

MONTEREY BAY AREA SELF-INSURANCE AUTHORITY

MEMORANDUM OF COVERAGE

This coverage document shall be in effect from 6-6-05 through ans fald

In consideration of the payment of the *Member's* contribution, the Monterey Bay Area Self Insurance *Authority* agrees with the *Member* as follows:

SECTION I - COVERAGES

This Memorandum of Coverage does not provide insurance, but instead provides for pooled self-insurance. This Memorandum is a negotiated agreement among the *members* of the *Authority* and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles that require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the *members* of the *Authority*, acting through the Board of Directors in adopting this Memorandum. As the *Authority* is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide "Cumis" counsel to a *Member* or *covered party* in disputed coverage situations under Civil Code section 2860. Finally, failure to provide notice to a *Member* or *covered party* of any coverage disputes shall not operate to waive any of the provisions of this Memorandum.

A. Workers Compensation

The *Authority* will pay up to the limit of coverage in excess of the retained limit those sums required by California Workers Compensation law for *Members'* employees covered and not excluded by Workers' Compensation law for *bodily injury* or disease occurring out of or in the course of employment, or, in the event of an employee's death as a result of *bodily injury* or disease, the dependants of a covered deceased employee; and claims expenses of the *Member*.

B. Liability

The *Authority* will pay up to the *limit of coverage* those sums for *ultimate net loss* in excess of the *retained limit* that the *Members* become legally obligated to pay as *damages* because of *bodily injury, property damage, personal injury, public officials errors and omissions or employment practices liability* as those terms are herein defined and to which this agreement applies, caused by an *occurrence* during the coverage period, except as otherwise excluded.

SECTION II – DEFINITIONS

1. **Authority** shall mean the Monterey Bay Area Self Insurance *Authority*, a joint powers agency organized and existing under the laws of the State of California.
2. **Bodily Injury** means *bodily injury*, sickness, disease or emotional distress sustained by a person, including death resulting from any of these at any time. *Bodily injury* includes *damages* claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.
3. **Covered Party** means:
 - (a) A *Member* of the Monterey Bay Area Joint Powers Risk Management *Authority*. This includes all entities named in its declarations page, including any and all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities coming under the entity's direction or control, or for which the entity's board *Members* sit as the governing body, except a hospital board or commission, regardless of how such body is denominated.
 - (b) Any person or entity identified as a *covered party* holding a certificate of coverage duly issued by the *Authority*, for *occurrences* during the coverage period identified in the certificate of coverage; if a particular activity is identified in the certificate of coverage, the person or entity is a *covered party* only for *occurrences* arising out of the described activity.
 - (c) Any person who is an official, *employee* or volunteer of a *Member* covered by (a), or (b) herein, whether or not compensated, while acting in an official capacity for or on behalf of such person or entity, including while acting on any outside board at the direction of such person or entity, except a hospital board or commission, regardless of how such body is denominated. *Covered party* shall not include any person whose conduct is not within the course and scope of his or her employment or office with the *covered party* at the time of the act or acts that give rise to liability.
 - (d) With respect to any *automobile* owned or leased by a *Member* (described in (a) or (b) above), or loaned to or hired for use by or on behalf of the *Member*, any person while using such *automobile*, and any person or organization legally responsible for the use thereof,

provided the actual use is in the course and scope of the person's employment with the express permission of the *Member*.

- (e) Notwithstanding sections (c) and (d) above, the defense and indemnity coverage afforded by this agreement to a past or present official, *employee* or volunteer of a *member entity* (described in (a) or (b) above) is not broader than the *member entity's* duty to defend and indemnify its official, *employee* or volunteer pursuant to California Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof. If the *member entity* which employs the official, *employee* or volunteer is not obligated under the Government Code to provide a defense, or to provide indemnity to said official, *employee* or volunteer, then this agreement shall not provide for any such defense or indemnity coverage to said official, *employee* or volunteer. All immunities, defenses, rights and privileges afforded to a *member entity* under Government Code sections 815 to 815.3, 825 to 825.6, and 995 to 996.6, inclusive and any amendments thereof, shall be afforded to the *Authority* to bar any defense or indemnity coverage under this agreement to that *member entity's* official, *employee* or volunteer.

