asserts that the public entity is liable for "money or damages." This would, therefore, include tort claims arising out of negligence and/or intentional acts and subrogation and indemnity claims. Actions seeking injunctive relief would be excluded from the claims requirements, as they do not seek money damages.

## Claims Subject to Presentation Procedures

### **1. *Claims Against Local Public Entities***

Government Code Section 905 defines the coverage of claims against local public entities by a process of exclusion; "all claims for money or damages against local public entities" must be presented under the statutory procedures, except those specifically excluded.

The exclusion in Section 905 embraces substantially all types of claims (most are essentially non-tortious in nature) for which some other adequate claims procedure has already been devised or for which the procedural protection of the new act is believed to be unnecessary. (*Miner v. Superior Court* (1973) 30 Cal.App.3d 597, [106 Cal.Rptr. 416].)

Specially exempted from claims presentation requirements under Section 905 are the following types of actions:

- a. Claims under the Revenue and Taxation Code or other related tax provisions;
- b. Claims made in connection with mechanics lien or labor lien laws;
- c. Actions by public employees for fees, salaries, wages or other benefits, including money or benefits under any public retirement or pension system;
- d. Workers' compensation actions;
- e. Claims made by the State, any State department or agency, or by another public entity.

### **2. *Special Claims Procedures Established by Public Entity***

Under Government Code Sections 935-935.4, local public entities may adopt claims procedures by charter provision, ordinance, or regulation applicable to claims not governed by the Tort Claims Act or by other statutes or regulations.

When a local public entity has established a local claim filing procedure that satisfies the requirement of Government Code Section 935, compliance with its provisions is a mandatory prerequisite to suit. (*Pasadena Hotel v. City of Pasadena* (1981) 119 Cal.App. 3d 412 [174 Cal.Rptr.52].)

The time period for presenting the claim cannot be shortened to less than the six-month period allowed by Government Code Section 911.2 of the Tort Claims Act for similar claims. Special local procedures cannot lay traps for the unwary. In addition, the local

procedures cannot allow the governing body of the local entity more than 45 days for taking action upon a claim.

*Note:* Our recommendation is for local public entities to adopt special claims procedures for excluded types of actions, and particularly with respect to claims for indemnification and contribution by other public entities.

### **3. *Inverse Condemnation Exemption***

No claim is required to be filed in order to maintain an action against a public entity for inverse condemnation pursuant to Section 19 of Article 1 of the California Constitution.

### **4. *Claims of Minors and Incompetent Persons***

Under the Tort Claims Act, claimants who are minors or incompetent must comply with the procedures of the time limits provided in the statutes. (*Whitfield v. Roth* (1974) 10 Cal.3d 874, [112 Cal.Rptr. 540].

However, escape provisions have been provided as follows:

- a. Minority, physical incapacity, mental disability, and inadvertence or mistake may provide the basis for granting leave to present a late claim after the statutory six-month period has expired.
- b. The time limit for commencement of an action on a rejected claim is tolled for a State prisoner-claimant until his civil rights to sue are restored. (Gov. Code, ' ' 945.6(b) and 9590.6(c).)

## Preparation, Presentation and Consideration of Claims

### 1. *Contents of Claim*

The basic facts and legal theories upon which the claimant intends to rely should include all potential theories of recovery, because a complaint filed against a public entity may not enlarge upon or include a cause of action not mentioned in the claim. (*Donohue v. State* (1986) 178 Cal.App.3d 795 [224 Cal.Rptr. 57].)

The essential contents of the claim are prescribed by Government Code Section 910. They are as follows:

- a. The names and addresses of the claimant and the person to whom notices are to be sent.
- b. A statement of facts supporting the claim.
- c. A description of the injuries, losses, and/or amount of damages claimed as of the time of presentation.
- d. The name of the public entity who caused the entry, if known.

### 2. *Presentation*

- a. Time limits for presentation
  - (1) Claims based on causes of action for death, personal injury, injury to personal property, or injury to growing crops must be presented "not later than the 6 months after the accrual of the cause of action." (Gov. Code '911.2.)

The six-month rule covers not only personal injury entailing physical trauma and property damage but also tortious injuries a person may suffer to "reputation, character, feelings or esteem," i.e., emotional distress, defamation, etc.

The six-month presentation period prescribed by Government Code Section 911.2 is not limited to negligence claims but extends to tort claims.

- (2) Other causes of action: One-year rule.

All claims not within the six-month presentation requirement and subject to procedures of the California Tort Claims Act are required to be presented to the public entity "not later than one year after the accrual of the cause of action." (Gov. Code, § 911.2.)

*Note:* The tortuous injuries to real property are within the catchall one-year claim presentation period.

b. Computing the time limit

(1) Mandatory nature of time limits.

The statutory time limits within which a claim must be presented to the public entity are regarded as mandatory. (*Scannell v. County of Riverside* (1984) 152 Cal.App.3d 596 [199 Cal.Rptr. 644].)

(2) Accrual of claim

The date of accrual means the date on which the cause would be deemed to accrue for the running of the statute of limitations if the action were between private litigants. Ordinarily, this is when the injury was incurred as a result of the defendant's wrongful act or omission. (*Mosesiano v. Fresno* (1972) 28 Cal.App.3d 93, [104 Cal.Rptr. 655].)

(3) Late-discovery doctrine

The strictness of the time limits for claim presentation is modified in appropriate cases by the application of the "late-discovery" doctrine. Here a cause of action (fraud, medical malpractice) which has been concealed from or unknown to the claimant is deemed to accrue only when the claimant receives notice of it or, through the exercise of reasonable diligence, should have done so. This is essentially a question of fact.

(4) Continuing injury.

If the injury is of a continuing nature, such as a prolonged flooding of land, the owner may treat the claim as one that keeps accruing from time to time and present periodic claims as the damage persists, or may treat the entire sequence of events as the occurrence from which the claim arose and compute the time for claim presentation from the last event in the series.

c. Method of presentation

Presentation to local entities of claims, amendments to claims, and applications for leave to file late claims consists of either delivering the document to the clerk, secretary or auditor of the public entity, or mailing it to one of these people or to the entity's governing body. (Gov. Code, ' 915(a).)

### 3. *Consideration of Claim*

#### a. Time for consideration of claim

The basic statutory rule governing the time allowed to a public entity to affirmatively act upon a claim is that such action must be taken "within 45 days after the claim has been presented." (Gov. Code, ' 912.4.)

Under Government Code Section 913, the public entity is required to give written notice of its action on a claim. Failure of a board to take action on the claim within this period is deemed, by operation of law, to constitute a rejection of the claim on the 45th day. (Gov. Code ' 912.4.)

#### b. Action by public entity on claim

The local public entity is authorized, within the period allowed, to (1) reject the claim entirely, (2) allow it in full, (3) allow it in part and reject the balance, (4) compromise it, if the liability or amount due is disputed, or (5) do nothing and permit the claim to be denied by operation of law. (Gov. Code. ' 912.4(c).)

#### c. Reconsideration of rejected claims

The California Tort Claims Act provides for flexibility in negotiation and settlement of claims against public entities. The power to allow or compromise claims is expressly confirmed by Government Code ' ' 12.6 and 912.8. This action to compromise is permitted before litigation and after.

### **Time to Commence Lawsuit**

If written notice is given to the public entity of the rejection of the claim, either by affirmative action or by operation of law due to inaction, a claimant has only six months after the date such notice has been personally delivered or deposited in the mail to commence litigation. However, if no written notice is given of the rejection of the claim, this period of time to commence litigation is extended to two years from the date of the accrual of the cause of action. (Gov. Code ' 945.6.)

## **Avoiding Effect of Noncompliance with Claims Statute**

### **1. *Doctrine of substantial compliance***

Although some cases on the application of claims statutes have declared that certain provisions are mandatory, the better view, currently accepted by the California courts, is that substantial compliance will suffice.

Substantial compliance presupposed that an attempt to comply was made but was defective or incomplete in respects that did not prevent satisfaction of the purposes of the claim presentation.

The fact that the defendant public entity had full knowledge of the claim and related circumstances is not sufficient to excuse non-compliance.

### **2. *Notice of Insufficiency and Amendments***

Within 20 days after a claim has been presented, the public entity may give the claimant written notice of any substantial defects or omissions; having done so, the entity is forbidden to take action on the claim for 15 days. (Gov. Code. ' 910.8.)

The entity's obligation to give the requisite notice of defects arises only where the plaintiff has presented a document that is recognizably intended to constitute a claim.

### **3. *Estoppel***

The doctrine of estoppel as a bar to a public entity's raising the defense of non-compliance with the claim statutes is available to a plaintiff when certain elements are present. Basically, (1) the public entity must be apprised of the facts; (2) the public entity must intend that its conduct be acted on or act so that the party asserting estoppel has a right to believe the entity so intended; (3) the other party must be ignorant of the true state of facts; and (4) the other party must rely on the conduct of the entity to his detriment.

Estoppel generally consists of false or misleading statements or concealment about the claim or its settlement made by the entity's employees or agents with knowledge of the claims procedure to a claimant or someone acting for him who is ignorant of the procedure, where the claimant had detrimentally relied on the statements or concealment.

The issue of estoppel ordinarily must be determined as one of fact.

## **Late Claim Proceeding**

### **1. *Purpose and Scope***

The Tort Claims Act includes an important procedural mechanism under which the failure to present a claim within the six-month period allowed by law may be treated as non-fatal upon a showing of special circumstances. An attempt to present a claim after the time limit has expired will fail unless the late-claim procedures have been followed and late-claim relief secured.

### **2. *Summary of Late-Claim Procedure***

These steps comprise the late-claim procedure:

- a. Initial application must be made to the public entity for leave to present the claim after expiration of the six-month period. (Gov. Code. ' 911.4.) The application must be presented within "a reasonable time not to exceed one year" after the accrual of the cause of action. This period is not tolled by the minority of the injured person but is tolled during a period of mental incapacity if the claimant is not represented by a guardian or a conservator.
- b. The governing board is given 45 days within which to grant or deny the application. Failure to act within this period operates as a denial of the application on the 45th day.
- c. If the application is denied, the claimant may within six months thereafter petition the court for an order relieving the claimant from the claims presentation and rejection procedure.
- d. If the court makes an order dispensing with the need to comply with the claims procedure, the claimant is required to commence his action within a special 30- day limitations period.

### **3. *Grounds for Leave to Present Late Claim***

- a. Mistake, inadvertence, surprise, excusable neglect.

The primary statutory basis late-claim relief is specified in Government Code '911.6, i.e., that the failure to present a timely claim was through mistaken inadvertence, surprise, or inexcusable neglect. The applicant has the burden of proof on this issue.

After the applicant has established this requirement the public entity may still properly deny the application if it was prejudiced by the failure to present the claim in a timely manner. The public entity bears the burden of proof on the issue of prejudice. (Gov. Code. ' 911.6.)

b.      Minority

Permission to present a late claim must be given when the claimant was a minor during the entire six-month claim presentation period, provided the claimant applied for such permission within a reasonable time (not to exceed one year) after the claim arose. (Gov. Code. ' 911.6.)

Reasonable diligence by or on behalf of the minor claimant in presenting the late-claim application is the only issue open to dispute.

A claim filed late by or on behalf of a minor has no operative effect in the absence of late-claim proceedings; the mere fact that the court would have been required to grant the minor's late-claim petition, had one been filed, does not excuse the minor from complying with the statutory procedure.

c.      Disability

Late-claim relief may be granted if the claimant was "physically or mentally incapacitated" during all of the six-month period and "by reason of such disability failed to present a late claim during such time." (Gov. Code. ' 911.6.)

**4.      *Application to Public Entity for Late-Claim Relief***

a.      Time limit - reasonable diligence

The initial application for leave to present a late claim must be presented to the public entity "within a reasonable time not to exceed one year after the accrual of the cause of action." (Gov. Code. ' 911.4.)

b.      Action by public entity

The board must act on the application within 45 days after it is presented, and failure to do so constitutes a denial of the application on the 45th day. (Gov. Code. ' 911.6.) There is no statutory authority for extending this 45-day period, as there is for granting or denying claims.

**5.      *Petition to Court for Late-Claim Relief***

a. De novo review by court: Procedural aspects

If the public entity denies application for leave to present a late claim, the claimant may file a petition for a court order *relieving* the claimant from the necessity to comply with the claim presentation requirement. (Gov. Code. ' 946.6.) The court is then required to make an independent determination upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition as to whether the denial of the late claim application was proper. (Gov. Code. ' 946.6.)

b. Time limits for filing petition

The petition for review must be filed within *six months* after denial of the late claim application by the public entity, or of its denial by operation of law on the 45th day after its original presentation. (Gov. Code. ' 946.6.)

c. Filing and service of a petition

- (1) The petition is required to be filed in a court that would be a proper court for trial of the basic cause of action.
- (2) Service of the petition, together with written notice of time and place of the hearing, are required to be made not less than 10 days before the hearing. (Gov. Code. ' 946.6.)

*Note:* Due to mere ten-day notice requirement, it is imperative these petitions be forwarded to counsel immediately so that opposition can be prepared and timely filed five days prior to the hearing.

d. Order granting relief: Commencement of action

If the court makes an order relieving the claimant of the obligation requiring presentation and rejection of the claim, action must be filed within 30 days in the court which granted the petition. This 30-day rule is a statute of limitations. Failure to meet this time limit results in dismissal.

## Claim Deadlines in a Nutshell

### **A. Filing of a Claim**

Before a complaint for damages against a public entity or employee can be filed in court, a claim must first be filed with the entity in accordance with the Tort Claims Act and rejected (Gov. Code. ' 945.4). The claim has to be filed within six months of accrual of the cause of action (Gov. Code. ' 911.2). For purposes of the Tort Claims Act, the date of accrual is the same date on which the cause of action would accrue if there were no claims requirements (Gov. Code. ' 901).

### **B. Notice of Insufficiency**

The public entity may give notice of the insufficiency of the claim within 20 days. Thereafter it may not act on the claim for 15 days (Gov. Code. ' 910.8).

### **C. Rejection of a Timely Claim**

The public entity must approve or reject a timely claim within 45 days and provide written notice to the claimant (Gov. Code. ' ' 912.4, 912.6, 931). If a timely claim is rejected in whole or in part, the claimant may file suit for money or damages within six months after the date notice is personally delivered or deposited in the mail (Gov. Code. ' ' 945.4; 945.6, subd.(a)(1)). If the rejection is not properly noticed in accordance with Section 913, however, the action may be filed in court within two years from the accrual of the cause of action (Gov. Code, ' 945.6, subd.(a)(2)).

### **D. Rejection of an Untimely Claim**

If the entity determines that the claim was filed late, it must return the claim within 45 days from the date it was signed, along with a notice that the claimant may apply for leave to present a late claim (Gov. Code. ' ' 911.3., 911.14).

### **E. Application for Leave to File Late Claim**

If the claim is filed beyond the six months, the claimant may apply to the public entity, within a reasonable time not to exceed one year after accrual, for leave to present a late claim (Gov. Code. ' 911.4). In responding to an application for leave to present a late claim, the entity must grant or deny leave within 45 days and provide notice (Gov. Code. ' ' 911.6, 911.8). If the entity takes no action, the application is deemed denied on the 45th day (Gov. Code. ' 911.6(c)).

**F. Petition for Relief from Claims Act Requirements**

If an application for leave to file a late claim is rejected by the public entity, the claimant must first obtain a court order for relief from the requirements of the Claims Act before filing a suit (Gov. Code, ' 946.6). A petition for such an order must be filed with the court within six months after the application is denied or deemed denied (Gov. Code. ' ' 946.6, subd.(b); 911.6). If relief is granted, suit must be filed within 30 days of the order granting relief (Gov. Code. ' 946.6(f)).

### **Releases**

As discussed previously, there are certain circumstances under which an agency has the option of handling a claim. Should the District settle a property damage claim we would strongly recommend the District to secure a release from the claimant before issuing a warrant.

Carl Warren & Company has standard form releases which you may wish to use in settling the small property damage claims. They are always happy to assist you in properly completing the forms.

## Claims Forms

Several public entities provide claim forms to the claimants.

Please be advised that it is not necessary for the claimants to use the claim forms, as the claimant may fulfill the statutory requirements by submitting any document that substantially complies with the Government Code.

Also, a public entity cannot require more information than is required by Government Code '910. There may be no harm in asking for more information, but the public entity cannot force the claimant to provide more data than what is required.

District employees should be alert to any document that may constitute a claim. Please advise the claims administrator of any document you may receive asking for monetary damages. Also, please retain the envelope in which any claim or potential claim document is received.

Often claimants will have questions regarding how to fill out a claim form. Contact Carl Warren & Company if you have questions in this regard or review the following sections.

