

MEMORANDUM OF COVERAGE -- LIABILITY

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MEMORANDUM OF COVERAGE -- LIABILITY

DECLARATIONS

ENTITY COVERED: _____

MAILING ADDRESS: _____

COVERAGE PERIOD: FROM: _____ 12:01 A.M., Pacific Standard Time
TO: _____ 12:01 A.M., Pacific Standard Time

PREMIUM: \$ _____

DEDUCTIBLE: \$ _____ per Loss.

LIMIT OF COVERAGE: Five million dollars (\$5,000,000) per Loss.

In consideration for the payment of the premium, ABAG and the ENTITY COVERED (which is designated in the DECLARATIONS) agree as follows:

SECTION I - DEFINITIONS

Words and phrases that are capitalized in this MEMORANDUM OF COVERAGE -- LIABILITY (including any and all endorsements hereto and forming a part hereof) have special meanings, as defined below:

- A. "ABAG" means the Association Of Bay Area Governments.
- B. "Aircraft" means a vehicle designed for the transport of persons or property principally in the air.
- C. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- D. "Covered Party" means any entity, person, organization, trust or estate constituting a Covered Party under SECTION II - WHO IS A COVERED PARTY.
- E. "Covered Parties" means more than one Covered Party.
- F. "Coverage Period" means the COVERAGE PERIOD which is designated in the DECLARATIONS to this Memorandum.
- G. "Coverages" means the COVERAGES which are set forth under SECTION III of this Memorandum.
- H. "Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which:
 - 1. Is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier to the maximum possible water storage elevation;

2. Is twenty-five (25) feet or more in height from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation; or
3. Has an impounding capacity of fifty (50) acre-feet or more.

However, the following shall not be considered a "Dam":

1. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which is not in excess of six (6) feet in height, regardless of storage capacity;
2. Any artificial barrier, together with appurtenant works, which does or may impound or divert water, but which has a storage capacity not in excess of fifteen (15) acre-feet, regardless of height;
3. Any obstruction in a canal used to raise or lower water therein or divert water therefrom;
4. Any levee, including but not limited to a levee on the bed of a natural lake, the primary purpose of which levee is to control floodwaters;
5. Any railroad fill or structure;
6. Any tank constructed of steel or concrete or of a combination thereof;
7. Any tank elevated above the ground;
8. Any barrier which is not across a stream channel, watercourse or natural drainage area, and which has the principal purpose of impounding water for agricultural use; and
9. Any obstruction in the channel of a stream or watercourse which is fifteen (15) feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground.

Regardless of the language of the above definition, however, no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a "Dam," unless such structure is under the jurisdiction of an agency of the federal government.

- I. "Deductible" means the DEDUCTIBLE which is designated in the DECLARATIONS to this Memorandum.
- J. "Defense Costs" means:
 - 1. The following:
 - a. All fees (including attorney's fees), costs (including court costs) and expenses incurred in connection with the adjustment, investigation, defense and appeal of a claim or suit to which this Memorandum applies; and
 - b. Interest on any judgment or portion thereof (accruing after entry of judgment) to which this Memorandum applies.
 - 2. However, "Defense Costs" does not include any of the following:
 - a. Any office expenses of ABAG or a Covered Party;
 - b. Any salaries of employees of ABAG or a Covered Party;
 - c. Any salaries of or other monetary payments (including but not limited to per diems, honorariums or reimbursements) to elected or appointed officials of ABAG or a Covered Party;
 - d. Any fees or expenses of any claims administrator engaged by a Covered Party; or
 - e. Any fees or expenses incurred for services of a city attorney, city engineer, city manager or any other individual or entity providing services to or for the benefit of a Covered Party in connection with the adjustment, investigation, defense or appeal of a claim or suit to which this Memorandum applies, unless such services are provided pursuant to the express written consent of ABAG.

- K. "Entity" means:
1. The ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum; and
 2. Any commission, agency, district, authority, board or similar entity the governing board of which is exclusively comprised of elected or appointed officials, employees or volunteers (whether or not compensated) of the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum.
- L. "Liability Risk Coverage Agreement" means the revised liability risk coverage agreement dated as of July 1, 1992 among ABAG, the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum, and all other participants in the ABAG Pooled Liability Assurance Network (PLAN) program.
- M. "Limit Of Coverage" means the LIMIT OF COVERAGE which is designated in the DECLARATIONS to this Memorandum.
- N. "Loss" means all damages to which this Memorandum applies arising out of circumstances which are in any way related (whether logically or causally).
- O. "Memorandum" means this MEMORANDUM OF COVERAGE -- LIABILITY, including the DECLARATIONS and all endorsements thereto.
- P. "Nuclear Material" means source material, special nuclear material or byproduct material. "Source Material," "Special Nuclear Material" and "Byproduct Material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- Q. "Occurrence" means:
1. With respect to Coverage A - Bodily Injury Liability, an accident, including continuous or repeated exposure to substantially the same general harmful conditions;
 2. With respect to Coverage B - Property Damage Liability, an accident, including continuous or repeated exposure to substantially the same general harmful conditions;