4. **Damages** means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a *covered party*. *Damages* includes (1) attorney fees not based on contract awarded against the *covered party*, (2) interest on judgments, or (3) costs, for which the *covered party* is liable either by adjudication or by compromise with the written consent of the *Authority*, if the fees, interest or costs arise from an *occurrence* to which this coverage applies. *Damages* also include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the *covered party*, which are assumed by the *covered party* in a *covered indemnity contract* where such attorney fees or costs are attributable to a claim for *damages* covered by this Memorandum.

Damages with respect to *employment practices liability* shall not include those sums owed by a *covered party* as contract *damages*, prospective salary or wages, prospective benefits, any wage or salary resulting from promotion or reinstatement, or any *damages* owing under an express contract of employment or an express obligation to make severance payments in the event of termination of employment.

Damages with respect to *employment practices liability* also shall not include amounts awarded under a labor grievance or arbitration pursuant to a collective bargaining agreement, nor sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish

practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct, or any non-monetary relief.

5. **Defense costs** means all fees and expenses incurred by any *covered party*, caused by and relating to the claims administration, adjustment, investigation, defense or litigation of a claim to which this coverage applies, including attorney fees. *Defense costs* shall include adjusting expenses of a third party claims administrator which are specifically identifiable with a claim subject to this coverage.

Defense costs shall not include:

- (a) the office expenses, salaries of *employees* or officials, or expenses of the *Member* or the *Authority*,
 - (b) any fee or expense relating to coverage issues or disputes between the *Authority* and any *Member*, or
 - (c) attorney fees, interest on judgments, or costs awarded to a prevailing plaintiff against the *covered party*.
6. **Employment Discrimination** means an act or failure to act with respect to any present or former *employee* or applicant for employment or a person providing services pursuant to a contract as defined in California Government Code section 12940 with regard to compensation, terms, conditions, privileges or opportunities of employment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, or other protected category or characteristic established pursuant to any applicable federal, state or local statute or ordinance.
7. **Employee** means a person whose labor or services is engaged and directed by a *Member* described in definition 8(a), (b) or (c) above. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial or confidential position. *Employee* shall not include an independent contractor, volunteer or agent, and shall not include any person performing work pursuant to a court order in lieu of a fine or jail sentence.
8. **Employment Practices Liability** means liability of a *Member* arising from *discrimination, sexual harassment, and/or wrongful termination* claimed by an *employee, former employee* or applicant for employment or a person providing services pursuant to a contract as defined in California Government Code section 12940.
9. **Limit of coverage** shall be the amount of coverage stated in the declaration page or certificate of coverage for each *Member* per

occurrence, subject to any lower sublimit stated in this Memorandum. For each *occurrence*, there shall be only one *limit of coverage* regardless of the number of claimants or *covered parties* against whom a claim is made. If the *covered parties* have different limits of coverage, the highest limit for any party found liable by a final judgment will apply.

10. **Member** means a signatory to the Second Amended and Restated Joint Powers Agreement creating the Monterey Bay Area Self Insurance Authority (the MBASIA Agreement) and any entity which becomes a *Member* pursuant to Article 18 of the MBASIA Agreement.
11. **Occurrence** means:
 - (a) with respect to *bodily injury* or *property damage*: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in *bodily injury* or *property damage* neither expected nor intended from the standpoint of the *Member*. *Property damage* that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the *occurrence* that caused it.
 - (b) with respect to *personal injury*, *public officials errors and omissions liability* and *employment practices liability* respectively: an offense described in the definitions of those terms in this coverage agreement.
12. **Personal injury** means:
 - (a) physical injury to tangible property, including all resulting loss of use of that property; or
 - (b) wrongful entry into, or eviction of a person from, a room, dwelling or premises that person occupies;
 - (c) publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or oral or written publication of material that violates a person's right of privacy.
 - (d) violation of state or federal civil rights.
 - (e) Injury resulting from the use of reasonable force for the purpose of protecting persons or property.
13. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis,

chemicals, airborne particles or fibers, asbestos, lead and waste. Waste includes material to be recycled, reconditioned or reclaimed. The term *pollutants* as used herein does not mean potable water, agricultural water, water furnished to commercial users or water used for fire suppression.