## **Approved List of Defense Firms**

### **SACRAMENTO AREA**

Downey, Brand, Seymour & Rohwer  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 441-0131

Bolling, Walter & Gawthrop  
8880 Cal Center Drive, Suite 400  
Sacramento, CA 95826  
P.O. Box 255200  
Sacramento, CA 95865-5200  
(916) 369-0777

Dillon & Rodgers  
1387 Garden Highway  
Sacramento, CA 95833  
(916) 925-2500  
Fax: (916) 925-1864

Porter Scott  
350 University Avenue, Suite 200  
Sacramento, CA 95825  
(916) 929-1481  
Fax: (916) 927-3706

### **SAN FRANCISCO BAY AREA**

Meyers, Nave, Riback, Silver & Wilson  
401 Mendocino Avenue, Suite 100  
Santa Rosa, CA 95401  
(707) 545-8009

Low, Ball & Lynch  
601 California Street, 21<sup>st</sup> Floor  
San Francisco, CA 94108-2898  
(415) 981-6630

Howard, Rome, Martin & Ridley  
1775 Woodside Road, Suite 200  
Redwood City, CA 94061-3436  
(650) 365-7710  
Fax: (650) 364-5297

Boornazian, Jensen & Garthe  
555 12<sup>th</sup> Street, Suite 1800  
Oakland, CA 94607  
(510) 834-4350  
Fax: (510) 839-1897

Hoge, Fenton, Jones & Appel  
60 South Market Street, Suite 1400  
San Jose, CA 95113-2396  
(408) 287-9501  
Fax: (408) 287-2583

Bledsoe, Cathcart, Diestel & Pedersen, LLP  
601 California Street, 16<sup>th</sup> Floor  
San Francisco, CA 94108-2805  
(415) 981-5411  
Fax: (415) 981-0352

Tobin & Tobin  
(Paul Gaspari)  
500 Sansome Street, Eighth Floor  
San Francisco, CA 94111  
(415) 433-1400  
Fax: (415) 433-3883

Edrington, Schirmer & Murphy  
2300 Contra Costa Boulevard, Suite 450  
Pleasant Hill, CA 94523-3936  
(925) 827-3300  
Fax: (925) 827-3320

## **CENTRAL CALIFORNIA AREA**

Peel, Garcia & Stamper LLC  
3585 W. Beechwood, Suite 101  
Fresno, CA 93711  
(559) 431-1300  
Fax: (559) 431-1442

## **SANTA BARBARA/SAN LUIS OBISPO/VENTURA COUNTIES**

Benton, Orr, Duvall & Buckingham  
39 North California Street  
Ventura, CA 93001-2620  
P.O. Box 1178  
Ventura, CA 93002-1178  
(805) 350-8921  
(805) 648-5111  
Fax: (805) 648-7218

McCarthy & Kroes  
125 East Victoria Street, Suite A  
Santa Barbara, CA 93101  
(805) 564-2085  
(805) 564-8891

## **ORANGE/LOS ANGELES COUNTY**

Collins, Collins, Muir & Traver  
1100 El Centro Street  
South Pasadena, CA 91030  
P.O. Box 250  
South Pasadena, CA 91030  
(626) 243-1100  
Fax: (626) 243-1111

Haight, Brown & Bonesteel  
5 Hutton Center Drive, #900  
Santa Ana, CA 92707  
(714) 754-1100  
Los Angeles Office: (310) 215-7100  
Fax: (714) 754-0826

Woodruff, Spradlin & Smart  
701 South Parker Street, Suite 8000  
Orange, CA 92868  
(714) 558-7000

## **SAN DIEGO COUNTY**

McCormick & Mitchell  
625 Broadway, Suite 1400  
San Diego, CA 92101  
(619) 235-8444

Daley & Heft  
462 Stevens Avenue, Suite 201  
Solana Beach, CA 92075  
(858) 755-5666  
Fax: (858) 755-7870

## **SAN BERNARDINO and RIVERSIDE COUNTIES**

Lewis, Brisbois, Bisgaard & Smith  
650 East Hospitality Lane, Suite 600  
San Bernardino, CA 92408  
(909) 387-1130  
Fax: (909) 387-1138

Middlebrook, Kaiser & Popka  
1411 North Arrowhead Avenue, Suite 200  
San Bernardino, CA 92401  
P.O. Box 1319  
San Bernardino, CA 92402  
(909) 888-5751  
Fax: (909) 888-7360

Thompson & Colgate  
3610 Fourteenth Street  
P.O. Box 1299  
Riverside, CA 92502  
(951) 682-5550  
Fax: (951) 781-4012

Bell, Orrock Watase, Inc.  
1533 Spruce Street, Suite 100  
Riverside, CA 92507  
(951) 683-6014  
Fax: (951) 683-0314

**IMPERIAL COUNTY**

Anderholt & Storey  
654 Main Street  
El Centro, CA 92243  
(760) 352-1311  
Fax: (760) 352-3410

### **Instructions for Filing a Claim**

Please type or print clearly with a ball-point pen all the information requested on Claim Form. The following provides specific instructions for completing each section of the Claim Form:

1. Name and Mailing Address of Claimant - State full name and mailing address of the person/persons claiming damage or injury.
2. Dollar Amount of Claim - State the total amount you are claiming as a result of the alleged damage/injury. If damage/injury is continuing or is anticipated in the future, indicate with a "+" following the dollar future. If the total amount is unspecified or exceeds \$10,000, designate the appropriate court jurisdiction for the claim.
3. When Did the Damage/Injury Occur? - State the exact month, day, year and appropriate time (if known) of the incident which caused the alleged damage/injury.

Under State law, claims relating to causes of action for personal injury, wrongful death, property damage and crop damage must be presented to the State Board of Control no later than six months after the incident date. Please note that evidence of "presentation" includes a clear postmark date on an envelope or a certification of personal service.

When filing a claim beyond the six-month period, you must explain the reason the claim was not filed within the six-month period. This explanation is called an "Application for Leave to Present a Late Claim." In considering your claim, the Board will first decide whether the late claim application should be granted or denied. (See Government Code Section 911.4 for the legal acceptable reasons a claim may be filed late. Only if it is granted will the Board then consider the merits of the claim.

Claims relating to any cause of action other than personal injury, wrongful death, property damage and crop damage must be presented no later than one year after the incident date. See Government Code '911.2.

4. Where Did the Damage/Injury Occur? - Include the city, county and street address where the damage/injury allegedly occurred.
5. How Did the Damage/Injury Occur? - Provide in full detail the circumstances that led up to the incident. Identify ALL FACTS which support the claim. Include the name of the agency(ies) and employee(s) that allegedly caused the damage/injury as well as a specific identification as to any condition of public property that allegedly caused the damage/injury.

6. What Damage/Injury Occurred? - Provide in full detail a description of the damage/injury that allegedly resulted from the incident.
7. How Was the Amount of the Claim Computed? - Provide a breakdown of how the total amount that you are claiming was computed. You may declare expenses incurred and/or future, anticipated expenses. If available, please attach to your claim copies of all bills, payment receipts and cost estimates.
8. Official Notices and Correspondences - Provide the name and mailing address of the person to whom all official notices and other correspondence should be sent, if other than Claimant. This official contact person can be the Claimant or a representative of the Claimant.
9. Signature - The Claim must be signed by the Claimant or by the attorney/representative of the Claimant. The Board will not accept the claim without a proper signature. Government Code '910.2 provides: "The Claim shall be signed by the Claimant or by some person on his/her behalf."
10. If you need more space, please write on the back of the claim form or separate piece(s) of paper.

### **Form Letters**

The District will be contacted by an adjuster from Carl Warren & Company soon after a claim is received from the District. The adjuster will advise the District as to appropriate response.

The purpose of the response is to protect the District and to take advantage of code and case defenses to force the claimant to comply with the Government Code and set the statute of limitations for suit filings.

Please follow the adjuster's instructions, making certain that any written correspondence be sent to the claimant's proper mailing address - taken from the claim form. If any attorney has submitted a claim on behalf of the claimant, correspondence should be sent to the claimant in care of the attorney. Also, all the following form letters should be prepared on the District's letterhead for transmittal and accompanied with a Proof of Service by Mail statement. See Form 6.

The following form letters are composed to fit the needs of the individual claim and, at the same time, remain consistent with the requirements and limitations of the Government Code.

CLAIM PROCEDURES  
Form Letter #1  
Alternative A  
[Letterhead and Date]

NOTICE OF INSUFFICIENCY

Dear:

Your claim, which was received by the [insert title of board or officer] on [date], failed to comply substantially with certain Government Code sections. It was insufficient for the following reasons:

[Give reasons for insufficiency]

For your information, consults Sections 910, 910.2, 910.4 and 910.8 and other sections of the Government Code pertaining to the filing of the claims against a public entity. Due to certain time requirements for filing claims, these deficiencies should be corrected immediately.

[title]

Alternative B  
[Letterhead and Date]

NOTICE OF INSUFFICIENCY

Dear:

This is to advise you that your claim against the [insert title of board of officer] is being returned. The claim fails to substantially comply with the requirements of California Government Code Sections 910 or 910.2; it is insufficient for the reason(s) checked below:

1. The claim fails to state a cause of action.
2. The claim fails to state the name and post office address of the claimant.
3. The claim fails to state the post office address to which the person presenting the claim desires notice to be sent.
4. The claim fails to state the date/place/or other circumstances of the occurrence or transaction which gave rise to the claim presented.
5. The claim fails to state the injuries, damages or losses believed to have been incurred as a result of the incident.
6. The claim fails to state the name(s) of the public employee(s) causing the injury, damage or loss (if known).
7. The claim fails to state the amount claimed as of the date of presentation/the estimated amount of any prospective injury or loss so far as known, or the basis of computation of the amount claimed.
8. The claim is not signed by the claimant or by some person on his/her behalf.
9. Other.

REJECTION OF CLAIM

Dear:

Notice is hereby given that the claim which you presented to the [insert title of board or officer] on [date] was rejected on [date] by [title of board of officer or operation of law].

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

[title]

## REJECTION OF UNTIMELY CLAIM

Dear:

The claim which you presented to the [title of board or officer] on [date] is being returned because it was not presented within six months after the event or occurrence as required by law. See Section 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to [name of public entity] for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Government Code Section 911.6.)

You may seek the advice of an attorney of your choice in connection with the matter. If you desire to consult an attorney, you should do so immediately.

[title]

DENIAL OF APPLICATION TO PRESENT A LATE CLAIM

Dear:

Notice is hereby given that the application to present a late claim which you presented to the [insert title of board or officer] on [date] was denied on [date] by [title of board or officer] or [by operation of law].

**WARNING**

If you wish to file a court action in this matter, you must first petition the appropriate the court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See also Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

[title]

DENIAL OF UNTIMELY APPLICATION TO PRESENT A LATE CLAIM

Dear:

The application which you presented to [title of board or officer] on [date] is being returned to you herewith, without any action having been taken on it.

The application is being returned because it was not presented within one year after the accrual of the cause of action. To determine whether you have any further remedy or whether further procedures are open to you, you may wish to consult with an attorney of your choice. If you desire to consult an attorney, you should do so immediately. See Government Code Section 911.4.

[title]

State of California  
County of

I am employed in the County of \_\_\_\_\_, State of California. I am over the age of 18 and not a party to the within cause or claim; my business address is.

I served the foregoing document \_\_\_\_\_ [name of document; e.g., "Rejection of Claim"] by depositing a true copy thereof in the United States Mails in \_\_\_\_\_, State of California, on \_\_\_\_\_, 20\_\_, enclosed in a sealed envelope with the postage thereon fully prepaid, addressed as follows: \_\_\_\_\_ [name and address of claimant or claimant's attorney].

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ [day] of \_\_\_\_\_ [month], 20\_\_, at \_\_\_\_\_, California.

[Type or Print Name]

[Signature]

State of California  
County of

I am employed in the County of \_\_\_\_\_, State of California. I am over the age of 18 and not a party to the above-entitled cause. My business address is.

I am familiar with the practice of \_\_\_\_\_ [name of public entity or business] for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

I served the foregoing document \_\_\_\_\_ [name of document; e.g., "Rejection of Claim"] by placing a true copy thereof for collection and mailing, in the course of ordinary business practice, with other correspondence, of \_\_\_\_\_ [name of public entity or business], located at \_\_\_\_\_ [address of public entity or business], on \_\_\_\_\_, [date], enclosed in a sealed envelope, with the postage fully prepaid, addressed as follows:  
[name and address of claimant or claimant's attorney].

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_ [day] of \_\_\_\_\_ [month], 20 \_\_\_\_, at \_\_\_\_\_, California.

[Type or Print Name]

[Signature]

\*Use Alternative No. 1 only if declarant personally deposits in U.S. mail.

SECTION - 3  
PROGRAM COMMITTEE

## **Pooled Liability Program Committee**

The "Pooled Liability Program Committee" is a standing committee of the Authority. The Committee consists of six members, at least one of whom is a member of the Executive Board selected by the President and serves as the Committee Chair. All members of the Committee must be: (1) affiliated with member agencies that are participants in the Authority's Pooled Liability Program; (2) knowledgeable about the operation of the program; and (3) selected by the president. Committee members other than the Committee Chair serve two-year terms with the terms of two members beginning in even-numbered calendar years and the other two members' terms beginning in odd-numbered calendar years. The term of the Chair is indefinite and serves at the discretion of the President.

### **PURPOSE**

The purpose of the Pooled Liability Program Committee is to advise the Executive Board and the Board of Directors of all operational aspects of the Pooled Liability Program and to execute and implement the directions of the Executive Board with regard to matters within the committee's powers, duties and responsibilities which are as follows:

### **RESPONSIBILITIES**

#### **Underwriting**

- ◆ Solicit information necessary to evaluate membership applications. Determine adequacy of information provided by prospective members.
- ◆ Advise and report to the Executive Board on matters relating to prospective new members to the program.

#### **Coverage Issues**

- ◆ Review coverage issues as they arise and make a determination relative to the coverage issue.

## **Claims Administration**

- ◆ Advise and report to the Executive Board and the Board of Directors as to the status of the program.
- ◆ Solicit proposals, select and recommend to the Executive Board qualified candidates to serve as the program's administrator.
- ◆ Administer the contract for claims services and review invoices.
- ◆ Provide supervision and direction to the Authority's claims administrator.
- ◆ Review procedures for claim processing and recommend changes if appropriate.
- ◆ Review claims frequency and severity reported by participants.
- ◆ Oversee the preparation of a quarterly claims report to all participants.
- ◆ Identify needs of participants and recommend training.
- ◆ Review disputed claims and settle claims within authority granted by the Executive Board.

## **Safety**

- ◆ Develop programs, policies and resources that will enable participants to reduce Workers' Compensation losses.
- ◆ Provide for inspections of participants' facilities to assist in reducing losses and improving safety.
- ◆ Administer contract for safety services and recommend approval of payments.
- ◆ Provide supervision and direction to the Authority's safety program consultant.
- ◆ Prepare and coordinate an annual safety program.
- ◆ Coordinate safety program with Pooled Liability Program Committee.

## **Budget**

- ◆ Recommend program budget.

## **Program Committee Members**

The most recent and complete CSRMA Organizational Chart can be found in the “About Us” section of the CSRMA website at the below link:

<http://csrma.org/docs/CSRMA-Organizational-Chart.pdf>

## SECTION - 4

### COPY OF POLICY DOCUMENT

**Copy of Policy Document**

If you would like a copy of the policy document, please contact Myron Leavell.

(415) 403-1404  
mleavell@alliant.com

SECTION - 5  
SAFETY PROGRAM

## **Safety Program**

A major part of keeping accidents to a minimum is a good safety program. To this end, CSRMA provides full-time risk control services. In conjunction with, and under the direction of the CSRMA Pooled Liability Program Committee, the Risk Control Advisor helps member agencies identify and reduce loss exposures, and assists them to develop sound safety programs and practices.

CSRMA's Risk Control Advisor is:

**Mr. David Patzer**  
**DKF Solutions Group**  
**170 Dogwood Lane**  
**Vallejo, CA 94591**  
**Telephone: (707) 373-9709**  
**Facsimile: (707) 647-7200**  
**Email: dpatzer@dkfsolutions.com**

### **TWO KEY SERVICES AVAILABLE**

In addition to a number of other safety programs that CSRMA provides, the following two are of particular merit:

#### **Risk Control Site Visits**

Helping member agencies identify and reduce loss exposures is the backbone of a successful risk control program. The CSRMA Risk Control Advisor performs routine site reviews in an effort to help members develop, or enhance, their safety programs and working practices. The Risk Control Advisor also serves as a resource in helping member agencies stay in compliance with the occupational health and safety regulations.

#### **Telephone Hot Line**

One of the services provided at no charge to member agencies is access to risk control/ safety information and guidance. The telephone hot line service provides member agencies with one central resource to help answer their occupational safety & health questions. If you have questions concerning occupational safety and health and wish to get advice, call the Risk Control Advisor at (707) 373-9709.

The CSRMA Risk Control Advisor also provides many other services to CSRMA member agencies including, but not limited to the following:

- Assists in the planning and development of policies, regulations, and operational procedures pertaining to member agencies' safety/risk control programs;
- Conducts a variety of research activities;
- Conducts site/facility inspections and program reviews to evaluate conditions affecting safety/risk control programs;
- Assists in analysis of member agency claim, loss and accident history in order to recommend appropriate programs;
- Plans, develops and recommends programs designed to promote safe working conditions, safe driving, and liability reduction;
- Assists in the development and coordination of and/or conducts annual in-service safety workshops;
- Conducts limited on-site safety training specific to the wastewater industry in conjunction with the site/facility inspection;
- Provides staff assistance to various CSRMA Committees;
- Provides technical advice in safety/risk control matters to member agencies as part of the CSRMA Risk Control Hotline Service.

## SECTION - 6

# LIABILITY PROGRAM PARTICIPATION AGREEMENT

## Liability Program Participation Agreement

### CALIFORNIA SANITATION RISK MANAGEMENT AUTHORITY (CSRMA)

We, \_\_\_\_\_, signatory to the California Sanitation Risk Management Authority ("CSRMA") Joint Exercise of Powers Agreement, have agreed by action of our Board of Directors on \_\_\_\_\_, 20\_\_ , to participate in the CSRMA Auto and General Liability Program, hereinafter referred to as "Pooled Liability Program." As evidenced by the authorized signatures on page 4 of this document, we agree to become a participant in the Pooled Liability Program and be referred to as a "Program Participant."

It is understood that this Participation Agreement pertains only to the Pooled Liability Program and not to any other program operated by CSRMA.

We understand that provided the following requirements are met, Liability Insurance coverage shall begin on \_\_\_\_\_, following approval by the CSRMA Board of Directors:

- 1) We have paid the Underwriting Fee, and, if applicable, the inspection fee per the established fee schedule;
- 2) We have received an underwriting/loss evaluation for qualification purposes and Deposit Premium calculation;
- 3) We have qualified and been recommended to the Executive Committee for approval by the CSRMA Underwriting Committee;
- 4) We have been recommended by the Executive Committee for acceptance by the existing Liability Program Members, and have received such acceptance;
- 5) We have executed this Pooled Liability Insurance Program Participation Agreement; and
- 6) We are a member of the Joint Powers Authority. This means we:
  - a) have been approved for Joint Powers Authority membership by the Executive Committee;
  - b) have executed the Joint Exercise of Powers Agreement;
  - c) have executed a "Resolution to Join" in accordance with the Joint Exercise of Powers Agreement; and

- d) have paid the initial membership fee.

#### **MINIMUM PARTICIPATION PERIOD FOR POOLED LIABILITY PROGRAM:**

It is understood that the CSRMA Pooled Liability Program requires an initial full three-year commitment in order to participate in the program. Withdrawal from the Pooled Liability Program cannot occur until three full years of participation have occurred, that is, from the coverage inception date until the end of the third consecutive full program year, and only then if a six-month prior notice is provided.