3. With respect to Coverage C - Personal Injury Liability, the commission of one or more of the following offenses by a Covered Party in the discharge of duties for the Entity:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. Oral or written publication of material that slanders or libels a person or organization, including disparaging statements concerning the condition, value, quality or use of that person's or organization's real or personal property;
 - d. Oral or written publication of material that violates a person's right of privacy; or
 - e. Discrimination or violation of civil rights;
4. With respect to Coverage D - Public Officials Errors And Omissions Injury Liability, one or more of the following:
 - a. The commission of one or more of the following offenses by a Covered Party in the discharge of duties for the Entity:
 - (1) A misstatement or misleading statement;
 - (2) Neglect or breach of duty; or
 - (3) Misfeasance, malfeasance or nonfeasance; or
 - b. The status of a Covered Party as an elected or appointed official of the Entity (and solely by reason of such status).

- R. "Other Insurance" means insurance or coverage other than the coverage afforded by this Memorandum, including but not limited to the following:
1. Valid and collectible insurance (whether stated to be primary, pro rata, contributory, excess, contingent or otherwise);
 2. Any self-funding mechanism, including but not limited to a joint powers authority (whether stated to be primary, pro rata, contributory, excess, contingent or otherwise); and

3. Specific self-insurance (whether stated to be primary, pro rata, contributory, excess, contingent or otherwise).
- S. "Personal Injury" means emotional distress, including mental anguish or mental injury.
- T. "Pollutants" means without limitation any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes without limitation materials to be recycled, reconditioned or reclaimed. The term "Pollutants" does not include any of the following:
1. Potable water,
 2. Agricultural water,
 3. Water furnished to commercial users,
 4. Water used for fire suppression,
 5. Raw sewage,
 6. Combined sewage,
 7. Storm water run-off,
 8. Partially treated sewage,
 9. Fully treated sewage (as defined by the applicable NPDES permit), and
 10. Residual streams of waste water treatment.

- U. "Property Damage" means:
1. Physical injury to tangible property, including the loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it.
- V. "Public Officials Errors And Omissions Injury" means injury, other than Bodily Injury, Property Damage or Personal Injury.
- W. "Ultimate Net Loss" means the monetary sum the Covered Party must pay under the terms of a final judgment, but does not include any of the following:
1. Any monetary sum as or for restitution;
 2. Any monetary sum as or for attorney fees or costs;
 3. Any monetary sum as or for fees, fines, sanctions, penalties, punitive damages or exemplary damages;
 4. Any monetary sum as or for any loss, cost or expense arising out of any:
 - a. Request, demand or order that any Covered Party or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of Pollutants; or
 - b. Claim or suit by or on behalf of a government 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;
 5. Any monetary sum to satisfy any obligation of a Covered Party (or any insurance company as a Covered Party's insurer) under any workers' compensation, disability benefits or unemployment compensation law or any similar law; and

6. Any monetary sum to satisfy any obligation imposed upon a Covered Party (or which is imputed to a Covered Party) under the Employee Retirement Income Security Act of 1974 and any law amendatory thereof.

SECTION II - WHO IS A COVERED PARTY

- A. Subject to the terms of provision B. below, each of the following constitutes a Covered Party under this Memorandum:
1. The Entity,
 2. Any person who was or is now an elected or appointed official, employee or volunteer of the Entity, whether or not compensated, while acting for or on behalf of the Entity (including while acting on outside boards at the direction of the Entity), and
 3. Any person, organization, trust or estate to whom or to which the Entity is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum, but only with respect to:
 - a. Operations performed by or on behalf of the Entity, or
 - b. Facilities owned or used by the Entity.
- B. None of the following shall constitute a Covered Party under this Memorandum with respect to any claim or suit brought by or on behalf of the Entity:
1. The Entity;
 2. Any person who was or is now an elected or appointed official, employee or volunteer of the Entity, whether or not compensated, while acting for or on behalf of the Entity (including while acting on outside boards at the direction of the Entity); and
 3. Any person, organization, trust or estate to whom or to which the Entity is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum.

SECTION III - COVERAGES

A. Coverage A - Bodily Injury Liability.

1. Insuring Agreement

- a. Subject to the terms and conditions of this Memorandum (including but not limited to provisions b. and c. below), ABAG agrees to pay, on behalf of the Covered Party, the Ultimate Net Loss (or portion thereof) that the Covered Party becomes legally obligated to pay as damages because of Bodily Injury to which this Memorandum applies.
- b. This Coverage A - Bodily Injury Liability applies:
 - (1) Only to Bodily Injury:
 - (a) That occurs during the Coverage Period, and
 - (b) That is caused by an Occurrence, and
 - (2) Only if there is no Other Insurance providing coverage for the Covered Party's legal obligation to pay damages because of the Bodily Injury (unless the available limits of liability of such Other Insurance are insufficient to pay the Covered Party's legal obligation to pay damages because of the Bodily Injury, in which event this Memorandum will be excess over any and all such Other Insurance, subject to all of the terms and conditions of this Memorandum).
- c. The amount that ABAG will pay under Coverage A - Bodily Injury Liability is limited as described under SECTION V - LIMIT OF COVERAGE.