14. **Property damage means:**

- (a) physical injury to tangible property, including all resulting loss of use of that property; or
- (b) loss of use of tangible property that is not physically injured or destroyed.

15. **Public officials errors and omissions means any actual or alleged misstatement or misleading statement or act or omission by any *covered party* (individually or collectively) arising in the course and scope of their duties with the *covered party* or claimed against them solely by reason of their being or having been public officials or *employees*, and which results in damage neither expected nor intended from the standpoint of the *covered party*.**

16. **Retained limit means the amount, identified in the applicable declaration or certificate of coverage, of *ultimate net loss* which the *Member* must incur or become liable for before the *Authority* is obligated to make any payment, subject to the following:**

- (a) For each *occurrence*, there shall be only one *retained limit* regardless of the number of claimants or *covered parties* against whom a claim is made. If the *covered parties* have different *retained limits*, the lowest *retained limit* of any party found liable will

apply. Payment of the retained limit shall be apportioned among

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

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

17. **Sexual harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that: (1) are made a condition of employment; and/or (2) are used as a basis for employment decisions; and/or (3) create a work environment that is intimidating, hostile or offensive, or interfere with performance.
18. **Ultimate net loss** means the total of all *defense costs* incurred by the *covered parties* and all *damages* for which the *covered parties* are liable either by adjudication or by compromise with the written consent of the *Authority*, arising from an *occurrence* to which this coverage applies. However, *ultimate net loss* does not include defense expenses incurred by the *Authority* after the *Authority* assumes control of the negotiation, investigation, defense, appeal or settlement of any claim or proceeding. *Ultimate net loss* also does not include attorneys' fees or costs awarded to the prevailing party in a suit except where such attorneys' fees or costs are attributable to a claim for compensatory damages covered by this Memorandum.

19. **Workers Compensation Claims Expenses** means litigation costs, interest as required by law on awards or judgments, reasonable expenses incurred at the *Authority's* request, premiums for bonds to release attachments and for appeal bonds in amounts up to twice the amount payable under this coverage, litigation costs taxed against the *Member*, and a *Member's* special claim investigation or legal expenses which can be directly allocated to a specific claim, including medical bill review. Claim expenses do not include salaries and travel expenses of employees of the *Member*, *Member* overhead and any fees paid to any third party administrator for claims administration services obtained or directed by the *Member* without prior *Authority* approval.
20. **Workers Compensation Law** means the Workers Compensation laws of the State of California which include injury by both accident and/or disease, including any amendments to that law which are in effect during the coverage period; and does not include the provisions of any law that provides non-occupational disability benefits.
21. **Wrongful termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment.

Section III. Defense and Settlement

If the *Authority* determines in its sole discretion that any *occurrence* or any claim to a *Member* or *covered party* may be related to a *Member* employee work related injury or disease, or to have a reasonable possibility of resulting in an ultimate net loss in excess of the retained limit, the *Authority* shall have the right to assume control of negotiation, investigation, defense, appeal or settlement of such *occurrence* or claim. The *Authority* shall have no obligation to assume control of any investigation or defense of any claim. The *Member* shall fully cooperate in all matters pertaining to such investigation, claim or proceeding.

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

Except for Workers Compensation claims, a *Member* may settle a claim for less than the retained limit if the covered party notifies the Chief Executive Officer of the *Authority* in writing in advance of any settlement and if the *Authority* provides written consent to such settlement. A *Member* shall not under any circumstances settle a Workers Compensation claim.

No claim may be settled for an amount in excess of the retained limit without the prior written consent of the *Authority* and the *Authority* shall not be required to contribute to any settlement of a claim or to satisfy liability imposed by law, up to the applicable retained limit.