Our initial commitment to the Pooled Liability Program will expire on December 31, 20\_\_\_\_, unless the program renewal date is modified by the Liability Program Participants. After the initial three-year participation commitment has been met, withdrawal can occur at the end of a program year provided a six-month prior notice of intent to withdraw is provided to the Authority, as noted above.

Program Participants remain subject to the "Termination" provision of the CSRMA Joint Exercise of Powers Agreement, despite the three-year participation commitment.

#### **RESPONSIBILITIES OF PROGRAM PARTICIPANTS:**

It is understood that as a Program Participant, we are obliged to do the following:

- ◆ take such action, including providing the Pooled Liability Program with such statistical and loss experience data and other information, as is necessary to carry out the CSRMA Pooled Liability Program required by the CSRMA Joint Exercise of Powers Agreement, Bylaws and the policies established by the Executive Committee and/or the Board of Directors;
- ◆ pay the Liability Insurance Program when due any and all Deposit Premiums and Retrospective Premium Adjustments (assessments) for each program year. Withdrawal or termination does not relieve a Program Participant from liability for such retrospective adjustments;
- ◆ fully cooperate with the Pooled Liability Program staff and/or representatives in determining the cause of losses and in the investigation, adjudication and settlement of claims; and
- ◆ comply with all provisions, policies and procedures of the CSRMA Pooled Liability Insurance Program as set out in the CSRMA Joint Exercise of Powers Agreement.

## **RESPONSIBILITY FOR POOLED LIABILITY PROGRAM EXPENSES:**

It is also understood that Pooled Liability Insurance Program Participants are responsible for their share of all Pooled Liability Program expenses:

For the self-funded layer: projected losses; margin for contingency; claims adjusting and legal fees, loss control services, general administration and costs for any other services as identified by the Board of Directors and Executive Committee per authority vested by the CSRMA Joint Exercise of Powers Agreement and/or Bylaws;

For the excess layer(s) expenses: excess insurance premium cost (first layer: excess of the Authority's Self Insured Retention) and premium costs for any other layer(s) of excess insurance which may be purchased.

A Program Participant's share of the program costs shall be reflected, as accurately as possible, within its Deposit Premium which is based upon the Pooled Liability Program's budgetary needs, prior claims experience, actuarial projections for future years' losses and any other expenses deemed necessary by the Board of Directors. The cost allocation formula may be subject to change by the Board of Directors.

The withdrawal or termination of any Program Participant from the Pooled Liability Program shall not terminate the responsibility to continue to contribute to its share of assessment on prior Program Years or other financial obligations incurred by reason of its previous participation.

## **RETROSPECTIVE PREMIUM ADJUSTMENT**

It is understood further that in accordance with the above section, a financial reconciliation or audit of each Program Year will occur in order to determine if Deposit Premiums collected were adequate to cover all costs.

In general, any deficiency or surplus in the Deposit Premium amounts shall be adjusted by a Retrospective Premium Adjustment. If Deposit Premiums were not adequate to meet costs of all expenses, an assessment to make up the difference will be made. If there is a surplus, a refund or a credit against Deposit Premiums for the following year will be made.

The Retrospective Premium Adjustment for the self-funded layer for each Program Year shall be calculated for each Program Participant in accordance with the formula found in the CSRMA Manual. Retrospective Premium Adjustment formulas are subject to change by the Board of Directors.

\* \* \* \* \*

We acknowledge and agree that this Participation Agreement shall automatically conform to any amendments made to the CSRMA Joint Exercise of Powers Agreement or Bylaws, which affect the conditions of participation in the Pooled Liability Program. Any other amendments to this Participation Agreement shall require a two-thirds vote of the Liability Program Participants.

In recognition of the above, this Participation Agreement is executed on \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Program Participant

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## SECTION - 7

# RETROSPECTIVE RATING PLAN

## **Purpose and Background**

The purpose of this report is to provide a description of the Pooled Liability Program retrospective rating formula that is used by the program.

During the formation and development of the CSRMA program, it was the intention of all parties involved to design the Pooled Liability Program in such a way that member agencies with favorable experience would be rewarded with either lower future pool deposits, or immediate return of pool deposits. Conversely, agencies with poor loss experience would be charged additional pool deposits. Also, since the CSRMA program was designed to retain (self-insure) some risk in the pool per occurrence above each agency's deductible, it was necessary to construct a funding mechanism which would allow for the pool to collect additional deposits in the event losses and expenses were greater than revenues (deposits and interest income).

In principle, retrospective rating works to determine an agency's deposit at the expiration of a rating period on the basis of actual losses during that period. Such a rating program allows an agency to more directly determine insurance costs through the control of its own loss experience. This concept of individual cost determination on the basis of an agency's actual incurred losses is significant in that:

- An agency that controls losses is allowed the opportunity to generate a final deposit substantially lower than deposits developed by a typical insurance program (e.g. guaranteed costs);
- An agency that has historically not controlled losses is provided with incentive to do so;
- Each agency has the opportunity to earn a reasonable final deposit based upon its own actual losses. Retrospective rating provides more immediate recognition of favorable (or unfavorable) loss experience.

To accomplish these objectives, the basic plan design was formulated to include a retrospective rating feature. The legal basis for such a rating plan was then incorporated in the Joint Exercise Of Powers Agreement and the Program Participation Agreement.

## Legal Authority

As stated in the previous section, the program legal documents were drafted to incorporate a description of CSRMA's authority to make special premium assessments and retrospective rating adjustments.

The governing document, the "Joint Exercise of Powers Agreement for the California Sanitation Risk Management Authority," establishes the general authority to charge annual premiums and levy assessments when necessary in the context, "premium" and "deposit" are interchangeable. Section 20(b)(ii) and (iii) provide the following:

- ii. Annual Premium. Except as provided in iii. below, all post-development costs of an insurance program shall be funded by annual premiums charged to the Member Agencies participating in the program each policy year, and by interest earnings on the fund so accumulated. Premiums shall be determined by the Executive Board upon the basis of a cost allocation plan and rating formula developed by the Authority with the assistance of an actuary, risk management consultant, or other qualified person. The premium for each participating Member Agency shall include that Member Agency's share of expected program losses, program reinsurance costs, and program administrative costs for the year, plus that Member Agency's share of Authority general expense allocated to the program. Annual premiums shall be billed by the Authority at the beginning of each policy year and shall be payable within thirty (30) days of the billing date. At the end of each policy year, program costs shall be audited by the Authority. Any deficiency or surplus in the premium paid by a participating Member Agency, as shown by such audit, shall be adjusted by a corresponding increase or decrease in the premium charge to that Member Agency for the next succeeding year, unless the Member Agency withdraws or is cancelled from the program.
- iii. Assessment. If the Authority experiences an unusually large number of losses under a program during a policy year, such that pooled funds for the program may be exhausted or depleted excessively before the next annual premiums are due, the Board of Directors may, upon consultation with an actuary, impose assessments on all participating Member Agencies, which, in total amount, will assure adequate funds to the Authority for the payment of all incurred losses.

In addition, the "Participation Agreement for the Pooled Liability Program" was drafted to incorporate specific language about the sharing of program expenses (i.e. losses and operating expenses) for the pooled layer and the excess insurance layers. The Agreement also includes a description of the retrospective premium adjustment formula, a key portion of which provides that:

In general, any deficiency or surplus in the Deposit Premium amounts shall be adjusted by a Retrospective Premium Adjustment. The Retrospective Premium Adjustment (audit) process examines all claims and expenses for the Policy year in review to determine if Deposit Premiums were adequate. At this time, investment income is also allocated back to each Program Participant on a pro rata basis. If Deposit Premiums were not adequate to meet costs of all expenses, an “assessment” to make up the difference, can take place (refer to Agreement, Section 20(b)(3)). If there is a surplus of Deposit Premium funds, a refund or a credit will exist for Program Participants. The Retrospective Premium Adjustments will be conducted in conjunction with the Deposit Premium calculations for the following year (refer to CSRMA Agreement, Section 20(b)(2)).

The Participating Agreement goes on to provide that:

- The retrospective adjustment will be calculated within six (6) months of the conclusion of each program (policy) year and annually thereafter until all claims are closed;
- The results will be communicated to each agency one month after the calculation; and
- The retrospective premium shall not be “greater than 150% of the Deposit Premium for that layer, nor less than 74% of the Deposit Premium for that layer.”

This last provision, therefore, limits the amount of credit for favorable loss experience to 25% of the self-funded layer premium and the debit for poor experience to 50% of the self-funded premium.

All member agencies were provided and were required to sign the Joint Powers Agreement and the Liability Program Participation Agreement.

## Plan Operation

The basic retrospective plan will operate as described in the Participation Agreement. Additional description is provided in this section.

### **Calculation Dates**

The retrospective rating calculation dates are established at six months following the conclusion of each Program Year. The first calculation will be performed as of July 1, 1988 for CSRMA's first program year, 1987. Subsequent adjustments will be made each year thereafter until there are no more open claims that occurred in that year. The results of the calculations will be provided to each agency at the renewal of the program.

### **Pool Deposits**

CSRMA will collect a pool deposit from each member for each Program Year. These deposits have been calculated using rating formulas and criteria adopted by the program members. This formula uses various exposures, such as miles of sewer lines (collection), average dry flow (treatment) and number of vehicles. An appropriate deductible credit is given for the selected deductible (ranging from \$2,500 to \$500,000). This deposit formula may be modified by the membership. Added to the pool deposits, premiums are collected for the cost of commercial excess insurance.

Excess insurance costs are not included in the retro calculation as this money is transferred to an insurance company.

### **Allocated Losses**

Six months after the end of a Program Year, each member's share of the pooled costs (losses and administrative charges) will be calculated. Each member's share will reflect that member's proportionate share of the deposit paid for that year (which reflects its exposure) and its actual incurred loss costs in the pooled layer (above its deductible up to the excess insurance attachment point). Losses under the deductible or over the excess attachment point are not counted in the calculation.

The formula for calculating the retrospective adjustment is as follows:

The Retrospective Adjustment for each Program Year shall be calculated for each Program Participant by adding the sums of (A) and (B) below, less the deposits on hand (or "on deposit" with the Authority).

- (A) An amount equal to the individual Program Participant's incurred losses and share of expenses and interest income for such layer; provided, however, that such

amount shall not be greater than 150% of the Deposit Premium for that layer, nor less than 75% of the Deposit Premium for that layer;

- (B) Each Program Participant's proportionate share (based upon the amounts determined pursuant to (a) above) of the difference between the sum of the individual amounts calculated pursuant to (A) above, and the total of all incurred losses, reserved, expenses, and interest income for such layer.

Any adjustment (credit or debit) will be applied to the deposit premium for the following year. For example, if the formula results in a \$2,000 credit for the first program year, the agency's deposit premium for the third year will be reduced by \$2,000 (The second year's premium would not be affected since the calculation is not due until six months into the second year).

Examples of the retrospective premium calculations can be found in the Retrospective Rating Policy and Procedure in the Policies and Procedures section of this manual.

## SECTION - 8

# POLICIES AND PROCEDURES

**CSRMA  
POLICY AND PROCEDURE  
MEMORANDUM #1-L**

**SUBJECT: Small Property Damage Claim Settlement Policy**

**EFFECTIVE: February 4, 1987  
Revised August 6, 2004**

**Policy Statement:**

Participants in the California Sanitation Risk Management Authority's Liability Program shall have the option of settling or denying any claim covered by the Liability Program which meet *all* the following conditions:

1. The claim is for Property Damage only;
2. The claim has no apparent potential for related Bodily Injury;
3. The entire occurrence from which the claim arises appears to have settlement value of no more than \$5,000, or less if participant's SIR is less;
4. The claim settlement or denial can be concluded within no more than 30 days of the date the agency becomes aware that a claim may exist;
5. The appropriate claim form was received within the time period required by law and deemed sufficient;
6. A release was secured from the claimant at the time of settlement.

If the option to settle or deny is exercised by a CSRMA Liability Program participant under the guidelines above, they shall still report all such claims to the Claims Administrator for recording purposes.

**Definitions:**

Property Damage - means (1) physical damage to, or destruction of, tangible property, including the loss of uses thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically damaged or destroyed.

Bodily Injury - means bodily injury, sickness or disease, including death resulting therefrom, and also includes the care and loss of services by any person or persons.

Sufficient Claim - means that the claimant has provided all the information specified by the California Government Codes (See Section 910).

**CSRMA  
POLICY AND PROCEDURE  
MEMORANDUM #2-L**

**SUBJECT: Deductible Recovery Process**

**EFFECTIVE: February 4, 1987**

**REVISED: January 15, 2010**

The deductible recovery program will be administered by Carl Warren & Company, the Claims Administrator for CSRMA.

Each member of CSRMA has a deductible which they are responsible to pay for each occurrence. The Claims Administrator will track the amount expended as claims are filed. To recover that portion of the claim costs for which each member is responsible in accordance with those provisions outlined below, Carl Warren & Company shall bill the member district when any of the following occur:

1. Whenever a claim is closed, or
2. On a quarterly basis for all open claims reaching the deductible (SIR), or
3. Whenever the amount of \$5,000 is expended, and in \$5,000 increments thereafter for those deductibles higher than \$5,000.
4. On an annual basis for any amount incurred, but not yet billed, as of June 30th of each year.

Upon receiving the bill from the Claims Administrator each agency shall remit the amount payable to CSRMA to:

California Sanitation Risk Management Authority  
Attn: Accounting  
c/o Alliant Insurance Services, Inc.  
560 Mission Street, 6th Floor  
San Francisco, CA 94105

Where a member district elects to pay a property damage claim directly, the incident shall be reported to the Claims Administrator for recording purposes, with a note that the district paid the claim, and the amount paid. Such amounts shall not be billed to the district under the deductible recovery procedure.

**Provisions For When Deductibles Apply**

The deductible chosen by each member agency shall be applied to claim occurrences for which CSRMA has accepted coverage under the Pooled Liability Program Memorandum of Coverage.

**CSRMA  
POLICY & PROCEDURE  
MEMORANDUM #3-L**

**Subject: Employee Driving Standards**

**Effective: December 31, 1988  
Revised May 11, 1990  
January 16, 1992  
August 11, 2006  
August 20, 2010**

**Issue:**

This policy and procedure addresses necessary measures aimed at reducing losses related to vehicle operation.

**Discussion:**

Employees whose duties necessitate driving vehicles in the course of employment need to maintain certain acceptable standards. The privilege of driving is granted through the issuance of a license by the Department of Motor Vehicles. Certain proficiencies and physical requirements must be proven prior to the granting of such license. Failure to meet these requirements results in revocation or non-issuance of such a state license.

In addition, insurance companies have established certain standards for drivers in order to meet insurability requirements at standard premium rates. Drivers not meeting these underwriting standards must, if possible, be placed in other more expensive plans such as the Assigned Risk Plan. Because of employees' bad driving records, a financial burden may be placed on the agency in the form of increased insurance costs.

**Policy:**

Each CSRMA liability program member agency shall institute and enforce the employee driving eligibility standards as set forth in the Policy & Procedure. Employees failing to meet these standards shall be excluded from coverage under the CSRMA pooled layer auto liability coverage. Any agency which fails to adhere to these standards shall be subject to having its participation in the liability program terminated, pursuant to Section 23 of the Restated Joint Exercise of Powers Agreement for CSRMA (8/9/91). In addition, coverage is excluded for employees who drive without a valid driver's license, or who drive with six or more accumulated DMV violation points incurred in the past three years (unless a waiver is received as described below). Coverage is also excluded for member districts who knowingly allow such employees to operate vehicles in the course of employment, or who fail to enroll mandated employees in the

pull notice program and as a result, permit such an employee to operate a vehicle in the course of employment.

**Procedure:**

The following steps shall be taken to enforce the policy:

1. All member agencies shall enroll in the Department of Motor Vehicles' Driver Record Information Program, as described in the information attached to this Policy & Procedure.
2. Employees who are employed to drive any vehicle identified in Vehicle Code section 1808.1(k) shall be placed in the DMV's pull-notice program upon hire, unless the employee is a "casual driver" as defined in vehicle Code section 1808.1(j). It is further recommended that the agency request all existing and prospective employees who do now or will drive "frequently" on the agency's behalf during employment sign a written waiver allowing such existing or prospective employees to be enrolled in the pull-notice program, and if such waiver is obtained, to enroll the employees in the pull-notice program.
3. All employees shall be informed of the policy guidelines and standards. It is suggested each employee be required to read the policy standards and to have acknowledged the reading of same by signing a statement attesting to that fact. Such acknowledgment shall be placed in the employee's personnel file.
4. Job descriptions, or other formally adopted policies of the agency, should state that employees must continue to meet the established driving standards as a condition of employment for that position. Decisions regarding employment or assignment of non-qualifying employees are the purview of member agency management.
5. Driving standards shall be enforced consistently and fairly among **ALL** employees working in classifications where driving is required.
6. Names of employees not meeting the standards shall be provided to the Program Director within 15 calendar days upon the agency's receipt of the Department of Motor Vehicles' employers notification of point assignment, resulting in an employee's failure to comply with the standards.
7. The Program Director shall acknowledge exclusion from coverage of such employee by the issuance of an amendatory endorsement. The employee shall be considered uninsured as of the date of such an endorsement from the Program Director.

8. The Program Director shall be notified upon the agency's determination when an employee's status has changed in such a manner as to comply with CSRMA's minimum requirements.
9. The Program Director shall, upon receipt of such notice as described in #7 above, issue an endorsement reinstating coverage for such employee. The effective date of coverage shall be determined by the Program Director in accordance with the minimum eligibility standards.

**Minimum Eligibility Standards:**

1. Employees must possess a valid driver's license to legally operate the class of vehicle(s) they operate in their employment.
2. Employees accumulating four violation points, as valued and enumerated by the Department of Motor Vehicles' Negligent Operator Count Sheet posted online at <https://www.dmv.ca.gov/portal/driver-education-and-safety/dmv-safety-guidelines-actions/financial-responsibility-insurance/> within the last three years, shall be considered in a "warning status" and shall be required to attend a Defensive Driving class. The nature and duration of such class shall be left to the agency's discretion. Upon completion of the training, the member agency shall provide the Program Director with either a copy of the Certificate of Completion or a written description of the duration and contents of the training course attended.
3. Employees accumulating six violation points, as valued and enumerated by the Department of Motor Vehicles' Negligent Operator Count Sheet posted online at <http://www.dmv.ca.gov/dl/vioptct.htm>, within the last three years, shall be excluded from the pooled layer of Automobile Liability coverage.
4. The conviction date as determined by the DMV shall be considered as the starting date for the three-year period discussed in #2 and #3 above.
5. The provisions of #2 and #3 above shall apply regardless of whether the driving which resulted in acquiring the violation points was or was not in the course of employment.

