

**MONTANA MUNICIPAL INTERLOCAL  
AUTHORITY**

**MEMORANDUM OF LIABILITY COVERAGE**

**EFFECTIVE**

**JULY 1, 2009**

**As Revised  
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# **MONTANA MUNICIPAL INTERLOCAL AUTHORITY**

## **MEMORANDUM OF LIABILITY COVERAGE**

**EFFECTIVE JULY 1, 2009**

THIS DOCUMENT IS NOT AN INSURANCE POLICY. The Montana Municipal Interlocal Authority (Authority) is not an insurance company. The Authority is an entity created pursuant to Montana Code Annotated (Mont. Code Ann.), Title 7, Chapter 11, parts 1 through 8. The Montana Insurance Code, Mont. Code Ann. Title 33, does not apply to the Authority. Mont. Code Ann. 33-1-102(9)

This document is a contract by the Authority and its Member Entities to pay all covered Ultimate Net Losses subject to the LIMITS OF LIABILITY and other terms and conditions of this Memorandum, the Interlocal Agreement entered into between and among the Members of the Authority, the Liability Program Agreement, the Bylaws, and the Policies and Procedures of the Authority, as the same may be amended or modified from time -to-time.

The Authority has no duty to pay for any Ultimate Net Loss or to indemnify any COVERED PARTY for sums paid, or to defend in connection with Occurrences to which this Memorandum does not apply, afford coverage, or which did not occur during the COVERAGE PERIOD .

Various provisions in this Memorandum and the DECLARATIONS restrict coverage. Please read the entire document carefully to determine rights, duties and what is and what is not covered.

In consideration of the payment of the Member Assessment, the Authority agrees, subject to the LIMITS OF LIABILITY, EXCLUSIONS, CONDITIONS and other terms of this Memorandum and DECLARATIONS, to pay on behalf of the Member Entity named in the DECLARATIONS (the Entity) and a COVERED PARTY as follows:

## **SECTION 1. COVERAGE**

- 1.1 The Authority, subject to the EXCLUSIONS, CONDITIONS, limitations, and restrictions set forth in this Memorandum, agrees to pay on behalf of a COVERED PARTY all sums in excess of the DEDUCTIBLE up to the LIMITS OF LIABILITY set forth in the DECLARATIONS which the COVERED PARTY shall become legally obligated to pay as an Ultimate Net Loss because of:

Coverage A. General Liability

Coverage B. Public Officials Errors and Omissions

Coverage C. Employment Practices

Coverage D. Employee Benefit Liability

Coverage E. Land Use Practices

As those terms are herein defined and to which the Memorandum applies, caused by an Occurrence during the COVERAGE PERIOD.

## **SECTION 2. DEFENSE, JUDGMENT, AND SETTLEMENT**

- 2.1 The Authority shall have the right and duty subject to the terms of this Memorandum to defend any Claim against a COVERED PARTY claiming Damages for which coverage is afforded under this Memorandum for an Occurrence during the COVERAGE PERIOD, even if any of the allegations of the Claim are groundless, false, or fraudulent, and may make such investigation and settlement of any Claim as it deems expedient. No Defense Costs shall be incurred on behalf of the Authority without its prior written consent.
- 2.2 Subject to Sections 15.9.2 and 15.9.3, the Authority shall be responsible for payment of all reasonable attorney's fees and costs for defense of a COVERED PARTY and shall only be responsible for payment of that portion of a settlement or judgment which relates to Claims for which coverage is afforded under the terms of this Memorandum. Provided, however, the Authority shall not be obligated to pay any settlement or judgment or to defend any Claim after the LIMITS OF LIABILITY have been exhausted by payment of settlements or judgments.
- 2.3 In the event that a Claim that would be covered under this Memorandum does not seek Damages other than the claimant's attorney fees or expenses, the Authority shall pay reasonable Defense Costs for such Claims in an amount subject to the LIMITS OF LIABILITY for non-monetary Claims and for the COVERAGE PERIOD as provided in the DECLARATIONS.