Section IV. Limit of Coverage

The limit of coverage is the most the *Authority* will pay for ultimate net loss arising out of any occurrence less the amount of the retained limit. For each occurrence there shall be only one limit of coverage regardless of the number of claimants or the number of covered parties against whom a claim is made. The limit of coverage for an additional *Member* shall be the limit stated in its additional *Member* certificate, regardless of the limit that applies to the *Member*. Wherever this Agreement lists a sublimit that sublimit is the limit of coverage

Section V. Employment Practices Liability Sublimit/Aggregate Limit

A sublimit applies to *employment practices liability*. For any *claims* arising out of *employment practices liability*, the *limit of coverage* will be \$1,000,000 per *occurrence*. All allegations by an *employee* or former *employee* or applicant for employment or a person providing services pursuant to a contract as defined in California Government Code section 12940 in the same *claim* shall be considered as one *occurrence* for the purpose of the *limit of coverage*. All *claims* by all *employees* or former *employees* or applicants for employment arising from the same act, policy, or course of conduct by a *Member* or *covered party* shall be considered as one *occurrence* for the purpose of the *limit of coverage*. All *claims* which allege *employment practices liability* for *occurrences* extending to a duration of more than one coverage period shall be treated as a single *occurrence* arising during the first coverage period when the *occurrence* begins.

This sublimit for *employment practices liability* will further be subject to an annual aggregate limit, so that the \$1,000,000 *limit of coverage* is the most the *Authority* will pay for all *ultimate net loss* arising out of *employment practices liability* for any *Member* (inclusive of its *employees*, commission, agencies, districts, authorities or boards), as defined in Section II. 3(a) (b) or (c) for any coverage year.

SECTION VI. COVERAGE PERIOD AND TERRITORY

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

Section VII. EXCLUSIONS

Except where required under California Workers Compensation law, this agreement does not apply to:

1. **Aircraft**

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

2. **Airports**

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

3. **Air shows**

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

4. **Bid Specifications/Cost Overruns**

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

5. **Contractual Obligations**

Claims arising out of:

- a. a failure to perform or breach of a contractual obligation; or
- b. *bodily injury* or *property damage* for which the *Member* is obligated to pay *damages* by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for *damages*:
 - i. assumed in a contract or agreement that is a *covered indemnity contract*, provided the *bodily injury* or *property*

damage occurs subsequent to the execution of the contract or agreement; or

- ii. that the *Member* would have in the absence of the contract or agreement.

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

Notwithstanding this exclusion, the *Authority* may, but is not obligated to approve settlements involving promises to indemnify a co-defendant as part of the settlement. Any funds recovered from a co-defendant under such an agreement must be applied to *ultimate net loss* in addition to the *retained limited* before MBASIA coverage is triggered.

6. Damages Other Than Money

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

7. Dams

Claims arising out of partial or complete structural failure of a *dam*.

8. Defamation

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

9. Employment Practices – Class Actions

Under *employment practices liability*, to any potential or actual liability arising from a claim or claims which are filed or certified as class actions in which *employees* or other persons represent a class of *employees* who are alleging similar or related claims.

10. Employment Practices – Labor Disputes

Under *employment practices liability*, to any potential or actual liability arising out of a lockout, strike, picket line, replacement or other similar action in connection with labor disputes or labor negotiations.

11. Employment Practices – Workers' Adjustment and Retraining

Except when applicable to a Workers Compensation claim, any liability arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988, or any amendment thereto, or any similar federal, state or local law.

12. Elected Officials – Employees – Restitution

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

13. Employee Benefit Plans

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

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

14. Employment Benefits

Any obligation under any unemployment compensation or disability benefits law or any similar law, whether the *Member* may be liable as an employer or in any other capacity.

15. ERISA

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

16. Failure to Supply

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

17. Fines, Penalties, Punitive Damages

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

18. Firing Ranges

Claims arising out of the private use of a firing range owned, operated or maintained by a *Member* where such private use is sanctioned by the *Member*, except where such use is by a *Member's* employee or a covered individual as defined in definition (3)(c). This exclusion does not apply to such private use where all of the following conditions are met:

- a. A qualified range master is present at all times while the firing range is being utilized;
- b. The firing range is only provided for the additional use of law enforcement divisions of other public agencies;
- c. Any agency using the firing range has provided an indemnification agreement which assumes full responsibility by the user agency for all liability arising out of their activities; and
- d. The user agency has provided liability coverage in an amount of not less than \$1,000,000 and has also provided a certificate of coverage which names the *Authority Member* as an additional *Member*.