**New Employees:**

The agency must obtain a DMV Report of Public Record for all prospective employees who are subject to the pull-notice program under Vehicle Code section 1808.1(a). It is recommended that the agency additionally request applicants for positions requiring driving on the agency's behalf who do not fall within the pull-notice program to provide a current DMV Report of Public Record prior to employment.

**Waivers:**

An agency may request a waiver from the strict application of the limitations contained in Item 3 of the Minimum Eligibility Standards. The request shall be in writing, addressed to the CSRMA Liability Program Committee, which shall promptly hear and consider the request.

The request may be granted only upon a showing that exceptional circumstances warrant granting a waiver. If a waiver is granted, the committee may condition the grant upon such conditions as it deems appropriate, including participation in driver education or other programs aimed at enhancing driver safety. The decision whether to grant, deny or grant subject to conditions shall be addressed to the sound discretion of the committee, which may consider relevant factors, including the potential exposure of the CSRMA Liability Program for claims based on unsafe driving.

The applicant agency or any member of the CSRMA Liability Program may appeal the decision of the committee to the Executive Board. The notice of an appeal shall be filed with the Executive Board within 30 days from the date of the committee's decision, and the appeal shall be scheduled for and heard at the next regularly scheduled meeting of the Executive Board.

The applicant agency, or any member of the CSRMA Liability Program, may appeal the decision of the Executive Board to the Board of Directors. The notice of an appeal shall be filed with the Board of Directors within 30 days from the date of the Executive Board's decision, and the appeal shall be scheduled for and heard at the next regularly scheduled meeting of the Board of Directors. The decision of the Board of Directors shall be final. During the pendency of the waiver application proceedings, the agency employee for whom the waiver is sought shall be excluded from coverage under the CSRMA pooled auto liability program, unless the agency is notified in writing to the contrary by the Officers Committee.

**CSRMA  
POLICY & PROCEDURE  
MEMORANDUM # 4-L (Revised)**

**Subject: CLAIMS MANAGEMENT**

**Effective: December 8, 1992  
Amended January 18, 2002  
Amended January 23, 2004  
Amended January 18, 2017**

This Policy & Procedure is divided into four sections:

1. Claims Reporting
2. Defense Counsel Selection
3. Claims Litigation Management
4. Settlement Authority

*Should there be any discrepancy between this document and either the Memorandum of Coverage or Participation Agreement between the Authority and the member Agency, the Memorandum of Coverage and the Participation Agreement will govern.*

## ***CLAIMS REPORTING AND HANDLING***

### **Claims Reporting**

In the event of an occurrence likely to involve the Authority, written notice regarding the occurrence shall be given by the member Agency to the Authority as soon as practicable. Such notice shall include the name of the member Agency, and also information regarding the date, time, place and circumstances of the occurrence, and the names and addresses of any injured, and witnesses.

Failure to report occurrences as required may be cause for denial of coverage by the Authority.

### **Claims Administration**

The Authority shall retain the services of a Third Party Claims Administrator (TPA) to facilitate the handling of losses reported to the Authority by member agencies. The TPA shall report its activities to the Pooled Liability Program Committee pursuant to contractual requirements.

### **Pooled Liability Program (PLP) Committee**

The PLP Committee shall meet no less than quarterly to review open claims. A report of current pending losses will be provided by the TPA at each regularly scheduled meeting of the PLP Committee.

The responsibilities of the PLP Committee shall include, but are not limited to:

1. Review claims with the TPA as necessary.
2. Review the specific handling of reported losses.
3. Review adequacy of reserve levels in conjunction with the Program Director and TPA.
4. Make recommendations to the Executive Board regarding rejection of coverage for claims, or the handling of claims under a reservation of rights, based on the Memorandum of Coverage.
5. Make recommendations to individual member Agencies concerning the settlement or defense of claims.
6. Report information on losses to the Executive Board at each Board meeting.
7. Report to the Executive Board on any other claim related matter.

### **Occurrences/Claims To Be Reported To CSRMA**

All claims shall be reported to the TPA, regardless of the claim value, in accordance with the claims filing procedures provided by the TPA to member Agencies.

### **Members' Claims Handling**

The Board of Directors has established an optional settlement policy whereby small property damage claims valued at less than \$5,000 per occurrence may be settled by the Agency. Should an Agency wish to exercise this option it shall remain obligated to report such claims to the TPA for recording purposes. *The Policy and Procedure governing this optional claims handling procedure is found as Policy and Procedure #L-1.*

### **Where Reports Are To Be Sent**

All reports shall be sent to the TPA which is currently:

Carl Warren & Company  
P.O. Box 2411  
Tustin, CA 92781  
Attn: Bill Kirker, Sr. Claims Examiner & Beth Tavares, Claims Manager

E-Mail: CSRMAclaims@carlwarren.com

Primary: Bill Kirker: 657-622-4218  
Beth Tavares: 657-622-4215  
After Hours SBU Emergency: 855-763-5898

Fax: 866- 254-4423 ATTN: Bill Kirker & Beth Tavares

### **What Needs To Accompany The First Report**

The following information should accompany the first report, if available and applicable:

1. Investigation reports
2. Police reports
3. Claims notices and member Agency responses
4. Pleadings (i.e., Summons, Complaints and other legal papers received by the member Agency)
5. Medical reports

### **Distribution Of First Report Of Claims**

The TPA shall forward a copy of the first report to the PLP Committee Chair and the Program Director.

### **Reserving Practices**

The TPA shall adhere to the following reserving practices for claims:

- Initial reserve file set up within 14 days of receipt of the claim
- 90-day review after initial set up
- 6-month review thereafter (minimum)

### **Responsibility of Third Party Administrator**

The TPA has general responsibility for performing or overseeing all necessary investigation of claims, as well as overseeing legal defense. The TPA provides monthly claims reports containing the status of claims and the projected reserves. *The specific services to be provided, and the responsibilities of the TPA are found in the contract for services.*

### **Responsibility Of Defense Counsel**

Assigned defense counsel are required to report claim status to the TPA every 90 days, or upon any activity that would significantly affect the value reserved for the claim.

## ***DEFENSE COUNSEL SELECTION***

### **Policy**

1. Except as permitted by Policies Nos. 2, 3, and 4 below, CSRMA shall have the sole responsibility to select and engage defense counsel to represent members of the Pooled Liability Program as to any matters tendered by a member Agency through the Pooled Liability Program for defense and indemnity.
2. If there is a conflict of interest between CSRMA and a member Agency which would be "conflict of interest" between an insured and its insurer within the meaning of California Civil Code Section 2860, the member Agency has the same rights to select and engage independent counsel as would an insured under Section 2860, CSRMA has all of the rights reserved to an insurer under Section 2860, and all of the provisions of Section 2860 shall apply as if CSRMA was an insurer and the member Agency was an insured.
3. A member Agency also may select defense counsel if all of the following conditions apply:
  - a. Defense counsel is selected from the TPA's list of recommended law firms referred to in Policy No. 7 below;
  - b. CSRMA approves the selection. The selection will be approved and the attorneys will be engaged by CSRMA unless the member Agency's selection is found to be imprudent (for example, the attorneys selected by the member Agency do not have sufficient experience, expertise or other qualifications required to competently undertake the defense assignment) and
  - c. One of the following circumstances exist:
    - i. The member Agency has significant exposure to claim as to which CSRMA has either denied coverage or has reserved its rights to deny coverage, but as to which

claim there may not be a conflict of interest between CSRMA and the member Agency of the kind referred to in Policy No. 2 above. If the member Agency chooses to avail itself of the privilege of selecting defense counsel under this Policy No. 3 c.i., the member Agency shall affirmatively waive its rights under the Policy No. 2 above.

- ii. The member Agency has a large deductible in relation to its probable exposure.
  - iii. The case involves legal or factual issues which merit handling by attorneys with specialized expertise.
  - iv. The case involves unusual ancillary factors which justify retaining attorneys having special sensitivity in dealing with those factors.
4. The member Agency always may select and engage, at its own expense, counsel in addition to the defense counsel selected and engaged by CSRMA.
  5. CSRMA will pay for defense counsel selected and engaged pursuant to Policies Nos. 2 and 3 above. CSRMA will not pay for defense counsel engaged by a member Agency pursuant to Policy No. 4 above.
  6. Except for defense counsel selected pursuant to Policy No. 2 above, CSRMA shall have the right to manage and control the conduct of the litigation. A member Agency's independent counsel selected pursuant to Policy No. 4 above may participate in the defense of the litigation but shall not interfere with CSRMA's right of control.
  7. The TPA shall maintain a list of recommended law firms to which most litigation will be assigned. The list of recommended law firms is attached to this Policy Procedure. In special cases, other defense counsel not on the list may be used for their particular expertise, or where a conflict of interest may arise.

Any member Agency wishing to recommend a legal firm for inclusion on the list of recommended law firms may do so by submitting background information on the firm to the TPA. The TPA shall research the firm's qualifications and submit a recommendation to the PLP Committee for approval or disapproval.

8. Attorneys who serve regularly as legal counsel for a particular member Agency shall not be selected to defend that member Agency unless a recommendation is made and approved by the PLP Committee.
9. The TPA shall assign claims to defense counsel within five days after receipt of notice from the member agency that a Summons and Complaint has been served.

The TPA shall notify the member Agency by telephone of defense counsel assignment to a claim, and confirm by sending the member Agency a copy of the TPA's letter to the selected defense counsel confirming their engagement.

## ***CLAIMS LITIGATION MANAGEMENT***

**The purpose of this procedure is to outline the process of litigation management by the TPA and the involvement of the Pooled Liability Program (PLP) Committee.**

### **Settlement Conferences**

Once the TPA receives notice that an Authority case has a settlement conference date, the following procedure will occur:

1. The TPA shall notify the Authority's Legal Counsel regarding the settlement conference and provide a comprehensive case review and/or documentation for review.
2. The Authority's Legal Counsel shall review the case and either at its next scheduled meeting, or by phone, recommend to the PLP Committee to:

*Formerly assign* the Authority's Legal Counsel to oversee the case with existing defense counsel; or

*Hire* additional outside defense counsel for case review and recommendations; or

*Hire* outside defense counsel and associate in as co-counsel; or

*Refer* case back to the TPA for intense continued handling.

If time permits prior to the settlement conference, the case is to be discussed in detail at the next regularly scheduled meeting of the PLP Committee, or if Legal Counsel and the PLP Committee Chair deem necessary, an emergency meeting will be called.

Defense counsel will report the results of any settlement meeting or conference verbally to the TPA within 24 hours. The TPA will immediately communicate this information to both the Authority's Legal Counsel and the Program Director.

**Motions/Court Appearances (Excluding Settlements & Trial)**

Appearances shall be made by the defense counsel (and in special circumstances, the Authority's Legal Counsel or TPA shall attend).

**Trials**

Trials shall be attended by either the TPA, or in their absence, the Authority's Legal Counsel (or designated representative of Authority) when deemed necessary by the Authority's Legal Counsel and after notification to the Program Director.

**Special Situations/Circumstances**

Should any member Agency send or receive correspondence or documentation on a case in litigation, a copy of all such correspondence or documentation must be sent to the TPA.

Expenses incurred by the Authority's Legal Counsel (or alternate representative) for these listed duties shall be reimbursed by Authority and allocated directly to the file. All expenses shall be in accordance with the Authority's travel policy.

***SETTLEMENT AUTHORITY***

**Claims Settlement Authority**

Various levels of settlement authority have been established as Authority policy. These levels are as follows:

- Claims Administrator (TPA): \$0 - \$25,000

The TPA has authority to settle claims up to, and including, \$25,000 per occurrence.

- Pooled Liability Program Committee: \$25,001 - \$200,000

The PLP Committee has authority to authorize claims settlement up to, and including, \$200,000 per occurrence.

- Executive Board: \$200,001 - Pool Layer Limit

The Executive Board has authority to authorize claims settlement up to the Pool Layer limit per occurrence.

For purposes of this Policy and Procedure, "Claims Settlement Authority" means the dollar amount that one of the foregoing representatives of CSRMA is empowered to approve for payment to a claimant in settlement of a claim for which CSRMA provides coverage under its Pooled Liability Program. However, the respective levels of "Claims Settlement Authority" are exclusive of and in addition to amounts paid by CSRMA for Defense Costs, claims administration costs and amounts, if any, that CSRMA routinely pays vendors retained by the TPA for remediation of a claimant's property or for similar purposes.

#### Small Property Damage Only Claims - Option

Property damage claims valued at less than \$5,000 per occurrence may be settled by the member. Should a member wish to exercise this option, it shall remain obligated to report such claims to the TPA for recording purposes. The Policy and Procedure governing this optional claims handling procedure is found as Policy and Procedure #1-L.

**All of the foregoing notwithstanding, if time is of the essence in a specific matter, CSRMA'S President and PLP Committee Chair, on the advice of Authority's Legal Counsel, shall have the authority to determine terms of settlement.**

#### Claims Settlement Responsibility

CSRMA shall have the primary responsibility to control and direct settlement negotiations and to determine the terms of any settlement. However, before effecting any settlement, CSRMA shall comply with the provisions of the Memorandum of Coverage which pertain to settlement of claims, including provisions which require CSRMA to give notice to the member Agency of the terms of the proposed Settlement and to request the member Agency's consent. CSRMA's notice to the member Agency shall refer specifically to any provisions by the Memorandum of Coverage which, in the absence of the member Agency's consent to the proposed settlement, would require the member Agency to assume all future responsibility for defense of the claim and for any risk of loss which might ensue. The notice shall also inform the member Agency that CSRMA's obligation to pay for the defense of the claim may terminate immediately if the member Agency does not consent to the proposed Settlement.

**CSRMA  
POLICY AND PROCEDURE  
#5-L**

**SUBJECT: Pooled Liability Program Dividend from Retained Funds**

**EFFECTIVE: January 19, 2001  
Revised January 28, 2021**

**Policy:**

Participants in the Pooled Liability Program will receive dividends from funds that are no longer required by the Authority, and in a manner which supports the following goals:

- Protect the overall program from catastrophic loss
- Reduce reliance on non cost-effective insurance
- Stabilize future years' loss rates for payment of expected claims and expenses

An actuarial study will be relied upon to develop the funding necessary on prior program years; to assure that adequate funds are held for incurred liabilities. Funding in excess of the Program's liabilities is categorized as either designated or undesignated retained funds. Retained Funds not returned automatically through the Retrospective Rating Plan (RRP) are eligible to be paid to members participating in that program year in the form of a dividend declared by the Board of Directors.

Dividends can be declared only if, on an aggregate basis, all eligible program years are fully funded at the confidence level established in the procedure below, and the retained fund amount is in excess of seven (7) times the pooled layer program's per occurrence limit currently in force prior to the dividend calculation, subject to a minimum retained fund balance in the program after the dividend is calculated in the amount of \$5,000,000 (catastrophic reserve).

**Eligibility:**

Dividends cannot be declared sooner than five (5) years after expiration of a Program Year.

Dividends will be paid from eligible Program Years with no more than 25% of any Program Year's retained funds being released as part of any declared dividend. All retained funds remaining will be returned to Program Year participants when that year is declared "closed" by the Board of Directors.

**Procedure:**

The Program Administrators will prepare a recommendation to be reviewed by the Executive Board prior to a regularly scheduled Board of Directors meeting. The purpose of the dividend will be stated, and the advantages and disadvantages of releasing the recommended amount will be addressed.

Members' share of declared dividends are *calculated as a percentage of the total dividends declared using the Retrospective Rating Plan results as a basis for the calculation.* The formula that calculates the percentage share of a program year dividend is:

$$DS = \left( \frac{\text{Individual MD-RA}}{\text{Total of all members (MD-RA)}} \right) \times AA$$

Where:

- DS = Dividend Share
- MD = Member Deposits
- RA = Retrospective Adjustments
- AA = Amount Available for Distribution

For example:

Amount available for distribution equals 25% of each Program Years' undesignated retained funds less any "catastrophic reserve" established by the Board of Directors, multiplied by each member's "percentage share" which is calculated as follows:

Member's deposit plus deposit adjustments minus member's updated Retrospective Rating Plan adjustment divided by the total of all members' deposits plus deposit adjustments minus the total of updated Retrospective Rating Plan adjustments.

**Confidence Level:**

70% discounted

**CSRMA  
POLICY & PROCEDURE  
#6-L**

**SUBJECT: Retrospective Rating Plan**

**EFFECTIVE: January 19, 2001  
Revised January 29, 2025**

**Purpose:**

This policy and procedure is written to describe the process by which the Pooled Liability Program's (PLP) retrospective rating calculations are performed for Program Years less than ten (10) years old. Prior Program Years are deemed closed for any subsequent calculation of retrospective premium. Terms and phrases with special meaning are defined in the "Definitions" section of this policy and procedure.

**Policy:**

In order to provide an incentive for members to control losses and to maintain a prudently funded pool, the Board of Directors adopted a "Retrospective Rating Plan" ("the retro") in 1988 for calculating final member deposit amounts into the pool for each Program Year. While the plan has operated according to the wishes of the Board, the Board desires this policy and procedure to be written to more clearly describe the detailed operation of the plan. This document therefore supercedes the original document adopted by the Board.

In principle, retrospective rating works to adjust a member's initial deposit subsequent to the expiration of a rating period (Program Year) on the basis of actual losses during that period. Such a rating program allows a member to more directly determine risk transfer costs through control of its own loss experience. This concept of individual cost determination on the basis of a member's actual incurred losses is significant in that:

- A member that controls losses is allowed the opportunity to generate a final deposit lower than premium developed by a typical insurance program;
- A member who has historically not controlled losses, is provided with incentive to do so; and
- Each member has the opportunity to earn a reasonable final deposit based upon its own actual loss experience. Retrospective rating provides more immediate recognition of favorable (or unfavorable) loss experience.

To accomplish these objectives, the basic plan design was formulated to include a retrospective rating feature.

The retrospective rating adjustment process evaluates each member's claims and expenses for each Program Year to determine:

1. If the total of member pool deposit amounts (initial and subsequent adjustments) plus investment income, is adequate to cover losses and expenses; and
2. The degree to which individual member pool deposit amounts either contributed to the financial success of a given Program Year.