2. Exclusions

This Memorandum does not apply to:

- a. Bodily Injury expected or intended from the standpoint of a Covered Party; but this exclusion does not apply to Bodily Injury resulting from assault and battery committed by, at the direction of or with the consent of the Entity for the purpose of protecting persons or property from injury or death.
- b. Bodily Injury arising out of the actual, alleged or threatened exposure to or discharge, dispersal, seepage, migration, release or escape of Pollutants:
 - (1) At or from any premises, site or location which is or was at any time owned or occupied by, or loaned, rented or leased to, any Covered Party;
 - (2) At or from any premises, site or location which is or was at any time used for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any Covered Party or any person or organization for whom a Covered Party may be legally responsible; or
 - (4) At or from any premises, site or location on which any Covered Party or any contractor or subcontractor working directly or indirectly on any Covered Party's behalf is performing operations.
- c. Bodily Injury arising out of the ownership, use or operation of any hospital or airport.
- d. Bodily Injury arising out of medical professional services performed by or on behalf of a Covered Party; but this exclusion does not apply to such services performed by emergency medical technicians, paramedics and other similar classes of personnel.
- e. Bodily Injury arising out of any partial or complete structural failure of any Dam.
- f. Bodily Injury arising out of any hazardous properties of Nuclear Material.

- g. Bodily Injury arising out of the existence, anticipated exercise or actual exercise of powers of eminent domain (by whatever name called), including but not limited to any such Bodily Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- h. Bodily Injury arising out of condemnation proceedings, including but not limited to any such Bodily Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- i. Bodily Injury arising out of any circumstances that give rise to (or could give rise to) or result in (or could result in) an inverse condemnation claim, including but not limited to any such Bodily Injury claimed in any claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights, violation of equal protection rights, trespass, nuisance, adverse use, adverse possession and/or inverse condemnation.
- j. Bodily Injury arising out of the ownership, operation, use, maintenance or entrustment to others of any aircraft.
- k. Bodily Injury arising out of any transit authority, transit system or public transportation system owned or operated by a Covered Party; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.
- l. Bodily Injury arising out of the failure to supply or provide an adequate supply of gas, water or electricity.
- m. Bodily Injury for which a Covered Party is obligated to pay compensation or benefits (or other monetary sums) under workers' compensation, disability benefits or unemployment compensation law or any similar law.

n. Bodily Injury to:

- (1) An employee of a Covered Party arising out of and in the course of:
 - (a) Employment by a Covered Party; or
 - (b) Performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that employee (or any other person, whether or not a relative of that employee, which has a relationship with that employee) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

o. Bodily Injury to:

- (1) An elected or appointed official arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that elected or appointed official (or any other person, whether or not a relative of that elected or appointed official, which has a relationship with that elected or appointed official) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

p. Bodily Injury to:

- (1) A volunteer arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that volunteer (or any other person, whether or not a relative of that volunteer, which has a relationship with that volunteer) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

q. Bodily Injury to:

- (1) Any person arising out of any:

- (a) Refusal to:

1. Employ that person;
2. Elect or appoint that person; or
3. Allow that person to participate as a volunteer; or

- (b) Termination of:

1. That person's employment;
2. That person's elected or appointed official's position; or
3. That person's volunteer's participation; or

- (c) Practice, policy, act or omission which is in any way related (whether logically or causally) to employment, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, violation of civil rights, harassment, humiliation or discrimination.

- (d) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as an elected or appointed official, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
 - (e) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as a volunteer, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
- (2) The spouse, child, parent, brother, sister or other relative of that person (or any other person, whether or not a relative of that person, which has a relationship with that person) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
 - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- r. Bodily Injury to a Covered Party.

B. Coverage B - Property Damage Liability.

1. Insuring Agreement

- a. Subject to the terms and conditions of this Memorandum (including but not limited to provisions b. and c. below), ABAG agrees to pay, on behalf of the Covered Party, the Ultimate Net Loss (or portion thereof) that the Covered Party becomes legally obligated to pay as damages because of Property Damage to which this Memorandum applies.
- b. This Coverage B - Property Damage Liability applies:
 - (1) Only to Property Damage:
 - (a) That occurs during the Coverage Period, and
 - (b) That is caused by an Occurrence, and
 - (2) Only if there is no Other Insurance providing coverage for the Covered Party's legal obligation to pay damages because of the Property Damage (unless the available limits of liability of such Other Insurance are insufficient to pay the Covered Party's legal obligation to pay damages because of the Property Damage, in which event this Memorandum will be excess over any and all such Other Insurance, subject to all of the terms and conditions of this Memorandum).
- c. The amount that ABAG will pay under Coverage B - Property Damage Liability is limited as described under SECTION V - LIMIT OF COVERAGE.