19. Hospitals

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

20. Intentional Conduct

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

21. Jumping/Propelling Activities

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

22. Land Use

Claims arising out of or in connection with land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or inverse

condemnation by whatever name called, and whether or not liability accrues directly against any *Member* by virtue of any agreement entered into by or on behalf of any *Member*.

23. Marinas

Claims arising out of:

- a. or connected with *property damage* to private vessels or craft while present at or in a *marina* owned, operated or controlled by a *Member* whether or not the vessel or craft is docked, moored or underway; or
- b. *bodily injury* or *property damage* occurring on, in or about any boat owned or operated by the *Member* (whether such vessel is being operated or has broken away from any dock or mooring) while present at or in a *marina* owned, operated or controlled by a *Member*.

24. Medical Malpractice

Claims arising out of any professional *medical malpractice* (1) committed by a doctor, osteopath, chiropractor, dentist or veterinarian, or (2) committed by any health care provided (as defined in Business & Professions Code Section 6146(c)(2)) working for any hospital or hospital operated out-patient, in-patient or other clinic at the time of the *occurrence* giving rise to the loss.

25. Multi Passenger Vehicles

Claims arising out of the ownership, operation, maintenance or use of any vehicle (1) with over 30 passengers seats or carrying over 30 passengers and (2) which is owned, operated, maintained or used by any transit *Authority*, transit *Authority*, transit system or public transportation system owned or operated by or on behalf of the *Member*.

26. Nuclear Material

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

27. Pollution

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

- a. This exclusion does not apply to fire fighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or the discharge of *pollutants* for the purpose of

controlling a fire; or to police use of mace, oleoresin capsicum (O.C.), pepper gas or tear gas; or to weed abatement or tree spraying.

- b. This exclusion does not apply to claims arising from sudden and accidental sewer backups.
- c. This exclusion does not apply to claims arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine and other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or wastewater treatment or in water used in swimming pools, wading pools or decorative fountains.
- d. This exclusion does not apply to claims arising from materials being collected as part of any drop-off or curbside recycling program implemented and operated by the *Member*; if the materials have not been stored by the *Member* or *parties* for a continuous period exceeding ninety (90) days.
- e. This exclusion does not apply to sudden and accidental discharges of *pollutants* occurring during the transportation or deposit of materials as part of garbage collection activities. However, the exclusion does apply after *pollutants* have been deposited at a landfill or garbage dump.
- f. This exclusion does not apply to *bodily injury* or *property damage* arising from activities of the *Member* to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*, but this exception will not apply to *bodily injury* or *property damage* caused by *pollutants* on or arising from premises, equipment or locations under the control of the *Member*.

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

28. Pollution Clean Up

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

- a. request, demand or order that any *Member* or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*; or
- b. claim or suit by or on behalf of a governmental *Authority* for *damages* because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of *pollutants*.

29. Property of a Member

Property damage to:

- a. property owned by the *Member*,
- b. property rented to or leased to the *Member* where it has assumed liability for damage to or destruction of such property, unless the *Member* would have been liable in the absence of such assumption of liability; or
- c. *aircraft* or watercraft in the *Member's* care, custody or control.

30. Public Officials Errors & Omissions – Fiduciary Liability

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

31. Public Officials Errors & Omissions – Bodily Injury or Property Damage

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

32. Racing Contests

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

33. Refunds/Restitution

Refund or restitution of taxes, fees or assessments.

34. Reimbursement of Money

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

35. Transit Authorities

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

36. Tumbling Devices

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

37. Uninsured/Underinsured Motorists

Uninsured or undersigned motorist coverage.