Upon determination of these two issues, members are subject to a "retrospective rating adjustment" (an "adjustment") to their initial deposit, either positive or negative, subject to the formula utilized. The adjustment for each applicable Program Year appears on the member's annual Pooled Liability Program invoices. The first adjustment (credit or debit) is applied to the invoice for the following Program Year. Subsequent adjustments are applied to the invoices of subsequent Program Years.

Retrospective rating adjustments for the Pooled Liability Program are calculated three and half years (42 months) after the conclusion of each Program Year, and annually thereafter until the Program Year is declared "closed" by the Board of Directors. In addition, the Board of Directors may declare special assessments, above and beyond retro adjustments, calculated at any time if in the Board's opinion, it becomes advisable to do so. The results of each retro calculation are communicated to the membership after review by the Executive Board. Any special assessment authorized by the Board shall be due as specified by the Board.

**Procedure:**

Three and a half years (42 months) after the expiration of each Program Year, and annually thereafter, (currently June 30th of each year), unless otherwise directed by CSRMA, the Program Administrators are to start collection of the data needed to perform the retro calculation for that year. Data required includes:

1. Complete Pooled Liability Program Loss Runs valued as of June 30th showing paid and reserve amounts by member for the "pooled layer" (i.e. claim amounts between the members' deductibles and the excess attachment point).
2. Initial Pool Deposit amounts for each Program Year.
3. Incurred But Not Reported (IBNR) amounts for each Program Year as of June 30<sup>th</sup>.
4. Investment Income allocated to each Program Year as of June 30<sup>th</sup>.

Using the above data, the Program Administrators are to calculate the retrospective rating adjustment utilizing IBNR values representative of a “70% confidence level” for each Program Year. The results are to be presented to the Pooled Liability Program Committee and the Executive Board no later than the last regularly scheduled meeting of each in the calendar year. The Committee is to review the results and make a recommendation to the Executive Board concerning the appropriateness of implementing the results of the calculation.

With respect to initial Program Year Deposits, the Executive Board is granted authority to utilize an actuarial degree of confidence other than that noted above when it is appropriate to do so based upon evaluation of the following criteria:

1. Insurance market conditions that impact the viability of the Program;
2. Legislative issues expected to impact the workers’ compensation environment;
3. Either favorable or unfavorable program funding issues that need to be addressed; and
4. Risk exposures that impact the viability of the Program.

Upon acceptance of the results by the Executive Board, with or without modification, the Program Administrators are to credit or debit annual member invoices accordingly.

#### Calculation

The retrospective adjustment amount for each Program Year shall be calculated for each member by adding the sums of (A) and (B) below, adjusted for previously calculated and adjusted deposits, provided, however, that such amount shall not be greater than 150% of the Deposit, nor less than 75% of the Deposit:

- A. An amount equal to the individual members incurred losses, plus its pro-rata share of expenses;
- B. Each member’s proportionate share (based upon the amounts determined pursuant to (A) above) of the difference between the sum of the individual amounts calculated pursuant to (A) above, and the total of all incurred losses, reserves, expenses, and interest income for the Program as a whole.

#### **Column #1 –Deposit Amount:**

This column is the initial deposit paid to the Authority by the member.

#### **Column #2 – Administrative Costs:**

The retro allows for the insertion of Administrative costs.

#### **Column #3 – Pooled Loss Paid:**

This column includes actual losses paid in the pooled layer excess of the members’ deductible. It includes all losses up to the excess insurance attachment point.

**Column #4 – Investment Income Earned To Date:**

Commulative investment earnings for the program year to date.

**Column #5 - Average Investment Funds:**

This is an estimate of each member’s funds available for investment.

**Column #6 – Interest Allocation Factor:**

This is the factor to allocate the investment earnings.

**Column #7 – Allocated Investment Earnings:**

This is each member’s “share” of the investment income available for the Program Year.

**Column #8 – Total Investment Earnings:**

This is the sum of Investment Income Earned to date and Allocated Investment Earnings.

**Column #9 – Pooled Case Loss Reserves:**

This column indicates the loss reserves for each member in the pooled layer.

**Column #10 – Allocated IBNR and Loss Development Reserves:**

This column allocates the Incurred But Not Reported (IBNR) claims and loss development of the Program Year.

**Column #11– Net Pool Costs:**

The pool costs amount to losses, IBNR, and administrative costs, less interest.

**Column #12 – Maximum Deposit:**

This column is the maximum amount assessable against an individual member for poor experience. It is equal to the product of the member’s initial deposit and 1.50.

**Column #13 – Minimum Deposit:**

This is the minimum amount the Authority will retain for a member through the retro. It is the product of the member’s initial deposit and .75.

**Column #14 – Formula Deposit:**

The Formula Deposit determines the amount the member will pay. It is equal to Net Pool Costs as shown in Column #11, unless these are more than the maximum, or less than the minimum.

**Column #15 - Allocation of Overage:**

If the total of Formula Deposit is insufficient to cover the losses of the pool, the “overage” (the difference between funds available and funds needed) is allocated by this formula.

**Column #16 – Indicated Retro Adjustment**

This is the difference between the Formula Deposit and the Deposit Amount + Admin. Costs.

**Column #17 – Indicated Retro Adjustment for Overage**

This is the sum of the Allocation of Overage and Indicated Retro Adjustment.

**Column #18 – Retro Adjustment Paid to Date**

This column shows the previous Retro Adjustments for the program year being calculated.

**Column #19 – Prior Overage**

This column shows a member’s previous Allocation of Overage for the program year being calculated.

**Column #20 – This Year Retro Adjustment**

This is the Indicated Retro Adjustment for Overage less previous Retro Adjustments and Allocation of Overage for the program year being calculated.

**DEFINITIONS:**

**1. *Calculation Date***

The retrospective rating calculation dates are established at three and a half years (42 months) following the conclusion of each Program Year (Currently December 31<sup>st</sup>) and annually thereafter for each Program Year until closed.

**2. *Allocated Losses***

“Allocated Losses” includes each member’s actual losses (“paid and reserved”) as depicted in the JPA’s official loss runs **and** that members’ proportionate share of IBNR for that Program

Year. Loss amounts below the members' deductible, or above the Program's excess attachment point are not counted in the calculation.

### **3. *Pool Deposits (Deposits)***

"Deposit", or "pool deposit," term refers to the amount charged either individually or collectively to the pool members to cover the expected losses and expenses of a given Program Year.

### **4. *Claim Reserves***

"Claim Reserves" is an estimate of the funds needed to be set aside for **known** events (reported) that have given rise to a claim against a member. Each claim made against a member is "reserved" by the Program's claims adjusting firm in accordance with the intrinsic dollar value of that claim. The aggregate value of all claims reserved make up the Authority's total "claims reserves".

### **5. *Loss Adjustment Expenses***

"Loss Adjustment Expenses" refers to expenses incurred in the course of investigating and settling claims. Allocated loss adjustment expenses (ALAE) include costs, or expected costs, associated directly with specific claims paid or in the process of settlement, such as legal and adjusters' fees. Unallocated loss adjustment expenses (ULAE) include other costs, or expected other costs, that cannot be associated with specific claims but are related to claims paid or in the process of settlement, such as salaries and other internal costs of the pool's claims administrator.

### **6. *Incurred But Not Reported (IBNR)***

Claims for covered events that have occurred but have not yet been reported to the member or pool as of the date of the financial statement preparation or evaluation. IBNR claims include (a) known loss events that are expected to later be presented as claims, (b) unknown loss events that are expected to become claims, and (c) expected future development on claims already reported.

### **7. *Ultimate Net Loss***

"Ultimate Net Loss" is the sum of claims paid to date, claim reserves and IBNR; all within the program's pooled layer. Because it is composed of two estimates, Ultimate Net Loss is also an estimate. The term is used to capture the total value of all claims that will ultimately be made against members for which the Authority is responsible. The Authority attempts to fund its programs such that member deposits for each period (Program Year) will equal the estimated ultimate net loss for that year plus program expenses and other general and administrative costs.

### **8. *Confidence Level***

“Confidence Level” is a statistical term used to express the degree to which an actuarial projection (usually “Ultimate Net Loss” or “IBNR”) will be an accurate prediction of what the dollars losses will eventually be for a Program Year. The higher a confidence level, the greater surety one has that losses will not exceed the dollar value determined to attain that confidence level.

**9.     *Contingency Margin***

“Contingency margin” refers to program equity in excess of that which is needed to maintain an “expected” confidence level.

**CSRMA  
POLICY AND PROCEDURE  
#7-L**

**SUBJECT: Target Equity**

**EFFECTIVE: January 19, 2001**

**Purpose:**

It is the goal of CSRMA to prudently fund its risk sharing and group purchase Programs. It is the purpose of this policy and procedure to outline the basic financial factors and assumptions utilized in the Pooled Liability Program to assure prudent funding. Terms with special meaning related to this policy and procedure are defined in the “Definitions” section of this policy and procedure.

**Policy:**

It is the policy of the CSRMA Pooled Liability Program to:

1. Calculate each of its total initial Program Year deposit amounts at an actuarially determined confidence level equal to 70%.
2. Calculate retrospective rating adjustments and dividends according to the factors and assumptions assigned in the Policy and Procedures relating to these items.
3. To utilize the “expected” levels (approximately 50%) of actuarially determined confidence when reporting liabilities to which this terms relates in the JPA’s financial statements.
4. To create and maintain a “catastrophic reserve” (designated reserve) account within the equity section of the JPA financial statements that provides a dollar amount of designated equity equal to the difference between stating Program liabilities at a 70% confidence level compared with recording such liabilities at the “expected” level.

With respect to initial Program Year Deposits, the Executive Board is granted the Authority to utilize an actuarial degree of confidence other than that noted above when it is appropriate to do so based upon evaluation of the following criteria:

1. Insurance market conditions that impact the viability of the Program;
2. Legislative issues expected to impact the workers’ compensation environment;
3. Either favorable or unfavorable Program funding issues that need to be addressed; and
4. Risk exposures that impact the viability of the Program.

## **Procedure:**

With respect to the four policy items listed above, the procedure for implementing these is as follows:

### 1. Initial Deposits calculated at a 70% Confidence Level

At a minimum, when recommending funding levels (deposit amounts) for each new Program Year, the Program Administrator will provide the Pooled Liability Committee and the Executive Board with documentation for review detailing Program funding levels utilizing an actuarially determined 70% confidence level.

The Program Administrators may also provide documentation at other confidence levels as directed by the Board or Committee.

### 2. Retrospective Rating Adjustments and Dividend Calculation

When making Program Dividend Calculations and Retrospective Rating Adjustments, the Program Administrators will utilize the factors and assumptions detained in the Policy and Procedures relating to these items for such purposes.

### 3. Financial Statements

When reporting Program liabilities in the JPA financial statements, the CSRMA accounting personnel and the CSRMA financial auditors will report liabilities at an actuarially determined 50% confidence level.

### 4. Catastrophic Reserve

When reporting Program equity in the JPA financial statements, the CSRMA accounting personnel shall segregate equity between an equity amount entitled “Designated Catastrophic Reserve” and an equity amount entitled “Undesignated Retained Earnings.” The “Catastrophic Reserve” amount shall be equal to the difference between stating Program liabilities at a 70% confidence level compared with stating such liabilities at the “expected” level.

## CSRMA - Pooled Liability Program Manual

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### CSRMA POLICY & PROCEDURE MEMORANDUM # 8-L

**EFFECTIVE:**           **May 2, 2003**  
                              **Revised August 6, 2004**  
                              **Revised January 18, 2017**

**SUBJECT:**           **Deductible Selection**

#### **PURPOSE**

This Policy & Procedure Memorandum (P&P) governs the manner in which a member's annual deductible will be selected for purposes of the coverage provided by CSRMA's Pooled Liability Program (PLP).

#### **APPLICATION; EXCEPTIONS**

This P&P applies to the selection of annual deductibles for all CSRMA members participating in the PLP. However, if the PLP Memorandum of Coverage (MOC) specifies a minimum deductible for any coverage, the amount of which is greater than the deductible selected pursuant to this P&P, then in that case the minimum deductible established by the MOC controls. Nothing in this P&P is intended to, nor does it, preclude CSRMA from exercising other available remedies for a members' unsatisfactory claims history, such as removal of a member from participation in a program or removal from membership in CSRMA.

#### **POLICIES**

The following are policies of CSRMA:

1. Subject to the provisions of this P&P, each member participating in the PLP may select a General Liability deductible that will be applicable to the member during each annual coverage period. The Employment Practices Liability deductible for all members is \$25,000.
2. A member may not select a General Liability deductible that is less than the Recommended Minimum General Liability Deductible set forth in the Table below, unless the smaller deductible amount is approved by CSRMA.

Participant 's Pool Deposit Amount*		Recommended Minimum General Liability Deductible
From	To	
\$20,000 or Less		\$2,500
\$20,001	\$30,000	\$5,000
\$30,001	\$50,000	\$10,000
\$50,001	\$70,000	\$25,000
\$70,001	90,000	\$50,000
\$90,001	\$110,000	\$100,000
\$110,001	\$135,000	\$250,000
\$135,000 or More		\$500,000

3. A member may select a General Liability deductible that is greater than the Recommended Minimum General Liability Deductible amount, except that the maximum deductible amount may not exceed \$500,000.
4. Unless precluded by Adverse Loss Experience, a member may select a General Liability deductible that is less than the recommended minimum General Liability deductible shown in the Table if the member' s selection is approved as provided in this P&P.
5. If a member' s General Liability loss history constitutes Adverse Loss Experience, the member' s General Liability deductible will be established as provided in Procedure Section 3, below, of this P&P.
6. General Liability Adverse Loss Experience is defined as follows:
  - (a) Three or more losses incurred by the member in any one of the two most recent program years where each loss exceeds the member' s General Liability deductible for that year; or
  - (b) Total incurred losses by the member in any one of the two most recent program years equal to \$100,000 or more in excess of

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\*For the purposes of this Table, a member' s Pool Deposit Amount is the premium deposit payable by the member exclusive of the deposit required for Public Officials Errors and Omissions Coverage and before allowance is made for any deductible credits.

the member's General Liability deductible for that year.

For these purposes, the phrase two most recent program years means the PLP program year then in effect and the program year preceding it.

7. If a member's Employment Practices Liability loss history constitutes Adverse Loss Experience, the member's Employment Practices Liability deductible will be established as provided in Procedure Section 5, below, of this P&P.

8. Employment Practices Liability Adverse Loss Experience is defined as follows:

(a) Two or more losses incurred by the member in the five most recent program years.

## **PROCEDURES**

1. Unless (a) the member selects another General Liability deductible amount, or (b) other provisions of this P&P allow or require a different selection, a member is deemed to have selected the Recommended Minimum General Liability Deductible indicated in the Table above.

2. If a member wishes to select a General Liability deductible other than the Recommended Minimum General Liability Deductible, the member must notify CSRMA's Program Administrators of the member's selection not later than 90 days before the commencement of the program year.

(a) Subject to the provisions of this P&P concerning Adverse Loss Experience, selection of a deductible greater than the Recommended Minimum General Liability Deductible will be approved without further action.

(b) In the case of any PLP Participant that, as of the effective date of this P&P, has a General Liability deductible which is less than the Recommended Minimum General Liability Deductible, the participant is entitled to select and retain that lesser deductible amount so long as the PLP participant's loss history does not reflect Adverse Loss Experience, as defined in Policy Section 6 above.

(c) In cases not covered by Subsection (b) above, if the member wishes to select a deductible that is lower than the Recommended Minimum General Liability Deductible, the selection shall be referred to the PLP Committee for determination. The PLP Committee shall review the member's selection in relation to relevant underwriting considerations including, especially, the member's loss experience. The requested General Liability deductible selection may be approved by the Committee if the Committee believes:

- i. It is more probable than not that the member will not experience more than one loss during the next coverage period that would exceed the member's selected General Liability deductible amount, and
- ii. Other pertinent underwriting considerations do not favor selection of a larger amount.

3. During any interval that a PLP participant's General Liability loss history reflects Adverse Loss Experience, as defined in Policy Section 6 above, the member's minimum General Liability deductible shall be established by CSRMA as follows:

(a) A Risk Management Audit will be triggered. The Risk Management Audit will be performed by CSRMA's Risk Control Advisor.

(b) CSRMA's Program Administrators will make a recommendation to the PLP Committee on an appropriate General Liability deductible level for the member, based on the results of the risk management audit and an analysis of the member's loss history.

4. At such time as a PLP participant's loss history no longer reflects Adverse Loss Experience, as defined in Policy Section 6 above, the provisions of Procedure Section 3, above, shall no longer apply.

5. During any interval that a PLP participant's Employment Practices Liability loss history reflects Adverse Loss Experience, as defined in Policy Section 8 above, the member's Employment Practices Liability deductible shall be established by CSRMA as follows:

(a) A Risk Management Audit will be triggered to determine the root cause of the adverse loss experience. The Risk Management Audit will be performed by CSRMA's Risk Control Advisor.

(b) CSRMA's Program Administrators will make a recommendation to the PLP Committee on an appropriate CSRMA provided training program targeted at the root cause of the adverse loss experience and an appropriate Employment Practices Liability deductible level for the member based on an analysis of the member's loss history. The training program will be mandatory.

6. Any decision or determination by the PLP Committee may be appealed by the affected member or any other member of the PLP to CSRMA's Executive Board, who shall hear and determine the appeal as promptly as possible. The decision of the Executive Board is final.

**CSRMA  
POLICY & PROCEDURE  
MEMORANDUM # 9-L**

**Subject: RESIDENTIAL SEWER BACKUP RESPONSE AND CLAIMS  
HANDLING**

**Effective: August 17, 2007**

**Attachments Updated: May 29, 2025**

**PURPOSE**

This Policy and Procedure (Policy) is intended to provide protocols for Members of the Pooled Liability Program (Program) that operate sanitary sewer collection systems. Its purpose is to assist Members Agencies to respond effectively to residential sewer backup incidents, properly perform their responsibilities in the resolution of any resultant claims, and to minimize the cost of any claim.