## **SECTION 3. DEDUCTIBLE**

- 3.1 The obligation of the Authority to pay an Ultimate Net Loss on behalf of a COVERED PARTY shall apply up to the applicable LIMITS OF LIABILITY as stated in the DECLARATIONS. The DEDUCTIBLE amount stated in the DECLARATIONS applies on

a per Occurrence basis and is subtracted from the portion covered by the Authority for the Ultimate Net Loss and Defense Costs for the Occurrence.

- 3.2 The terms of the Memorandum, including those with respect to the Authority's rights and duties for the defense of Claims, apply without regard to the application of the DEDUCTIBLE amount.
- 3.3 The Authority may pay any part of or the entire DEDUCTIBLE amount to effect a settlement of any Claim or pay any final judgment for such Claim. Upon notification of such payment, the Entity shall promptly reimburse the Authority for such part of the DEDUCTIBLE amount as has been paid by the Authority.

## **SECTION 4. LIMITS OF LIABILITY**

- 4.1 Regardless of the number of (1) COVERED PARTIES under the Memorandum, (2) persons or organizations who sustain injury or damage, or (3) Claims for Personal Injury, Property Damage, Bodily Injury, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, Employment Practices, Employee Benefit Liability or Land Use Practices, the Ultimate Net Loss as the result of any one Occurrence shall be subject to the LIMITS OF LIABILITY as specified in the DECLARATIONS.
- 4.2 The Authority's liability up to the LIMITS OF LIABILITY stated in the DECLARATIONS shall apply separately to each Member Entity under this Memorandum in the event of an Occurrence that involves two or more Member Entities.
- 4.3 For the purpose of determining the LIMITS OF LIABILITY, the Ultimate Net Loss arising from Damages for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, Employment Practices, Employee Benefits Liability, or Land Use Practices arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one Occurrence, and shall be deemed to have originated in the COVERAGE PERIOD in which the Damages were first incurred and only the LIMITS OF LIABILITY as specified in the DECLARATIONS for that first COVERAGE PERIOD shall apply.

## **SECTION 5. COVERED PARTY**

Each one of the following is a COVERED PARTY under this Memorandum:

- 5.1. The Entity
- 5.2. While acting within the scope of his or her duties for the Member Entity:
  - 5.2.1. Those individuals who were, or are now, elected or appointed officials of the Entity, whether or not compensated, including members of the Entity's governing body or any other committees, boards, commissions or special districts of the Entity, while acting for or on behalf of the Entity during the COVERAGE PERIOD.
  - 5.2.2. Past or present employees of the Entity, whether or not compensated, while acting for or on behalf of the Entity during the COVERAGE PERIOD.

- 5.2.3. All persons who perform a service on a volunteer basis for a Member Entity provided such performance is under the direction and control of the Member Entity.
  - 5.2.4. Any peace officer or law enforcement entity which may render assistance during the COVERAGE PERIOD upon request of a peace officer or law enforcement organization of the Entity pursuant to applicable law.
  - 5.2.5. Any firefighter or firefighting entity which may render assistance upon request of a firefighter or firefighting organization of the Entity pursuant to a Mutual Aid Agreement entered into under the authority of Mont. Code Ann. 7-3-4112, (2007), or pursuant to a request for assistance made under Mont. Code Ann. 10 -3-209, (2007), as the same may be amended from time -to-time.
- 5.3 An agency, board or commission which is established by the Entity pursuant to resolution, ordinance, charter or statute to perform such functions as prescribed in a resolution, ordinance, charter or statute for the Entity ; provided, however, that any such agency, board or commission which is required by resolution, ordinance, charter or statute to obtain separate insurance to cover such functions or has obtained coverage from some other source to cover such functions , whether or not required to do so, shall not be a COVERED PARTY .
- 5.4 A quasi-governmental or intergovernmental agency, board or commission which is governed directly by the Entity by having a majority of the members of such agency, board, or commission representing or appointed by the Entity ; provided, however, that any such agency, board or commission that is required by the Entity or pursuant to resolution, ordinance, charter or statute to obtain its own separate insurance coverage or has obtained coverage from some other source to cover its activities and functions , whether or not required to do so, shall not be a COVERED PARTY . Any quasi-governmental or intergovernmental agency, board or commission which is autonomous from the Entity is not a COVERED PARTY . For purposes of this paragraph 5.4 indicia of autonomy shall include but not be limited to the ability to hire employees, collect fees or other revenues, enter into contracts, or purchase equipment or materials. An Entity desiring coverage for a quasi-governmental or intergovernmental agency, board or commission not otherwise covered under this Memorandum may apply to the Authority requesting that such agency, board or commission be endorsed as an Additional Covered Party under this Memorandum, and the Authority may at its discretion grant such application by issuing an ENDORSEMENT or amendment to this Memorandum.
- 5.5 Additional Covered Party. An Additional Covered Party means any other entity, agency, board, commission, person, or other private party named by ENDORSEMENT to this Memorandum as an Additional Covered Party pursuant to Section 6 of this Memorandum.