38. Watercraft

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

39. Willful Violation of Statute

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

SECTION VII. CONDITIONS

1. Member Duty in the Event of Employee Injury

a. The *Member* or *Member's* representative must make every reasonable effort to report to the *Authority* on the next business day after being informed of an injury that may be covered by this Agreement. The *Member* must, as soon as possible thereafter, provide the *Authority* the names and addresses of injured persons and witnesses, and any other information requested by the *Authority* or its representatives.

b. When notices, demands or legal papers are served or otherwise delivered to a *Member*, regardless of whether notice was given as set forth in "a" above, the *Member* shall deliver the same to the *Authority* within five (5) days of the *Member's* receipt.

c. The *Member* shall cooperate with the *Authority* when requested by the *Authority*, assist in the conduct of Workers Compensation proceedings and enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Member* because for an employee injury, and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

2. Member's Duties in the Event of Occurrence, Claim or Suit

a. Except in the occurrence of an employee injury or disease, in the event of an occurrence reasonably likely to exceed one half (1/2) of the *Member's* retained limit, the *Member* or *covered party* shall, within thirty (30) days of becoming aware of such occurrence, give written notice to the *Authority* with sufficient information to identify the *covered party*, and the time, place and circumstances of the occurrence, and the names, addresses and telephone numbers of any potential claimant or witness.

b. When a tort claim, employment discrimination claim, or suit is served or otherwise delivered to a *Member* or *covered party*, regardless of whether notice was given as set forth in "a" above, the *Member* shall deliver the written claim or suit and any demand, summons, complaint or process to the *Authority* within ten (10) days of the *covered party's* receipt unless the claim will not exceed the *Member's* retained limit and the *Member* intends to completely settle the claim from its own funds within thirty days of receipt. The *Member* shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense toward the settlement of any claim which has been determined to be or which may be a covered occurrence for which the ultimate net loss will exceed the *Member's* retained limit.

c. The *Member* and *covered party* shall cooperate with the *Authority* when requested by the *Authority* assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *Member* or *covered party* because of *bodily injury*, personal injury, property damage, or public officials errors and omissions, and the *covered party* shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

3. Action Against Authority/Subrogation

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

- a. The *Authority* shall be reimbursed first to the extent of its actual payment thereunder. If any balance then remains unpaid, it shall be applied to reimburse the *Member*.

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

4. Bankruptcy or Insolvency

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

5. Other Coverage

If insurance or any other coverage with any insurer, joint powers *Authority* or other source respectively is available to the *Member* covering a loss also covered hereunder (whether on primary, excess of contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance or coverage. This coverage shall be in excess of, and shall not contribute with, any insurance or coverage designed to cover the operator of an *automobile* or watercraft. This coverage shall be in excess of, and shall not contribute with, any insurance or coverage which names a *Member* herein as an additional *covered party* or additional insured party, where coverage is extended to a loss also covered hereunder.

This "other coverage" paragraph shall not operate to increase the *Member's retained limit* or the *Authority's limit of coverage* under this Memorandum because of coverage afforded to the *Member* by this Memorandum of Coverage for injury or disease suffered by an employee which is subject to Workers Compensation law.

6. Severability of Interests

The term *covered party* is used severally and not collectively, but the inclusion herein of more than one *covered party* shall not operate to increase the limits of the *Authority's* liability or the *retained limit* applicable per *occurrence*.

7. Accumulation of Limits

An *occurrence* which extends to a duration of more than one coverage period shall be treated as a single *occurrence* arising during the first coverage period when the *occurrence* begins.

8. Termination

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

9. Changes

Notice to any agent or knowledge possessed by any agent of the *Authority* or by any other person shall not affect a waiver or a change in any part of this Memorandum of Coverage, nor shall the terms of this Memorandum of Coverage be waived or changed, except in writing expressing the *Authority's* intent that such writing form a part of this Memorandum of Coverage.

10. Coverage Disputes

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

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

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

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

Any determination by the Executive Committee, and by the Board of Directors if the matter is appealed to the Board of Directors, whether a *Member* has breached the Conditions concerning notice of a claim, and any determination whether the *Authority* has been prejudiced by that breach, so that this coverage does not apply, comes within the sole discretion of the Board of Directors. Such determinations shall be conclusive, final and binding and shall not be the subject of any further review, whether by declaratory relief action or otherwise.