**POLICY**

Sewer backups into homes and businesses are one of CSRMA's greatest general liability exposures. Effective risk management following a sewer backup event requires preplanning and coordinated efforts between the:

- Member Field Staff
- Member Administrative Staff (referred hereafter to as the Members' "Claims Management Coordinator")
- Emergency Restoration Services Contractor (or other construction, and/or restoration management service providers)
- CSRMA Claims Administrator (Carl Warren & Company)

Sewer backups will occur occasionally; this Policy has been enacted to facilitate preplanning and a coordinated response between the Member, any outside contractors and the CSRMA Claims Administrator. Each party has a specific role to play, and the failure of any party to carry out their responsibilities can negatively affect the resolution of an incident or claim.

It is the intention of CSRMA, through this Policy (and other Member agreements) to assist Members to handle claims effectively and to contain costs.

## PROCEDURE

Each Member is responsible for adopting its own “Sewer Backup Response & Claims Handling Policy & Procedure” (“Member Policy”). All sewer backup incidents and any resulting claims shall be processed in accordance with the Member’s Policy.

The Member Policy must include (conform to) at least the following key elements:

1. Identify a person to serve as CSRMA’s “Claims Management Coordinator”. The employee filling this position will serve as the **key contact** on sewer back-up incidents between the Member, and Carl Warren and Co. The employee will also serve to coordinate any communication between any third party vendors and the affected individuals of any residence.
2. The “Claims Management Coordinator” shall have the authority to act on the Member’s behalf to deliver necessary emergency services to mitigate any damage, or resultant cost, of any incident.
3. All Member employees that respond to sewer backup incidents shall attend a CSRMA sponsored or approved “Sewer Backup Response & Claims Handling” training seminar on a three year revolving schedule.
4. The Members identification of multiple local emergency restoration firms qualified to respond to incidents. These vendors are to be qualified using the “CSRMA Water Damage Restoration Firm Screening Tool”. The Member shall have met with representatives from each vendor and determined in advance what activities constitute authorized “Emergency Services” for sewer backup incidents. Any services needed or desired **beyond** those identified as “Emergency Services” are to be authorized only by Carl Warren & Co.
5. The Members’ identification of multiple local hotels, motels, or alternative housing for the provision of emergency alternate living arrangements for affected individuals. Pre-arranged terms between the Member and such facilities shall be agreed to minimize confusion over acceptable charges. A standard “Hotel Authorization Form” for the residential customer to sign acknowledging the terms and conditions under which emergency alternate living arrangements are granted shall be developed and provided to the customer when needed.
6. The Member shall first take the necessary time to identify the cause and responsibility for the sewer back-up and then notify Carl Warren & Company within four hours of any incident that may be the responsibility of the Member. Upon notification, the Claims Management Coordinator and Carl Warren will jointly determine if the incident is likely to result in a claim against the Member. If so, Carl Warren & Company will assume management of the incident response.

The purpose of this notice requirement is not to give Carl Warren control over the conduct of Member employees, but instead to assure that Carl Warren is involved in decisions relating to the retention, scope of work, and compensation of any outside contractors, and to give Carl Warren adjusters the ability to consult with the Member concerning factual investigation relating to potential liability and damages at the earliest time feasible.

7. The Member shall have a written procedure governing the distribution and processing of Claim Forms. If requested by a party affected by a sewer back-up, Member staff must provide a Claim Form, **or** must provide information about how to obtain a Claim Form, **or** how to make a claim. The procedure must ensure that Carl Warren and Company is notified when a claim form is provided. Any claim may later be rejected if a subsequent investigation into the cause of the loss indicates the Member was not responsible for the incident, or if the claim is made improperly.
8. Each Member will submit all incident and/or documentation materials in a timely manner to Carl Warren & Company. Claim Forms should be submitted within one business day of receipt.
9. It is the responsibility of each Member to direct all claimant concerns and questions regarding the adjustment of their claim to the Carl Warren & Company Claims Adjustor, or to the CSRMA Program Administrator.

#### **PROVISIONS FOR NON COMPLIANCE**

If, during the resolution of any claim, it becomes apparent that either the Member has not adopted its own Member Policy for managing sewer backup incidents and claims in accordance with this Policy, or has not followed its Member Policy and either failure has exacerbated the settlement of the claim, or resulted in an increased cost of the claim, a review of the failure (audit) will be triggered. The audit will be performed by CSRMA, or its designee.

The purpose of the audit will be to determine the cause of the failure and to recommend a correction. The results of the audit will be reported to the Pooled Liability Program Committee and to the Member. If the source of the failure cannot be corrected, the failure and recommended correction will be scheduled for discussion and possible action at a Pooled Liability Program Committee meeting. The cost of the audit, if any, will be borne by the Member.

#### **TIME FRAME FOR COMPLIANCE**

All Members to which this Policy applies are to be in compliance with this Policy within six months of adoption by the CSRMA Board of Directors, or within six months of having joined the Program.

## **SAMPLE DOCUMENTS**

The documents referenced in this Policy and other materials related to managing sewer backup claims can be found in the Pooled Liability Program Manual. These are as follows, and are located in Section General Claims Information (Tab L2), Forms (Tab J).

- A. CSRMA Sewer Backup Response & Claims Handling Policy & Procedure Schematic
- B. Sample Sewer Back-Up Incident Report
- C. Sample Customer Information Regarding Sewer Backup Claims (Letter to Provide Customer)
- D. Sample Hotel Authorization Form
- E. CSRMA Model Sewer Ordinance Language Addressing Private Laterals and Backflow Prevention Devices

ATTACHMENT A:

CSRMA Sewer Backup Response & Claims Handling Policy & Procedure Schematic

# CSRMA Sewer Backup Response & Claims Handling Policy & Procedure

## Prior to Event, Member Mgt shall implement the following:

1. Consider adopting Backwater Prevention Device requirements in the Agency's Sewer Use Ordinance
2. Identify multiple local emergency restoration firms
  - Qualify these vendors using the CSRMA Water Damage Restoration Firm Screening Tool
  - Meet with representatives from each vendor and authorize emergency services only until Carl Warren & Co. authorizes additional services
3. Identify multiple local hotels for emergency alternate living arrangements
  - Develop standard agreement for customer to sign acknowledging terms/conditions emergency alternate living arrangements are granted
  - Establish billing agreement with each hotel
4. Customize the CSRMA Customer Information Letter Following a Sewer Backup to their Agency
5. Identify at least 2 Field Points of Contact at the Agency
  - Provide training for these persons on the CSRMA Sewer Backup & Claims Handling P&P
  - Provide authority for authorizing emergency alternate living arrangements
  - Develop mechanism for Field Crews to determine when these persons are to be contacted to come to scene and assume control
  - Provide training for these persons on how to review/approve scope of emergency services
6. Develop Field Response Procedures for Field Crews that are in accordance with this P&P
  - Provide training to Field Crews on the Agency's Sewer Backup Emergency Response Plan
  - Provide training to Field Crews on how to make initial determinations of responsibility
  - Provide training to Field Crews on documenting initial determinations of responsibility (*esp. photographic evidence*)
7. Identify at least 2 persons at the Agency who are responsible for communicating with Carl Warren & Co. on sewer backup claims mgt issues
  - Provide the contact information for these persons to Carl Warren & Co.
  - Provide training for these persons on this P&P
  - Ensure these persons and Carl Warren & Co. have met/spoken
8. Develop an internal mechanism to ensure Carl Warren & Co. is notified with 4 hours of all sewer backups where the Agency may have responsibility
9. Ensure all Agency vehicles that could respond to a sewer backup are equipped with cameras
10. Ensure the Agency has a mechanism to ensure sewer backup calls are addressed 24/7

# CSRMA Sewer Backup Response & Claims Handling Policy & Procedure

Sample Attachment A

Agency is Notified of a Sewer Backup Event

Agency Field Crew Respond & Make Initial Determination of Responsibility

Does The Backup Appear To Be As A Result Of A Failure In The Agency's Sewer Lines?

NO

YES

## Agency Field Crew Perform the Following:

1. Inform Owner/Tenant the cause of the backup is not in the Member owned sewer lines and that the Member is not responsible for private service lines.
2. Document all evidence (*photos, diagrams, narrative, etc*) that the backup is not due to a failure in the Agency's sewer lines

## Agency Field Crew Perform the Following:

1. Relieve the cause of the backup
2. Advise the customer to keep all family members/pets out of any contaminated areas
3. Notify Agency Field Point of Contact of the incident (*if not already on the scene*) & request permission to call out one the Agency's pre-approved restoration firms
4. If permission was granted, contact one the Agency's pre-approved restoration firms & request a crew be dispatched
5. Notify customer that an Agency representative (*if not already on the scene*) & that a restoration crew will arrive shortly
6. Take photos of affected & non-affected areas on the property
7. Follow the Agency's SSO Emergency Response Plan, as necessary, until either the restoration crew or the Agency Field Point of Contact arrives
8. If the restoration firm arrives before the Agency Field Point of Contact, authorize only emergency cleaning services (*i.e. no demolition*)

Carl Warren & Company Contact Info:  
 Tel 855.763.5898 (24hour) or 657-622-4218  
 (Bus Hrs) for William "Bill" Kirker  
 Or 657-622-4200 Carl Warren Main Line  
 Or CSRMAClaims@carlwarren.com

Mailing Address:  
 P.O. Box 2411  
 Tustin, California 92781

## Agency Field Point of Contact Performs the Following:

1. Initiate contact with the Customer & provide the following:
  - Agency Claim Form, or instructions on how to obtain a claim form
  - Sewer Backup Customer Information Letter
  - Hotel Authorization, as necessary
2. Explain to the Customer that your Agency has authorized payment for emergency services only & that all future expenses &/or questions regarding claims issues must be discussed with Carl Warren & Co.
3. Complete the Sewer Backup Summary Report
4. Review the scope of emergency services proposed by the restoration firm
5. Immediately contact Carl Warren & Co. & provide the following information:
  - Customer contact information
  - Extent of the backup
  - Scope of services proposed by the restoration firm

*NOTE 1: If Carl Warren & Co. can't be immediately reached, use best professional judgment to determine if the scope of services proposed by the restoration firm is appropriate. If in doubt, limit the scope of services to that which seems reasonable until Carl Warren & Co. can be reached.*

*Note 2: If the severity of the backup is beyond your ability to manage, request Carl Warren & Co. provide a Field Examiner ASAP.*
6. Collect the camera used by the Field Crew & take additional photos, as necessary
7. Gather all evidence/documentation of the following:
  - Cause of the backup
  - Extent of the damages caused by the backup
8. Forward all photos, completed Sewer Backup Summary Report & other documentation/evidence to the Claims Management Coordinator.

Go to Side 2

## Start Here From Side 1

### Agency "Claims Management Coordinator"

1. Review the Sewer Backup Summary Report, photos taken & all other documentation/evidence provided by the Agency Field Point of Contact
2. Set up a claims file and insert copies of all relevant information
3. **Immediately** contact Carl Warren & Co. & discuss the following:
  - Documentation gathered
  - Plan of action
  - Alternate living arrangements, if necessary (*ensure Carl Warren & Co. assumes responsibility for managing alternate living arrangements/incidentals from this point forward*)
4. Document the date, time & content of the discussion with Carl Warren & Co. and place in the claim file (*NOTE: document all phone conversations/other communication with the Customer & Carl Warren & Co. from this point forward & keep in the claim file*)
5. Immediately forward the Sewer Backup Summary Report, photos and all other relevant evidence/documentation gathered to Carl Warren & Co.
6. Direct all Customer concerns and questions regarding the adjustment of their claim to the Carl Warren & Co. Claims Adjustor or Account Manager or to the CSRMA Program Administrators
7. Communicate with the Claims Adjustor and/or Account Manager bi-weekly or as necessary to keep informed of the status of the claim and provide information, as necessary
8. Ensure the Claims File is kept current with all communications between Carl Warren & Co., the Customer, the restoration firm and other involved parties
9. Provide internal status reports, as necessary, to appropriate members of management staff

### Carl Warren & Co. Perform The Following:

1. Initiate contact with Owner/Tenant as soon as possible, but no later than the first business day after notification of the loss
2. Make all necessary arrangements for lodging, food and incidentals beyond those made by the Agency immediately following the loss
3. Negotiate & oversee the restoration firms' work to ensure proper scope of cleaning, disinfection, & demolition
4. Investigate, adjust and administer claim to closure
5. Whenever prudent to do so, have claimant agree, as a condition of claims settlement, to install and maintain, at their expense, a Backwater Prevention Device meeting local requirements on their service lateral
6. For claims where the estimated settlement timeframe is greater than 30-days, provide the Agency's Claims Management Coordinator with status reports bi-weekly, as necessary or as requested by the Claims Management Coordinator.
7. For claims with issues complicating movement towards settlement, immediately notify the CSRMA Program Administrator's for guidance
8. When circumstances warrant or when requested, dispatch a Field Adjustor to the location of the sewer backup

Carl Warren & Company Contact Info:  
Tel 855.763.5898 (24hour) or 657-622-4218  
(Bus Hrs) for William "Bill" Kirker  
Or 657-622-4200 Carl Warren Main Line  
Or CSRMAclaims@carlwarren.com

Mailing Address:  
P.O. Box 2411  
Tustin, California 92781

ATTACHMENT B:  
Sewer Back-Up Incident Report

**Complete this form only if there is a backup into a residence or business.**

Fill out this form as completely as possible.  
 Ask customer if you may enter the home. If so, take photos of all damaged and undamaged areas.

PERSON COMPLETING THIS FORM:		PHONE:
Name: _____		DATE:
Title: _____		TIME:
TIME STAFF ARRIVED ON-SITE:		
DOES THE CUSTOMER WANT THE [ABBREV] TO CALL FOR CLEANING SERVICE? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, give the customer the Cleaning Declination Form and have them sign here: _____ If customer called a cleaning contractor, provide name and contact number:		
RESIDENT NAME: <input type="checkbox"/> Owner <input type="checkbox"/> Renter ADDRESS:  PHONE:	IF RENT, PROPERTY MANAGER(S): OWNER: ADDRESS:  PHONE:	
# OF PEOPLE LIVING AT RESIDENCE:		
Approximate Age of Home:	# of Bathrooms:	# of Rooms Affected:
Numbers of Photographs or Videos Taken: <input type="checkbox"/> Photographs _____ <input type="checkbox"/> Video _____ <input type="checkbox"/> Customer did not provide or allow photographs		Where are photos/video stored?
Is nearest upstream manhole visibly higher than the drain/fixture that spilled? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Does property have a Property Line Cleanout or BPD? <input type="checkbox"/> Cleanout <input type="checkbox"/> BPD <input type="checkbox"/> Neither <input type="checkbox"/> Unknown		
If yes, was the Property Line Cleanout/BPD operational at the time of the spill?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Have there ever been any previous spills at this location?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Has the resident had any plumbing work done recently? <i>If YES, please describe:</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

**GO TO PAGE 2**

**LIVABILITY ASESMENT**

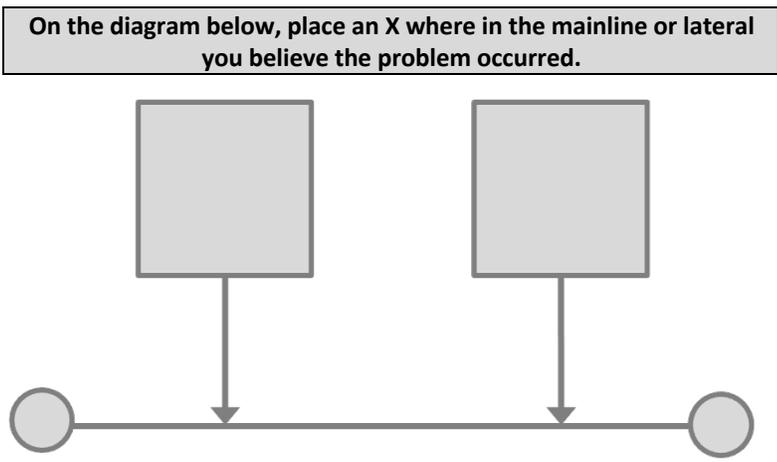
- Is there insufficient non-contaminated living space for residents to stay during cleaning including a functioning and non-contaminated bathroom?  Yes  No
- Are there any residents that are pregnant, are children, have severe allergies/asthma, have respiratory problems, and/or have a compromised immune system?  Yes  No
- Is the area a childcare or extended care facility?  Yes  No
- Is the food preparation area contaminated?  Yes  No
- Is it currently after 8pm, or if it is currently before 8pm will the cleaning and disinfection be completed after 10pm?  Yes  No

If the answer to any of the questions above is YES, complete the Lodging Authorization form. [If no lodging form may need to add a procedure here such as "...advise the resident to consider temporarily relocating while the living area is cleaned."]

If temporary lodging was offered by the [ABBREV] check one:  Accepted  Rejected

**SANITARY SEWER LINE BLOCKAGE LOCATION**

PLEASE CHECK THE BOXES THAT DESCRIBE YOUR OBSERVATIONS:	
Building Cleanout Was: <input type="checkbox"/> Non-Existent <input type="checkbox"/> Full <input type="checkbox"/> Empty	Property Line Cleanout was: <input type="checkbox"/> Non-Existent <input type="checkbox"/> Full <input type="checkbox"/> Empty



Did sewage go under buildings?  Yes  No  Unsure

**Recommended Follow-Up Action(s):**

ATTACHMENT C:

Customer Information Regarding Sewer Backup Claims (Letter to Provide Customer)

Dear Resident:

We recognize that sewer back flow incidents can be stressful and require immediate response when all facts concerning how an incident occurred are unknown. Rest assured that we do all we can to prevent this type of event from occurring. Nevertheless, occasionally tree roots or other debris in the sewer lines cause a backup into homes immediately upstream of the blockage. At this time the District is investigating the cause of this incident.

If the District is found to be responsible for the incident, we are committed to cleaning and restoring your property, and to protecting the health of those affected during the remediation process.

The cleaning contractor provided by the District has been selected because of their adherence to established protocols that are designed to assure all parties thorough, cost-effective and expeditious cleaning services. You also have the right to select your own cleaning contractor, but the District does not guarantee payment of fees/expenses incurred and reserves the right to dispute fees/expenses deemed not usual and customary.

If you wish to discuss this matter, please contact the <INSERT AGENCY CONTACT TITLE> at <INSERT CONTACT PHONE>. If you wish to submit a claim for damages, please complete the claim form in this packet. Completed Claim Forms are to be submitted to the <INSERT TITLE AND MAILING ADDRESS>.