2. Exclusions

This Memorandum does not apply to:

- a. Property Damage expected or intended from the standpoint of a Covered Party.
- b. Property Damage arising out of the actual, alleged or threatened exposure to or discharge, dispersal, seepage, migration, release or escape of Pollutants:
 - (1) At or from any premises, site or location which is or was at any time owned or occupied by, or loaned, rented or leased to, any Covered Party;
 - (2) At or from any premises, site or location which is or was at any time used for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any Covered Party or any person or organization for whom a Covered Party may be legally responsible; or
 - (4) At or from any premises, site or location on which any Covered Party or any contractor or subcontractor working directly or indirectly on any Covered Party's behalf is performing operations.
- c. Property Damage arising out of the ownership, use or operation of any hospital or airport.
- d. Property Damage arising out of medical professional services performed by or on behalf of a Covered Party; but this exclusion does not apply to such services performed by emergency medical technicians, paramedics and other similar classes of personnel.
- e. Property Damage arising out of any partial or complete structural failure of any Dam.
- f. Property Damage arising out of any hazardous properties of Nuclear Material.

- g. Property Damage arising out of the existence, anticipated exercise or actual exercise of powers of eminent domain (by whatever name called), including but not limited to any such Property Damage claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- h. Property Damage arising out of condemnation proceedings, including but not limited to any such Property Damage claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- i. Property Damage arising out of any circumstances that give rise to (or could give rise to) or result in (or could result in) an inverse condemnation claim, including but not limited to any such Property Damage claimed in any claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights, violation of equal protection rights, trespass, nuisance, adverse use, adverse possession and/or inverse condemnation.
- j. Property Damage to:
 - (1) Property owned by the Entity;
 - (2) Property rented to or leased to the Entity; or
 - (3) Aircraft or watercraft in a Covered Party's care, custody or control.
- k. Property Damage arising out of the ownership, operation, use, maintenance or entrustment to others of any aircraft.
- l. Property Damage arising out of any transit authority, transit system or public transportation system owned or operated by a Covered Party; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.
- m. Property Damage arising out of the failure to supply or provide an adequate supply of gas, water or electricity.

- n. Property Damage claimed by:
 - (1) Any person arising out of any:
 - (a) Refusal to:
 - 1. Employ that person;
 - 2. Elect or appoint that person; or
 - 3. Allow that person to participate as a volunteer; or
 - (b) Termination of:
 - 1. That person's employment;
 - 2. That person's elected or appointed official's position; or
 - 3. That person's volunteer's participation; or
 - (c) Practice, policy, act or omission which is in any way related (whether logically or causally) to employment, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, violation of civil rights, harassment, humiliation or discrimination.
 - (d) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as an elected or appointed official, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
 - (e) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as a volunteer, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.

- (2) The spouse, child, parent, brother, sister or other relative of that person (or any other person, whether or not a relative of that person, which has a relationship with that person) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
 - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- o. Property Damage claimed by a Covered Party.

C. Coverage C - Personal Injury Liability.

1. Insuring Agreement

- a. Subject to the terms and conditions of this Memorandum (including but not limited to provisions b. and c. below), ABAG agrees to pay, on behalf of the Covered Party, the Ultimate Net Loss (or portion thereof) that the Covered Party becomes legally obligated to pay as damages because of Personal Injury to which this Memorandum applies.
- b. This Coverage C - Personal Injury Liability applies:
 - (1) Only to Personal Injury that arises out of an Occurrence which takes place during the Coverage Period, and
 - (2) Only if there is no Other Insurance providing coverage for the Covered Party's legal obligation to pay damages because of the Personal Injury (unless the available limits of liability of such Other Insurance are insufficient to pay the Covered Party's legal obligation to pay damages because of the Personal Injury, in which event this Memorandum will be excess over any and all such Other Insurance, subject to all of the terms and conditions of this Memorandum).
- c. The amount that ABAG will pay under Coverage C - Personal Injury Liability is limited as described under SECTION V - LIMIT OF COVERAGE.

2. Exclusions

This Memorandum does not apply to:

- a. Personal Injury expected or intended from the standpoint of a Covered Party.
- b. Personal Injury arising out of the actual, alleged or threatened exposure to or discharge, dispersal, seepage, migration, release or escape of Pollutants:
 - (1) At or from any premises, site or location which is or was at any time owned or occupied by, or loaned, rented or leased to, any Covered Party;
 - (2) At or from any premises, site or location which is or was at any time used for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any Covered Party or any person or organization for whom a Covered Party may be legally responsible; or
 - (4) At or from any premises, site or location on which any Covered Party or any contractor or subcontractor working directly or indirectly on any Covered Party's behalf is performing operations.
- c. Personal Injury arising out of the ownership, use or operation of any hospital or airport.
- d. Personal Injury arising out of medical professional services performed by or on behalf of a Covered Party; but this exclusion does not apply to such services performed by emergency medical technicians, paramedics and other similar classes of personnel.
- e. Personal Injury arising out of any partial or complete structural failure of any Dam.
- f. Personal Injury arising out of any hazardous properties of Nuclear Material.