## **SECTION 6. ADDITIONAL COVERED PARTY ENDORSEMENT**

- 6.1. In order to obtain an Additional Covered Party endorsement (“Additional Covered Party ENDORSEMENT”), a Member Entity must submit a written request to the MMIA for issuance of an Additional Covered Party ENDORSEMENT stating the name, address,

and description of the person or entity to be named in the ENDORSEMENT, including a description of the need for such ENDORSEMENT and the time period for which an ENDORSEMENT is sought. Such request shall also contain information which addresses the criteria set forth in Paragraph 6.2 below and include an agreement in the form prescribed by the MMIA executed by the person or on behalf of the entity to be named in the ENDORSEMENT to abide by the terms of the applicable Memorandum of Liability Coverage if such ENDORSEMENT is granted. It shall also include an acknowledgment by the Member Entity that it is aware that an Ultimate Net Loss paid on behalf of the Additional Covered Party will be assessed to the Member Entity pursuant to the MMIA's Liability Program Agreement, the Interlocal Agreement, and the Policies and Procedures adopted by the Board of Directors of the MMIA.

- 6.2. MMIA will maintain absolute discretion in determining whether to issue an Additional Covered Party ENDORSEMENT, and will review requests and make decisions on the issuance of an ENDORSEMENT based on such criteria that may include, but are not limited to:
  - 6.2.1. Proposed Additional Covered Party's authority to conduct business in Montana.
  - 6.2.2. Experience and expertise in the proposed Additional Covered Party's area of service or purpose
  - 6.2.3. Risk management training, practices or programs by the person or entity seeking to be named in the Additional Covered Party ENDORSEMENT.
  - 6.2.4. Loss or lawsuit history of the person or entity seeking to be named in the Additional Covered Party ENDORSEMENT.
  - 6.2.5. Risk associated with service provided or purpose of the person or entity seeking to be named in the Additional Covered Party ENDORSEMENT.
  - 6.2.6. Duration the Additional Covered Party ENDORSEMENT will be in effect.
  - 6.2.7. Any other criteria MMIA staff determines to be applicable.
- 6.3. The MMIA may either issue an Additional Covered Party ENDORSEMENT as requested, issue the ENDORSEMENT with conditions, request additional information before making a decision, or deny the request for ENDORSEMENT.
- 6.4. The MMIA reserves the right to deny an Additional Covered Party ENDORSEMENT for coverage of the proposed Additional Covered Party that in the MMIA's sole estimation poses unreasonable risk or exposure to the Liability Program.
- 6.5. The decision to deny or conditionally approve a request for an Additional Covered Party ENDORSEMENT may be appealed to the MMIA Underwriting Committee pursuant to the provisions of the Memorandum of Liability Coverage.

## **SECTION 7. TERRITORY**

- 7.1 This Memorandum applies to any Personal Injury, Property Damage, Bodily Injury,

Automobile Liability, Professional Liability, Public Officials Error or Omission, Employment Practices, Employee Benefit Liability, or Land Use Practices Liability from an Occurrence during the COVERAGE PERIOD anywhere in the world provided a Claim is brought within the United States of America, its territories or possessions, or Canada.

## SECTION 8. COMMON COVERAGE DEFINITIONS

The following definitions shall govern the meaning of the defined terms for the purpose of this Memorandum. Defined terms have special meaning and are capitalized where used in this Memorandum. Words that appear entirely in capital letters have reference to the like-titled section in this Memorandum or in the DECLARATIONS.