Claims against the District must comply with the California Government Code Sec. 910-913.2. The <INSERT AGENCY CONTACT TITLE> has the responsibility for processing any claims for damages that are submitted and can be reached at <INSERT PHONE>.

---

### **What you need to do now:**

---

The <INSERT AGENCY NAME> has prepared this brief set of instructions to help you minimize the impact of the loss by responding promptly to the situation.

- Do not attempt to clean the area yourself; let the cleaning and restoration company handle this.
- Keep people and pets away from the affected area(s).
- Turn off all appliances that use water.
- Turn off heating/air conditioning systems.
- Do not remove items from the area – the cleaning and restoration company will handle this.
- If you had recent plumbing work, contact your plumber or contractor and inform them of this incident.
- If you intend to file a claim, do so as soon as practical in order to have your claim considered.
  - **Please Note:** The general provisions for the filing of claims against public entities are contained in Part 3 (*commencing at Section 900*) of Division 3.6 of the Government code. Certain claims are not governed by these provisions, including tax and assessment matters, liens, employee compensations, workers' compensation, unemployment compensation, welfare, securities, and others.
  - The form and contents of a claim are specified by Section 910, et seq. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six months after accrual of the cause of action; other claims shall be presented within one year (*Section 911.2*).
  - Claims are to be presented by delivery or mailing to the <INSERT TITLE AND MAILING ADDRESS> (*Section 915*).
  - It is suggested that the claimant refer to claims law and be fully advised with respect to the exceptions and further provisions contained therein.

**Important Legal Notice:** For your protection, read carefully, obtain a reliable translation, and/or consult your attorney.

ATTACHMENT D:

Sample Hotel Authorization Form

**INSTRUCTIONS TO EMPLOYEE:**

1. Review this form with the customer and instruct them to read and select, in order of preference, which of the hotels below they wish to stay at.
2. Contact the Senior Supervisor and request they contact the selected hotel and provide payment for one night's lodging for the customer named below.
3. Instruct the customer that this emergency authorization is for **LODGING ONLY – NO FOOD, MINIBAR, MOVIE, PHONE or Other Charges**).
4. Explain to customer that if circumstances require additional nights' lodging and other incidentals, the Business Manager or designee or the District's Claims Adjustor will address them.
5. Have the customer sign the Acknowledgement section of this form.
6. Complete this Authorization Form and sign.
7. Give the bottom copy of this form to the customer.

**INSTRUCTIONS TO RESIDENT:** <INSERT AGENCY NAME> recommends that you temporarily relocate to a local hotel for your safety and convenience while your residence is being cleaned. Please note that this emergency authorization is granted under the following conditions:

1. This authorizes payment of 1 (one) nights stay at one of the hotels listed below.
2. The authorization is good for **room and tax ONLY**. Phone, food, mini-bar and other incidental charges will not be reimbursed.
3. Additional nights, other allowances, incidentals and special circumstances may be discussed by contacting <INSERT AGENCY NAME AND CONTACT> or designee at **<INSERT AGENCY CONTACT'S PHONE>** or the District's Claim Adjustor, Carl Warren and Co. at (855) 763-5898.

**CUSTOMER ACKNOWLEDGEMENT:**

I/we have read and understood the terms and conditions governing this offer of temporary relocation and agree to abide by them as described above.

I/we have read and understood the terms and conditions governing this offer of temporary relocation and agree to abide by them as described above.

Customer Name (please print): \_\_\_\_\_

Customer Address: \_\_\_\_\_

Phone # where customer may be reached: \_\_\_\_\_

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Check here to decline this offer of temporary relocation. Customer Signature: \_\_\_\_\_

Good for one (1) night's stay on (date): \_\_\_\_\_ Number of affected residents: \_\_\_\_\_

(<INSERT AGENCY NAME> Representative's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

This voucher is valid at the following hotels:

<INSERT HOTEL INFO>

<INSERT HOTEL INFO>

ATTACHMENT E:

CSRMA Model Sewer Ordinance Language Addressing Private Laterals and Backflow Prevention Devices



c/o ALLIANT INSURANCE SERVICES, INC.  
560 Mission Street, 6th Floor, San Francisco, CA 94105

Insurance License No.: 0C36861  
Tel: 415.403.1400 Fax: 415.874.4813

**OFFICERS:**

Sandeep Karkal, *President*  
415.892.1694  
Vince De Lange, *Vice President*  
925.756.1920

**PAST PRESIDENTS:**

Craig Murray  
2020-2024  
Greg Baatrup  
2018-2020

**Dear CSRMA Member:**

Backups impacting private property from problems in the public sewer have been CSRMA's most frequent and costliest liability claim since CSRMA was founded in 1986. Over the past several years, CSRMA has seen an increase in liability exposure to member districts because of backups into homes and businesses. Generally, the frequency of these types of claims seems to be decreasing, but the dollar exposure on individual claims has been going up, as construction and repair costs increase.

During the period of 2006 through 2019, a Court of Appeal decision, *CSAA v. City of Palo Alto*, governed the issue of backup claims and expressly determined that such claims can support inverse condemnation liability, based upon the system's "failure to function as intended" which means plaintiffs could collect attorney fees as well as actual damages. This holding was reversed by the California Supreme Court in *City of Oroville v. Superior Court* (2019) 7 Cal.5<sup>th</sup> 1091, which held by contrast that for inverse condemnation to apply, a claimant must show that the operation of the system as deliberately design or constructed, or the entity's deliberately adopted plan of maintenance, must be shown as the cause. In other words, there must be a deliberate shifting of risk by the entity to the owner, inherent in the design, construction or plan of maintenance. The court also held that failure of the owner to install a backflow prevention device, if required by Code or Ordinance, barred inverse condemnation liability because it defeated the system design. A main effect of the *Oroville* decision is to shine a light on a District's plan of maintenance as an important consideration in determining liability.

An agency's Sewer Ordinance can be a tremendous resource to control many of these risks. If the language in the ordinance (dealing with lateral and device ownership, maintenance responsibilities, and backflow relief/prevention device installation and maintenance requirements) is addressed properly, the ordinance may be crucial in defending a claim. Proof issues such as documenting notice of ordinance requirements to the property owner, and code enforcement at the time building permits are issued, can also affect this defense to liability.

Many years ago, CSRMA began evaluating member ordinances for weaknesses highlighted by these claims. The results of that analysis indicated that many member ordinances lacked private lateral and backflow prevention language that would offer a degree of protection in certain circumstances. CSRMA then began developing model language taken from the best member examples, addressing private lateral and backflow prevention requirements, including a review by the CASA Attorney's Committee, with the goal of being able to offer members sample, model language that a member could use, as needed, to either evaluate or augment language in their own ordinance.

CSRMA isn't requiring members to adopt the attached model language. Rather, the intent of the document is to provide sample language for possible private lateral and backflow prevention ordinances. CSRMA encourages members to work with their own legal counsel to review the model language against their own sewer ordinance and consider adopting those portions that are appropriate to their jurisdiction and circumstances.

Please direct any questions, comments or general feedback to David Patzer, CSRMA Risk Control Advisor at 707.373.9709 or [dpatzer@dkfsolutions.com](mailto:dpatzer@dkfsolutions.com).

Sincerely,  
CSRMA Executive Board

## Private Lateral and Backflow Prevention Programs for CSRMA Agencies

3/23/2012

**USE NOTE TO PUBLIC AGENCY:** *The intent of this document is to provide sample language for possible private lateral and backflow prevention ordinances. These programs can be appropriate and useful where agencies have knowledge of private systems that are either in need of repair or have contributed to public system failures (through unauthorized releases of grease, oil, roots or other obstructions into the public system).*

*The goal is to assist agencies in addressing with their customers the point of transition between ownership and control of, and responsibility for, the public and private portions of systems; and to define potential triggers for requirements of inspection of private laterals and/or for installation of a Backflow Prevention Device.*

*Sewer agencies can reduce liabilities by communicating to their customers their responsibilities for maintenance and operations of private sewer laterals. Further, the Tort Claims Act defines agency liability for dangerous conditions of public property as based upon whether an agency "owns or controls" property. Further, inverse condemnation liability depends upon whether an agency's "public work" or "public improvement" as deliberately designed or constructed proximately caused the loss. So, defining ownership and control of parts of a connected system is an important consideration.*

*Numerous provisions of California law provide authorization to public agencies operating sewer systems to adopt ordinances and regulations related to the use of sanitary sewer services and facilities (for example, see Water Code Section 31105, and consult the underlying statutory authority for your agency). It is important to review the language of your program carefully with your agency's legal counsel to prevent conflicts/contradictions and to act consistently with your agency legal authority.*

*The following is a menu of language that may assist public agencies in issuing guidance or preparing ordinances for system compliance, depending on the needs of the agency. CSRMA's research has shown that there are widely divergent opinions on many of the issues presented, so "options" are included reflecting language used by some agencies or suggested by agency counsel; your agency should exercise its judgment in adopting language deemed suitable.*

*The first section is a set of definitions, to define the relation between public sewer systems, and private sewer disposal systems or private building sewers and laterals. Member agency attorneys suggested alternate language, so **TWO SETS of definitions** are included, each aimed at the same purpose. Either set would be appropriate, and the choice is essentially editorial preference. The important consideration is establishing **where** the boundary is placed between public and private ownership. In the remainder of this document, the terms used in "set I" of the definitions is used, so if you choose "set II" note that the defined terms are slightly different, and would need to be replaced globally in the rest of the document. Note that "set I" includes in the definition of "public sewer" the concept that private laterals will be deemed private even if they lie within an agency easement.*

## Definitions - I

**Building wastewater pipelines** – The building wastewater pipelines are those black or grey water pipes installed within the walls of a building or structure that connect to the building drain. Building wastewater pipelines may include interior sump systems, grease traps or other appurtenances.

**Building drain** – The building drain is that part of the lowest wastewater piping which receives the discharge from drain pipes inside the walls of a building or structure and conveys it to the private lateral (generally connecting within 2' of the building wall).

**Private sewer disposal system** – The pipelines and points of connection of a building drain to a grease interceptor, an individual sewage disposal system (septic system), holding tank or other private point of disposal unaffiliated with the public sewer comprises a private sewer disposal system.

**Private lateral(s)** -- shall mean that part of the generally horizontal piping of a drainage system which extends from the end of the building drain and which receives the wastewater discharge from the structure and conveys it to a public sewer or other on-site individual sewage disposal system (septic system). The Private lateral begins at Building Drain and extends to and including the wye or point of connection with the public sewer. Private laterals may include privately owned pipelines, sump systems, interceptors or other appurtenances within private streets or private property common areas that are not dedicated to or owned by the [entity]. Private laterals may also begin at the building drain and extend to a private sewer disposal system.

**Public sewer** – A public sewer is the sewer collection system owned by the [entity] lying within limits of public streets, roads, easements, reserves, non-exclusive easements or other public rights of way. That portion of the private lateral that may lie within any public street or right of way **is/is not (Choose option reflecting your jurisdiction's ownership/responsibility circumstances)** a public sewer owned by [entity]. Public sewer facilities owned and maintained by the [entity], including facilities designed and constructed by [entity] and facilities that have been dedicated and accepted by the [entity]. Private Sewer Facilities constructed for dedication to the [entity] do not become public sewers until they have been accepted by the [entity].

## Definitions - II

**Building sewer.** -- Private Sewer Facilities that convey wastewater from the premises of a Customer to the Public Sewer System.

**Private Sewer Facilities.** -- Sewer facilities that are privately constructed and not dedicated and accepted as a Public Sewer Facility by the District. Private Sewer Facilities generally include sewer facilities within a privately owned building, service laterals, private pump stations, grease interceptors, and all other facilities located between the sewer customer and the connection to the collection line, including the integral wye fitting that connects the lateral to a collection line. Sewer facilities intended for dedication to the District are Private Sewer Facilities until such time as they are accepted by the District

**Public Sewer Facilities or Public Sewer System.** -- Sewer facilities owned and maintained by the District, including facilities designed and constructed by the District and facilities that have been dedicated and accepted by the District. Private Sewer Facilities constructed for dedication to the District do not become Public Sewer Facilities until they have been accepted by the District.

**Service lateral or lateral.** -- Sewer pipeline from the plumbing of a building to a collection line, including portions that extend across public rights-of-way and the Saddle, wye or other physical connection to the collection line. Service laterals are privately owned and maintained.

### **Design, Construction and Maintenance of *Private Sewer Disposal Systems***

The design, construction and maintenance of *building drains, private laterals* and *private sewer disposal systems*, which are not connected to the *public sewer*, are governed by the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction, county and the state.

## **Design and Construction of *Building Drains and Private Laterals Connecting to the Public Sewer***

Construction of *building drains* and *private laterals* that connect to the *public sewer*, including any portion lying within or under a public road, shall be in accordance with the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction and the county.

**[The following language is to cover the encroachment permit requirements of another jurisdiction necessary to make a street entry cut]**

Construction of *private laterals* or any portion of a wastewater pipeline to be dedicated and become a part of the *public sewer*, which are planned for location under a public street shall be in accordance with the ordinances, rules and regulations of the **(Agency choose one)**:

- [entity]'s jurisdiction, county and the state.
- cities within the [entity]'s jurisdiction and the county.

No Person shall connect a drain line, wastewater pipeline, *building drain*, *private lateral* or *private sewer disposal system* to any *public sewer* without the submission of required plans, reviewed and accepted by [entity] whether by permit, license or otherwise, including the payment of applicable fees and connection charges; and unless the location and method of construction have been approved by the [Agency] Engineer or representative.

*USE NOTE -- there was some question among the reviewers of this document whether a unilateral hold harmless/indemnity provision would be enforced by the courts in the face of a challenge on public policy grounds, in the event of a claim. This issue is similar to the issue of "sidewalk ordinances" in which cities deem property owners responsible for the repair of adjacent sidewalks (the practice has been questioned but not overruled by the courts). CSRMA recommends that member agencies consider adopting the proposed hold harmless/indemnity language, but this is ultimately a decision each member agency must make. In this draft we have underlined the sections that relate to disavowal of liability for damages or assignment of damage liability to the homeowner to call attention to the issue.*

*The first two paragraphs below may appear to repeat information several paragraphs later under "Maintenance and Operation", but the initial two paragraphs refer to cost while the later paragraphs deal with "responsibility" implying a further affirmative duty to maintain and repair. These can be combined if the agency wishes.*

*At the end of this section are a number of enforcement options, since the language currently used between agencies varies widely; we have included a series of examples. On these issues there has been a wide divergence of approaches by agencies: whether a duty of inspection should be imposed on property owners; if so, when the inspection obligation should be triggered; how the requirements would be enforced; whether providing a notice of compliance should be an option; and whether and when backflow prevention devices should be required.*

*It is beyond the scope of this review to try to resolve these issues of policy; instead the purpose is to provide options for member agencies to assist them in deciding on their own policies.*

## Installation and Maintenance Costs; System Responsibility

All costs and expenses incident to the installation, connection, repair, maintenance, renovation, replacement, disconnection, reconnection or relocation of a *private sewer disposal system, building drain* or *private lateral*, including cleanouts, backflow protection devices, pumps or other appurtenances (collectively “installation and maintenance”), shall be borne by the property owner and person causing the connection to be made, including but not limited to the costs of application, plan submittal, plan check, connection fees or any other fee or charge of [entity] related to the installation.

In no event shall [entity] be responsible by reason of approval of plans, issuances of licenses or permits, or allowance of connection to the public system for any harm, cost, loss or damage which may be occasioned by the installation or maintenance of the building drain or private lateral and the same shall be borne by the property owner or the person causing the connection to be made.

### Cleanouts

In proximity to the *building drain* or at a point along the *private lateral* a cleanout should be provided either at the time of building construction or in the event of a plumbing system remodeling. Generally, acceptable cleanouts are installed within five (5) feet of the building foundation. All cleanouts shall conform to applicable local plumbing Codes and the [entity]’s Standard Specifications.

### Plumbing Too Low

In all buildings in which there are plumbing fixtures at an elevation too low to permit drainage by gravity from the fixtures to the public sewer, the wastewater from the building shall be lifted and discharged to the *private lateral* by pumps or other appropriate appurtenances which shall be the responsibility of the property owner.

Private pump stations are disfavored design options that are only allowed where there is a showing of unusual circumstances, such as technical infeasibility or significant hardship. The District Engineer must also find that they will not pose an unacceptable risk to the public sewer system. Supplemental permit conditions for privately owned pump stations shall require a formal agreement between Owner and [Agency].

### Separate Laterals

Each newly constructed separate building (and/or significant remodeling of a separate structure), shall be connected to the [entity]’s *public sewer* with a separate *private lateral*.

**[In some areas agencies may consider exceptions based on age of communities and infrastructure limitations. Consider each exception separately.]**

Exceptions, upon [agency] approval may include:

1. Multiple Existing Buildings Under Common Ownership. One or more existing buildings located on property owned by the same Person may be serviced by the same *private lateral* if the [entity] determines that it is unlikely that ownership of the property can or will be divided in the future. However, if for any reason the ownership of the property is subsequently divided, each

building under separate ownership shall be provided with a separate *private lateral*, and thereafter it shall be unlawful for any Person to continue to use or maintain a common *private lateral*. The cost to install the separate *private laterals* shall be the responsibility of the property owner whose property it serves.

2. Residential Occupancies With Common Walls. Existing single family residential units with common walls, condominiums, stock cooperatives, community apartments or other similar improvements which entitle owners of interests therein to occupy independent ownership interests and make joint use of utility and other services which may be provided by facilities owned in common may, upon issuance of a Permit by the [entity] authorizing such common use, be permitted to continue the use of a common *private lateral*.

3. Common Interest Developments. The homeowners association of a Common Interest Development shall, along with the Owner, be jointly and severally liable for duties and obligations imposed by this Chapter of the [entity] Ordinance Code in relation to any *private lateral* located within a common area of the development. If no homeowners association exists, then the individual unit owners, both jointly and individually, shall be liable for the duties and obligations with respect to *private laterals* established by the Common Interest Development.

4. Hardships. Private multi-unit sewer laterals are disfavored design options that are only allowed where there is a showing of unusual circumstances, such as technical infeasibility or significant hardship. The District Engineer must also find that they will not pose an unacceptable risk to the public sewer system.