- g. Personal Injury arising out of the existence, anticipated exercise or actual exercise of powers of eminent domain (by whatever name called), including but not limited to any such Personal Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- h. Personal Injury arising out of condemnation proceedings, including but not limited to any such Personal Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- i. Personal Injury arising out of any circumstances that give rise to (or could give rise to) or result in (or could result in) an inverse condemnation claim, including but not limited to any such Personal Injury claimed in any claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights, violation of equal protection rights, trespass, nuisance, adverse use, adverse possession and/or inverse condemnation.
- j. Personal Injury arising out of the ownership, operation, use, maintenance or entrustment to others of any aircraft.
- k. Personal Injury arising out of any transit authority, transit system or public transportation system owned or operated by a Covered Party; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.
- l. Personal Injury arising out of the failure to supply or provide an adequate supply of gas, water or electricity.
- m. Personal Injury arising out of the willful violation of a penal statute or penal ordinance:
 - (1) Committed by a Covered Party; or
 - (2) Committed with the knowledge or consent of a Covered Party.
- n. Personal Injury arising out of written or oral publication of material, if done by or at the direction of any Covered Party with knowledge of its falsity.

- o. Personal Injury for which a Covered Party is obligated to pay compensation or benefits (or other monetary sums) under workers' compensation, disability benefits or unemployment compensation law or any similar law.
- p. Personal Injury to:
 - (1) An employee of a Covered Party arising out of and in the course of:
 - (a) Employment by a Covered Party; or
 - (b) Performing duties related to the conduct of a Covered Party's activities; or
 - (2) The spouse, child, parent, brother, sister or other relative of that employee (or any other person, whether or not a relative of that employee, which has a relationship with that employee) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- q. Personal Injury to:
 - (1) An elected or appointed official arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
 - (2) The spouse, child, parent, brother, sister or other relative of that elected or appointed official (or any other person, whether or not a relative of that elected or appointed official, which has a relationship with that elected or appointed official) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

r. Personal Injury to:

- (1) A volunteer arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that volunteer (or any other person, whether or not a relative of that volunteer, which has a relationship with that volunteer) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Personal Injury to:

- (1) Any person arising out of any:
 - (a) Refusal to:
 - 1. Employ that person;
 - 2. Elect or appoint that person; or
 - 3. Allow that person to participate as a volunteer; or
 - (b) Termination of:
 - 1. That person's employment;
 - 2. That person's elected or appointed official's position; or
 - 3. That person's volunteer's participation; or

- (c) Practice, policy, act or omission which is in any way related (whether logically or causally) to employment, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
 - (d) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as an elected or appointed official, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
 - (e) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as a volunteer, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
- (2) The spouse, child, parent, brother, sister or other relative of that person (or any other person, whether or not a relative of that person, which has a relationship with that person) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
 - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- t. Personal Injury to a Covered Party.

D. Coverage D - Public Officials Errors And Omissions Injury Liability.

1. Insuring Agreement

- a. Subject to the terms and conditions of this Memorandum (including but not limited to provisions b. and c. below), ABAG agrees to pay, on behalf of the Covered Party, the Ultimate Net Loss (or portion thereof) that the Covered Party becomes legally obligated to pay as damages because of Public Officials Errors And Omissions Injury to which this Memorandum applies.
- b. This Coverage D - Public Officials Errors And Omissions Injury Liability applies:
 - (1) Only to Public Officials Errors And Omissions Injury that arises out of an Occurrence which takes place during the Coverage Period, and
 - (2) Only if there is no Other Insurance providing coverage for the Covered Party's legal obligation to pay damages because of the Public Officials Errors And Omissions Injury (unless the available limits of liability of such Other Insurance are insufficient to pay the Covered Party's legal obligation to pay damages because of the Public Officials Errors And Omissions Injury, in which event this Memorandum will be excess over any and all such Other Insurance, subject to all of the terms and conditions of this Memorandum).
- c. The amount that ABAG will pay under Coverage D - Public Officials Errors And Omissions Injury Liability is limited as described under SECTION V - LIMIT OF COVERAGE.

2. Exclusions

This Memorandum does not apply to:

- a. Public Officials Errors And Omissions Injury expected or intended from the standpoint of a Covered Party.
- b. Public Officials Errors And Omissions Injury arising out of the actual, alleged or threatened exposure to or discharge, dispersal, seepage, migration, release or escape of Pollutants:
 - (1) At or from any premises, site or location which is or was at any time owned or occupied by, or loaned, rented or leased to, any Covered Party;
 - (2) At or from any premises, site or location which is or was at any time used for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any Covered Party or any person or organization for whom a Covered Party may be legally responsible; or
 - (4) At or from any premises, site or location on which any Covered Party or any contractor or subcontractor working directly or indirectly on any Covered Party's behalf is performing operations.
- c. Public Officials Errors And Omissions Injury arising out of the ownership, use or operation of any hospital or airport.
- d. Public Officials Errors And Omissions Injury arising out of medical professional services performed by or on behalf of a Covered Party; but this exclusion does not apply to such services performed by emergency medical technicians, paramedics and other similar classes of personnel.
- e. Public Officials Errors And Omissions Injury arising out of any partial or complete structural failure of any Dam.
- f. Public Officials Errors And Omissions Injury arising out of any hazardous properties of Nuclear Material.
- g. Public Officials Errors And Omissions Injury arising out of the ownership, operation, use, maintenance or entrustment to others of any aircraft.
- h. Public Officials Errors And Omissions Injury arising out of any transit

authority, transit system or public transportation system owned or operated by a Covered Party; but this exclusion does not apply to any transit system operating over non-fixed routes, including dial-a-ride, senior citizen transportation or handicapped transportation.

- i. Public Officials Errors And Omissions Injury arising out of the existence, anticipated exercise or actual exercise of powers of eminent domain (by whatever name called), including but not limited to any such Public Officials Errors And Omissions Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- j. Public Officials Errors And Omissions Injury arising out of condemnation proceedings, including but not limited to any such Public Officials Errors And Omissions Injury claimed in a claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights and/or violation of equal protection rights.
- k. Public Officials Errors And Omissions Injury arising out of any circumstances that give rise to (or could give rise to) or result in (or could result in) an inverse condemnation claim, including but not limited to any such Public Officials Errors And Omissions Injury claimed in any claim or suit for unlawful discrimination, violation of civil rights, violation of substantive due process rights, violation of procedural due process rights, violation of equal protection rights, trespass, nuisance, adverse use, adverse possession and/or inverse condemnation.
- l. Public Officials Errors And Omissions Injury arising out of the failure to supply or provide an adequate supply of gas, water or electricity.
- m. Public Officials Errors And Omissions Injury arising out of injury to, destruction or disappearance of any tangible property (including but not limited to money or other financial instruments) or the loss of use thereof.
- n. Public Officials Errors And Omissions Injury arising out of benefits payable under any employee benefit plan (whether the plan is voluntarily established by a Covered Party or mandated by statute) because of unlawful discrimination.
- o. Public Officials Errors And Omissions Injury arising out of the imposition or collection of taxes, fees or assessments.
- p. Public Officials Errors And Omissions Injury arising out of the refund of taxes,

fees or assessments.

- q. Public Officials Errors And Omissions Injury arising out of:
 - (1) Any Covered Party obtaining remuneration or financial gain to which the Covered Party was not legally entitled, or
 - (2) Any Covered Party's liability for any other Covered Party obtaining remuneration or financial gain to which such Covered Party was not legally entitled.
- r. Public Officials Errors And Omissions Injury arising out of the willful violation of a penal code or penal ordinance:
 - (1) Committed by a Covered Party; or
 - (2) Committed with the knowledge or consent of a Covered Party.
- s. Public Officials Errors And Omissions Injury arising out of any bidding or contracting process if such Public Officials Errors And Omissions Injury is due to:
 - (1) Estimates of probable costs or cost estimates being exceeded,
 - (2) Faulty preparation of bid specifications or plans, including architectural plans, or
 - (3) Failure to award any contract (which under law must be submitted for bids) in accordance with any statute or ordinance.
- t. Public Officials Errors And Omissions Injury arising out of any failure to perform or breach of a contractual obligation.
- u. Public Officials Errors And Omissions Injury for which a Covered Party is obligated to pay compensation or benefits (or other monetary sums) under workers' compensation, disability benefits or unemployment compensation law or any similar law.

v. Public Officials Errors And Omissions Injury to:

- (1) An employee of a Covered Party arising out of and in the course of:
 - (a) Employment by a Covered Party; or
 - (b) Performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that employee (or any other person, whether or not a relative of that employee, which has a relationship with that employee) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

w. Public Officials Errors And Omissions Injury to:

- (1) An elected or appointed official arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
- (2) The spouse, child, parent, brother, sister or other relative of that elected or appointed official (or any other person, whether or not a relative of that elected or appointed official, which has a relationship with that elected or appointed official) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- x. Public Officials Errors And Omissions Injury to:
 - (1) A volunteer arising out of and in the course of performing duties related to the conduct of a Covered Party's activities; or
 - (2) The spouse, child, parent, brother, sister or other relative of that volunteer (or any other person, whether or not a relative of that volunteer, which has a relationship with that volunteer) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- y. Public Officials Errors And Omissions Injury to:

- (1) Any person arising out of any:
 - (a) Refusal to:
 - 1. Employ that person;
 - 2. Elect or appoint that person; or
 - 3. Allow that person to participate as a volunteer; or
 - (b) Termination of:
 - 1. That person's employment;
 - 2. That person's elected or appointed official's position; or
 - 3. That person's volunteer's participation; or
 - (c) Practice, policy, act or omission which is in any way related (whether logically or causally) to employment, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.