#### **[Optional supplemental permit requirement]**

Supplemental Sewer Service permit. Multi-unit sewer laterals require a Supplemental Sewer Service permit. Supplemental permit conditions for private multi-unit sewer service laterals shall require a formal agreement between Owner and [agency]. The agreement(s) shall be recorded by Owner against, and shall be an obligation running with the property. The agreement(s) shall include requirements for Owner and all future owners of all, or any portion of, the property to be solely liable and responsible for compliance with the [agency] Standard Specifications regarding design, construction, operation, maintenance, repair, and replacement of the privately owned sewer facilities. Owner shall comply with the [agency] Standard Specifications and shall submit such design packages to [agency] for review, approval, and for record purposes. [Agency] shall have no obligation whatsoever to design, construct, operate, maintain, repair, or replace any aspect of privately owned sewer facilities. Each such agreement will be subject to the requirements, review, and approval of [agency].

## Maintenance and Operation of *Private Sewer Disposal Systems* and *Private Laterals*

It is the responsibility of the property owner to maintain the *private lateral* up to and including its connection to the public sewer.

The operation and condition of *private laterals*, their cleanouts and any other wastewater facilities required to serve a connector's building, shall be the responsibility of the property owner, who shall keep them in good operating condition at all times and shall undertake all necessary repairs, including replacement of dilapidated and worn out components, at the property owner's expense and at no cost to the [entity]. All repairs to and replacements of *private laterals* or other *private sewer disposal systems* shall be performed in accordance with the [entity]'s Standard Specifications.

Property owners shall maintain a *private lateral* in a manner that prevents sanitary sewer overflows and sewer spills. Failure of a property owner(s) to abate any condition that is causing sanitary sewer overflow within <indicate number> business days of receiving a notice from the [entity] is hereby declared to [be a violation of entity ordinances and regulations] or [optional: a public nuisance] and may be subject to abatement or other remedies [entity] may have.

**[Optional; EBMUD has an Ordinance specifying what discharges are permitted and prohibited generally. (To find it on the web, search "EBMUD Ordinance 311".) See EBMUD Ordinance No. 311, Title II, Sections 1, 2, and 3. These may be suitable for consideration and inclusion, but were left out of this draft because the topics are already covered in other regulations or statutes. See also Title VI, Enforcement and Penalties, which includes issuance of cease and desist orders, recovery of costs, termination of service, and appeal procedures, together with civil and criminal enforcement penalties.]**

**[Optional; passing on RWQCB penalties]** Property owners responsible for the cause of a sanitary sewer overflow shall reimburse the [entity] for any civil penalty imposed on the entity the by Regional Water Quality Control Board as the result of such overflow. To secure such payment the [entity] shall have a nuisance abatement lien pursuant to the California Government Code. Prior to recordation of the lien the [entity] shall provide written notice to the owner of record of the subject property, based on the last equalized assessment roll or supplemental roll, whichever is more current.

**[Optional; agency right of entry; may be simply a restatement of existing rights under easements, but may be worth specifying nevertheless]** It shall be a condition of continuing use and connection to the *public sewer* that the owner of a *private lateral* allow the inspection and verification of the condition of the *private lateral* (from the point of the exterior *building drain* or cleanout to the *public sewer* connection) and / or monitoring of the constituents of the wastewater discharge entering the *public sewer* in the event that the [entity] has a reasonable belief that the manner of connection to the *public sewer*, the wastewater flow from the private property, or the condition of the private lateral is such that the *public sewer* will be damaged, rendered inoperable, or caused to spill because of the private property condition or use.

**[Optional; alternate section re agency entry to repair and replace; in practice, the agency may wish to seek a court injunction first, except in emergencies]** Should a property owner fail to comply with any of the owner's responsibilities identified above, after written notice from the [entity], the [entity] may undertake the testing and/or repair, replacement or upgrade work and the [entity]'s agents, employees and contractors may enter into the owner's property for such purpose.

**[Optional; passing back repair costs done to abate nuisance - this procedure may be different for different types of agencies or beyond the authority of some agencies -- cities have a broader abatement reach than some districts]** The owner shall promptly reimburse the [entity] for its costs incurred in undertaking such work and to secure such payment the [entity] shall have a nuisance abatement lien pursuant to Section 38773.1 of the California Government Code. Prior to recordation of the lien the [entity] shall provide written notice to the owner of record of the subject property, based on the last equalized assessment roll of supplemental roll, whichever is more current.

**[Optional; states generally that owner is responsible for cost.]** In the event that the *private lateral* or any portion within a public street, road, or easement to and including the point of connection to the *public sewer* of [entity]'s has become damaged or deteriorated such that its proper operation requires replacement or repair, then the same shall be conducted at the cost and expense of the property owner(s).

**[Optional; video inspection]** As a condition of continuing use of the public sewer, the [entity] may require that any private lateral be video inspected at the expense of the property owner, if there are reasonable grounds to suspect that the private lateral is damaged, has root intrusion, has contributed to a sanitary sewer overflow or sewer spill, or has other structural defects.

### **Responsibility for Costs of Repair of *Public Sewer* damage**

Any property owner served by the [entity] Sewer Collection System shall be responsible and liable for all costs involved in the repair of all damages to the [entity] *public sewer* system caused by the property owner or the property owner's tenants or agents. [Optional] That person shall defend, indemnify, and hold [agency] harmless from any cost, liability, loss or damage that may be incurred or occasioned by the installation or maintenance of the *building drain* or *private lateral*.

It shall be unlawful for any owner of the house, building, or property connected to a [entity] *public sewer* to maintain a *building drain* or *private lateral* in a condition that prevents or impedes the cleaning or inspection of the *public sewer*.

### **Testing New Sewer Laterals**

All new *private laterals* shall be inspected in accordance with the requirements of [agency] . The method of testing shall be at the discretion of the [entity].

**[Optional]** The test section shall be through the full length of the *private lateral* from the connection to the *public sewer* to the cleanout location adjacent to the building footprint. The air or water test of new private laterals shall conform to the testing requirements of the [agency's] Standard Specifications.

### **Testing Existing Sewer Laterals Conditions Requiring Cleaning and Inspection**

As a condition of continuing use, the [entity] may require that a *private lateral*, including those serving residential, multiple residential and commercial properties, connected to a [entity] *public sewer* shall be cleaned and inspected, at the property owner's expense, when any of the following conditions occur or at the following times:

1. The installation of additional plumbing facilities that produce a material increase, in the judgment of the [entity], in sewage flow from the house, building or property served;

2. A change of use of the house, building or property served from residential to business, commercial, or non-residential; or from non-residential/non-restaurant/non-industrial to restaurant or industrial uses such as carwashes, cleaners and laundries;
3. Upon repair or replacement of a significant portion of the *private lateral*;
4. Upon a determination of the [entity] that the cleaning, testing or repair is required for the protection of the public health, safety and welfare; or
5. **[Optional; testing upon transfer of property; if used, see also “Testing Failure Mitigation” below for remedy and hardship extension.]** Upon sale or transfer of the property. For property sold or transferred in probate, any repair or replacement shall be completed within 180 days after probate sale or transfer. In a non-probate transaction, any repair or replacement shall be completed prior to the close of escrow or, in the case of demonstrated undue hardship, by such later date as agreed to by [entity] in writing, but in no event later than 180 days following close of escrow. A transfer of ownership between family members does not require testing, if there is no reassessment of property value by the County.

### **[Optional] Inspection Criteria for Existing Private Laterals**

The owner or an agent of the owner of a house, building, or property connected to the [entity]'s *public sewer* shall notify the [entity] twenty-four (24) hours prior to inspection so that the [entity] has the opportunity to witness the inspection.

All *private laterals* shall be tested by television video inspection method in accordance with the applicable provisions of the [entity]'s Standard Specifications. When cleaning and inspecting of an existing *private lateral* is required, the *private lateral* shall first be cleaned, and then tested via an internal video inspection for the full length of the *private lateral* from the *building sewer* to the *public sewer*. The internal video inspection shall be completed by a person and/or firm qualified by experience to perform the work. Video recordings of the inspection shall be submitted to the [entity] for verification of the condition of the *private lateral*. A video recording that is not picked up within thirty (30) days after submission to the [entity] shall become the property of the [entity] and may be disposed of by the [entity].

A *private lateral* will comply with the provisions of this Section if video inspection verifies all of the following conditions as approved by the [entity]:

1. The *private lateral* is free of roots, grease deposits, and other solids that may impede or obstruct the transmission of sewage.
2. There are no non-sanitary connections to the *private lateral* such as roof or yard drainage facilities.
3. All joints in the *private lateral* are watertight and sound to prevent the exfiltration of sewage and the infiltration of groundwater.
4. The *private lateral* is free of structural defects, cracks, breaks, or missing portions and the grade shall be reasonably uniform without major sags or offsets.
5. The *private lateral* is equipped with at least one (1) cleanout located within five (5) feet of the building footprint which shall be securely sealed with a proper cap and shall further be equipped with a backflow protection device, if required.

A video inspection shall be valid for a period of six months from the date of the video.

**[In the alternative to the last sentence, see the certificate of compliance procedure below.]**

## **Lateral Compliance and Issuance of Certificate of Compliance**

[Agency] shall review the final submitted video for compliance with the conditions contained in the Inspection Criteria above. When the conditions are met, as verified by the visual findings of the video inspection as approved by [Agency], the *private lateral* shall be certified as complying with the provisions of these regulations. [Agency] shall then issue a Certificate of Compliance to the property owner, and will not require testing for a ten (10) year period from the date of issuance unless [Agency] has reason to believe the lateral may have become defective since issuance of the Certificate.

**[Use note – this is a simplified form; a detailed treatment of this topic is contained in Title VIII of EBMUD’s Ordinance No. 311. That form requires a certificate of compliance upon any transfer of property; remodeling including a sewer lateral or involving work exceeding \$100,000; increase or decrease of water meters; within 10 years for common interest developments; or within 10 years for owners of laterals more than 1000 feet in length. Obviously this issue raises concerns about staffing costs and whether the agency is, in effect, assuming additional responsibility or liability by certifying the results of an inspection. The Certificate itself should expressly state that the agency makes no warranty re the future condition or performance of the lateral.]**

### **Testing Failure Mitigation**

In the event that inspection indicates that a *private lateral* is insufficient to provide service to the property free from unauthorized discharges to the *public sewer* or is in danger of continuing spills, then as a condition of continuing use of the *public sewer* system, the property owner shall cause the necessary repairs or line replacement to be made to bring the *private lateral* into compliance with the requirements of [entity]. The costs of repair or replacement of the *private lateral* shall be borne by the property owner.

**[Option, may include deadline, perhaps 30 days, or such date as specified by Agency in light of the condition.]**

## Backflow Protective Device

### Purpose for Requiring Installation of Backflow Prevention Devices

When blockages or stoppages occur in sanitary sewers, there exists the potential for adverse public and private health impacts, bodily injuries and damage to property resulting from sewage overflow and backflooding on public and private property. It is the purpose of this Ordinance to protect the health, safety and welfare of residents of the [entity] and to minimize the possibility of damage to property or injury to persons by requiring the proper installation and maintenance of backwater overflow prevention devices pursuant to the directives and standards of the [entity].

### Responsibility for Backflow Prevention Devices

In this Ordinance, the term “*backflow prevention device*” includes, but is not limited to, backwater overflow devices and backwater check valves, pressure relief devices and shutoff systems, and any other devices the [entity] may approve for the purpose of preventing or minimizing the possibility that raw sewage will back up into any structure, or for any similar purpose. All *backflow prevention devices* shall comply with standards acceptable to the [entity] and shall be maintained and repaired by the property owner to provide for their uninterrupted function for the purpose for which they were designed.

**Option One – the paragraph below was taken from a member District’s ordinance. It applies to all properties. While this approach will provide property owners the greatest amount of protection from sewer backups, it is unknown if it would withstand legal challenge. Additionally, be advised this approach, without agency financial assistance, is likely to impose a monetary burden on customers:**

All property owners shall install, repair and maintain a *backflow prevention device* on any *private lateral* that is connected to, or is intended for connection to, the [entity]’s *public sewer* system.

The installation of any such *backflow protective device* shall be at the sole cost and expense of the property owner. The maintenance of the *backflow protective device* shall be the sole obligation of the owner or the owner’s successor in interest. The [entity] shall be under no obligation to ascertain that the backflow protective device continues in operating condition.

**Option Two [conditional requirement with options for conditions triggering BPD requirement, applies only to new construction of buildings or laterals, or significant remodels, or where damage has occurred]:**

All new *private laterals* including replacements shall be equipped with a cleanout riser. All new *private laterals* shall also be fitted with a *backflow prevention device* of type and materials as approved by the [entity], and shall be located on the *private lateral* between the building and the property line, preferably at the location of the cleanout, in the manner prescribed by the [entity]. The *backflow protective device*, if below grade, shall be enclosed in a suitable concrete utility box with removable cover and shall be readily accessible for inspection and maintenance.

Additionally, a *Backflow Prevention Device* shall be required when any of the following conditions exist:

1. All new building *private laterals* and *private lateral* replacements;
2. On remodels where plumbing fixtures are added to the property, and/or more than twenty-five percent of the structure area is being remodeled;
3. When property has been damaged by the blockage of the [entity]'s *Public Sewer* or the *private lateral*.

**[Note, in the absence of an Ordinance, the Uniform Plumbing Code, as adopted locally, will apply. The issues raised in this policy are (1) whether the Agency should adopt a “higher” standard than in the UPC and (2) whether the Agency should require upgrading to the most current UPC or Ordinance standard, upon the occurrence of certain conditions. Current California UPC section 710.1 provides that a BPD is required where “a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer” and “fixtures on floor levels above such elevation shall not discharge through the backwater valve.” In the unpublished case of *Burns v. City of Los Altos* (2006) 2006 WL 244909, the Court of Appeal described a prior version of the UPC section as requiring “a backwater valve when the flood level rim was lower than the curb or property line.” In that case, the City had adopted its own ordinance that “required the installation of a backflow device on every sewer lateral serving an individual building. The device also had to be installed in existing sewers if the lowest drain opening in the building was less than two feet above the rim of the nearest upstream manhole.” Similarly, in the unpublished case of *Starks v. Los Angeles* (2008) 2008 WL 570775, the court described the City’s ordinance as amended (from a potentially more confusing prior ordinance) to call for a BPD “whenever the flood-level rim of a fixture is below the nearest upstream maintenance hole.”]**

A *backflow prevention device* will also be required whenever the [entity] Manager determines, in the Manager’s discretion, and based upon specific site conditions, that the purpose of this Section will best be served by the installation of such a device.

The installation of any such *backflow protection device* shall be at the sole cost and expense of the property owner. The maintenance of the *backflow protection device* shall be the sole obligation of the owner or the owner’s successor in interest. The [entity] shall be under no obligation to ascertain that the *backflow protection device* continues in operating condition.

### **Maintenance Requirements**

All *backflow protection devices* shall fully comply with all [entity] requirements and shall be maintained by the property owner to provide for their continuing function as designed. All *backflow protection devices* shall be accessible at all times and shall be free from any obstructions, including, but not limited to, rocks, soil, vegetation, debris, grass, trees, bushes, plants, landscaping, concrete, asphalt or other ground coverings or any other materials or substances that may impair the proper function of or unobstructed accessibility to the devices.

**[Optionally, consider adding inspection requirements and the requirement that a licensed plumber be used for this purpose.]**

### **Elevation Requirements**

All *backflow protection devices* shall be installed at an elevation that protects the property upon which it is installed and other property in its vicinity from damage. The property owner shall either confirm that the *backflow protection device* is properly installed and placed at the proper elevation, or obtain

competent assistance from a duly licensed plumber or contractor to confirm its proper elevation. If any subsequent modification of the property results in the *backflow protection device* being at an improper elevation, the property owner shall adjust the *backflow protection device* to the proper elevation. The property owner shall be responsible for any damage to property or injury to person that is sustained as a result of the improper installation or location of a *backflow protection device*.

### **Failure to Follow Backflow Protection Device Requirements**

Any property owner whose property has no *backflow protection device* as required by this Ordinance or other law or regulation, or which has a defective or improperly installed *backflow protection device*, or which has a *backflow protection device* that does not comply in all respects with the requirements of this Ordinance or with any standards adopted or utilized by the [entity] shall be responsible for all damage that results from the lack of such a device, or the failure of the defective or improperly installed or noncompliant device to prevent or minimize such damage. The [entity] will not be liable for damage resulting from sewer overflows when a *backflow protection device* has not been installed or maintained as required by this Ordinance.

**CSRMA POLICY  
AND PROCEDURE  
#10-L**

**SUBJECT: Underwriting Policy & Procedure**

**EFFECTIVE: January 21, 2016  
Revised August 11, 2022**

**Purpose:**

The California Sanitation Risk Management Authority has established underwriting criteria for the Pooled Liability Program. Underwriting information is used for rate making/member pool deposit calculation, measuring member performance, and calculating the dividends and retrospective rating plans. Underwriting standards and guidelines are outlined in various governing documents, including the JPA Agreement, By-Laws and CSRMA Policies & Procedures. This Underwriting Policy provides a summary and highlights much of the criteria utilized to complete the underwriting process.

**Policy:**

Underwriting Function/Mission

Establishing underwriting criteria ensures that all CSRMA coverage programs are analyzed for risk exposures, funding requirements, dividend and retrospective plans and deductible selection.

Adherence to these Board approved standards and guidelines guarantees the continued financial viability and security of CSRMA.

New Members

The guidelines for admittance of new members to CSRMA are set forth in the Joint Powers Agreement and By-Laws. Membership eligibility requires the entity be a wastewater agency. Approval by the Board is required. The CSRMA Pooled Liability Program requires an initial full three-year commitment.

Application Process

Both new members and existing members must complete CSRMA's "general liability questionnaire" prior to the inception of each program year. The questionnaire solicits specific information to assess the applicants risk exposures, including the following information:

- a. Underwriting data for the current year, which includes:

Sewer Exposure Data  
Average Daily Dry Weather Flow  
Miles of Line

Water Exposure Data

Average Daily Dry Weather Flow

Miles of Line

Automobile Data

Number of Light Autos (less than 10K lbs.)

Number of Heavy Autos (more than 10K lbs.)

Payroll Data

Payroll by employee class

b. Audited financial statements, budget and other financial data as requested

c. Loss history for the previous ten years

Upon receipt of the completed questionnaire the Program Administrators review the information for acceptability and pool deposit calculation. For new members, if the information provided meets underwriting standards and guidelines outlined in the various CSRMA governing documents, approval to join the program is required by the Board of Directors.