- (d) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as an elected or appointed official, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
 - (e) Practice, policy, act or omission which is in any way related (whether logically or causally) to serving as a volunteer, including but not limited to any of the following: coercion, demotion, promotion, evaluation, reassignment, discipline, defamation, harassment, violation of civil rights, humiliation or discrimination.
- (2) The spouse, child, parent, brother, sister or other relative of that person (or any other person, whether or not a relative of that person, which has a relationship with that person) as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Covered Party may be liable as an employer or in any other capacity; and
 - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- z. Public Officials Errors And Omissions Injury to a Covered Party.

SECTION IV - DEFENSE AND SETTLEMENT

A. Defense Of Claims Or Suits.

1. ABAG shall have the right and duty to defend any claim or suit against a Covered Party seeking damages to which this Memorandum applies, even if any allegations are groundless, false or fraudulent. In the event this Memorandum is excess over any Other Insurance with respect to a claim or suit, then ABAG shall not have any duty to defend such claim or suit until the available limits of liability of all such Other Insurance are exhausted and the defense obligation under all such Other Insurance has terminated.
2. The Covered Party shall:
 - a. Cooperate with ABAG in the investigation, defense and settlement of any claim or suit,
 - b. Upon the request of ABAG, attend hearings and trials, assist in securing and giving evidence, and assist in obtaining the attendance of witnesses, and
 - c. Upon the request of ABAG, authorize it to obtain records and other information.
3. In the event a Covered Party elects not to appeal a judgment, ABAG may elect to do so if it pays the fees and costs of that appeal.
4. In the event a Covered Party is entitled to independent counsel pursuant to Section 2860 of the California Civil Code and elects to select such independent counsel, then ABAG may require that the counsel selected by such Covered Party possess certain minimum qualifications, including but not limited to the following:
 - a. That such counsel must have at least five years litigation experience in defending public agencies in California against similar suits (which qualification is presumptively met by the inclusion of such counsel as a member of ABAG's defense counsel list), and
 - b. That such counsel must have errors and omissions coverage with per claim and aggregate liability limits of no less than the amounts which ABAG reasonably determines (on a case by case basis) are appropriate.

5. The Covered Party must disclose to ABAG all information concerning the claim or suit (including but not limited to all facts giving rise to the claim or suit) which may assist in the defense of the claim or suit. The Covered Party is required to provide such information even if the information may relate to or affect matters pertaining to coverage under this Memorandum. The Covered Party is also required to direct counsel (including but not limited to independent counsel selected pursuant to Section 2860 of the California Civil Code) involved in the defense of any such claim or suit to disclose all such information, and hereby waives any and all privileges (including but not limited to the attorney/client privilege and the attorney work product privilege) to the extent necessary to allow for the disclosure of that information to ABAG for purposes of defending the claim or suit. Any such waiver of a privilege shall extend to ABAG only (and shall not extend to any other person, organization or entity), and shall not be construed to allow for the disclosure of any such information to any claimant. It is understood and agreed that the purpose of this provision is to ensure that ABAG is provided with all information which is or may be useful in defending the claim or suit, in whole or part, notwithstanding the existence of any coverage limitation or dispute.

B. Settlement Of Claims Or Suits.

1. ABAG shall not have any obligation to pay any sum on behalf of a Covered Party under the terms of a settlement of any claim or suit, unless such settlement is finalized in a written agreement signed by the Covered Party, the claimant and ABAG.
2. No Covered Party shall have the right to enter into a settlement of any claim or suit which seeks damages to which this Memorandum applies without the express written consent of ABAG.

SECTION V - LIMIT OF COVERAGE

A. Limit Of Coverage - Per Loss.

1. The Limit Of Coverage, and the rule set forth under paragraph 2 below, fix the most that ABAG will pay with respect to a Loss, regardless of:
 - a. The number of Covered Parties,
 - b. The number of claims made or suits brought,
 - c. The number of persons or organizations making claims or bringing suits,
 - d. The number of persons or organizations who sustain injury or damage,
 - e. The nature and types of injuries or damage sustained,
 - f. The number of Occurrences, or
 - g. The number of Coverages applicable to the Loss.
2. All Defense Costs shall be paid and applied first against and shall reduce the Limit Of Coverage. The difference between the Limit Of Coverage and the total amount of Defense Costs shall be the amount available, if any, to pay on behalf of all Covered Parties with respect to a Loss.

B. Deductible - Per Loss.

1. The amount of the Deductible is the amount that the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum must pay (or cause to be paid) before ABAG is obligated to pay any amount under the terms of this Memorandum as Ultimate Net Loss(es) and/or Defense Costs.
2. The ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum shall be obligated to pay one Deductible with respect to all claims and suits relating to a Loss.
3. The Deductible is the sole responsibility of the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum. ABAG shall not be responsible for payment of the Deductible or any part thereof.

**VI - ABAG'S OBLIGATIONS UPON EXHAUSTION
OF LIMIT OF COVERAGE.**

A. ABAG's Obligations Upon Exhaustion Of Limit Of Coverage.

1. ABAG's duties under this Memorandum end (with respect to all claims and suits relating to a Loss) when it has used up the Limit Of Coverage as a result of the payment of sums (including the payment of Defense Costs) under this Memorandum. In that event:
 - a. ABAG shall not have any further obligation to pay Defense Costs and shall have right to withdraw from the further investigation and defense of any and all claims and suits,
 - b. ABAG shall not have any further obligation to pay any judgment or settlement, and
 - c. ABAG shall not have any other obligation under this Memorandum.

SECTION VII - CONDITIONS

A. Duties Of Covered Party In The Event Of Occurrence, Claim Or Suit.

1. In the event of an Occurrence, the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum must provide to ABAG (or any of its authorized agents), as soon as practicable, written notice of the Occurrence which includes the following information:
 - a. The identify of the Covered Party(ies) involved in the Occurrence,
 - b. How, when and where the Occurrence took place,
 - c. The names and addresses of any injured persons,
 - d. The names and addresses of any witnesses,
 - e. The nature and location of any injury or damage arising out of the Occurrence, and
 - f. Any and all other information which is available and reasonably obtainable pertaining to the Occurrence.
2. If a claim is made or suit is brought against any Covered Party, the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum must:
 - a. Immediately provide ABAG with written notice of the claim or suit,
 - b. Immediately make a record of the specifics of the claim or suit, and
 - c. Immediately forward to ABAG a copy of all documents related to the claim or suit, including but not limited to all correspondence, demands, notices, summonses and pleadings.
3. Upon the request of ABAG, all Covered Parties involved in the Occurrence shall assist ABAG in the enforcement of any right (including but not limited to any right of contribution or indemnity) against any person or organization which may be liable to a Covered Party because of actual or alleged damages to which this Memorandum may also apply.

4. No Covered Party shall, except at its own cost, make a payment, assume any obligation or incur any expense (including but not limited to any attorney fees) without the prior express consent of ABAG. In the event a Covered Party makes any payment, assumes any obligation or incurs any expense (including but not limited to any attorney fees) without the prior express consent of ABAG, then any such payment, obligation or expense shall be the sole responsibility of that Covered Party.

B. Bankruptcy.

1. Bankruptcy or insolvency of the Covered Party shall not relieve ABAG of any of its obligations under this Memorandum.

C. Other Insurance.

1. Subject to provisions A. 1. b. (2), B. 1. b. (2), C. 1. b. (2) and D. 1. b. (2) of Section III - COVERAGES, and in accordance with the other provisions of this Memorandum, this Memorandum shall be in excess of the amount of any Other Insurance available to pay any sum otherwise covered under this Memorandum, except with respect to any such Other Insurance which is written only as specific excess insurance over the Limit Of Coverage.
2. Under no circumstances shall this Memorandum and any other memorandum of coverage between ABAG and the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum both apply to a claim or suit. In the event of a dispute as to whether:
 - a. This Memorandum, or
 - b. Another memorandum of coverage between ABAG and the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum

is applicable to a claim or suit, such dispute shall be resolved by application of the following rule. The first memorandum of coverage (between ABAG and the ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum) issued by ABAG shall be deemed the memorandum of coverage which is applicable (and only that memorandum of coverage shall be applicable).

D. Cancellation.

1. This Memorandum may be canceled at any time in accordance with the provisions of the Liability Risk Coverage Agreement.

E. Legal Action Against ABAG.

1. No person or organization has a right under the Coverages (or under any other provision of this Memorandum):
 - a. To join ABAG as a party or otherwise bring ABAG into a suit seeking damages from a Covered Party; or
 - b. To sue ABAG on the Coverages unless all of the terms of this Memorandum have been fully complied with.
2. A person or organization may sue ABAG to recover on an agreed settlement or on a final judgment against a Covered Party obtained after an actual trial; but ABAG will not be liable for damages that are not payable under the terms of the Coverages or that are in excess of the Limit Of Coverage. An agreed settlement means a settlement and release of liability signed by ABAG, the Covered Party and the claimant or the claimant's legal representative.

F. Transfer Of Rights Of Recovery Against Others To ABAG.

1. If the Covered Party has rights to recover all or part of any payment ABAG has made under the Coverages and/or as Defense Costs, those rights are transferred to ABAG. The Covered Party must do nothing after loss to impair them. At ABAG's request, the Covered Party will bring suit or transfer those rights to ABAG and help ABAG enforce them. All amounts so recovered shall be paid to ABAG. In the event any additional amounts are recovered, then those additional amounts shall be apportioned as follows:
 - a. The Covered Party shall first be reimbursed in an amount up to any payments it made, and
 - b. The remainder shall be paid to ABAG and the Covered Party in proportion to the ratio of their respective recoveries.
2. All expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by ABAG, it shall bear the expenses thereof.

G. Premium.

1. The ENTITY COVERED which is designated in the DECLARATIONS to this Memorandum is authorized to act on behalf of all Covered Parties with respect to all matters pertaining to premium.