- 8.1. **Additional Covered Party** means any other entity, agency, board, commission, person, or other private party named by ENDORSEMENT to this Memorandum as an Additional Covered Party pursuant to Section 6 of this Memorandum.
- 8.2. **Aircraft** means any contrivance invented, used, or designed to navigate, or fly, in the air.
- 8.3. **Air Navigation Facility** means a facility, personnel, mechanism, or equipment used, available for use, or designed for use in aid of air navigation, including runways, taxiways, places on land or water, including a landing field, used or intended to be used, for the takeoff and landing of Aircraft, lights, apparatus or equipment for distributing weather information, signaling, radio-directional finding, or radio or other electromagnetic communication, and any other structures or mechanism for monitoring, directing, guiding or controlling flight in the air or the landing, taxiing, or taking off of Aircraft, but does not include Airport Premises.
- 8.4. **Airport Premises** means those premises including buildings, parking lots, garages, sidewalks, streets, alleys, and structures that are not Air Navigation Facilities and are used for sheltering, receiving or discharging passengers or cargo.
- 8.5. **Authority** means the Montana Municipal Interlocal Authority.
- 8.6. **Automobile** means a land motor vehicle designed for travel on public roads, including a trailer or semi-trailer and any attached machinery, equipment or attached devices.
- 8.7. **Automobile Liability** means liability for those Damages that a Member Entity or COVERED PARTY shall become obligated to pay because of Bodily Injury or Property Damage resulting from the use of an Automobile by a COVERED PARTY while acting within the scope and course of his or her duties for the Entity. Such Damages do not include those Damages to an Automobile owned, rented, or leased by a Member Entity or COVERED PARTY, or in the care, custody and control of a Member Entity or COVERED PARTY.
- 8.8. **Bodily Injury** means physical injury, sickness or disease, including disability, shock, mental anguish, mental injury, emotional distress, including care and loss of services resulting from any of the foregoing, sustained by a person and including death resulting therefrom. Bodily Injury also includes assault and battery if committed or directed for the purpose of protecting persons from injury or death, or property from damage provided that such actions are not deemed in violation of criminal law.

- 8.9. **Claim** means a written demand for Damages or other relief in law or equity advising a COVERED PARTY of the intent to sue, a notice of a charge or violation from any governmental agency, an arbitration notice or any civil or administrative proceeding commenced by the service of a summons, complaint or similar pleading received by the COVERED PARTY alleging a negligent or wrongful act or omission or notice of an administrative hearing regarding an alleged negligent or wrongful act or omission committed by the COVERED PARTY while acting within the course and scope of employment during the COVERAGE PERIOD. As used herein, allegations arising from a negligent or wrongful act or omission that results in Damages to a single person are considered one Claim regardless of the number of persons or entities claiming Damages.
- 8.10. **Contractor for Residential Construction** means a person or an entity acting as a developer, general contractor, subcontractor or trade person or organization involved in or undertaking Residential Construction.
- 8.11. **Covered Party** means any person or entity qualifying as a COVERED PARTY as set forth in Section 5 of this Memorandum.
- 8.12. **Dam** means any artificial barrier, together with appurtenant works, used to impound or divert water with an impounding capacity of 50 acre feet or greater, and shall include a barrier designated as a "high hazard dam" pursuant to Mont. Code Ann. Sections 85-15-106 and 85-15-209, as the same may be amended from time-to-time.
- 8.13. **Damages** means a monetary judgment, monetary award, or a monetary settlement in payment of compensatory or actual damages, including general and special damages, which a COVERED PARTY is obligated to pay to a third party for a covered Claim.
- 8.14. **Defense Costs** means all reasonable fees and expenses caused by and relating to the adjustment, investigation, defense or appeal of a Claim for which coverage is afforded under this Memorandum, including attorney's fees, paralegal fees, court costs and interest on judgments accruing after entry of judgment. However, Defense Costs shall not include the office expenses or salaries of employees or officials of the Authority or any COVERED PARTY nor expenses of claims administrators engaged by the Authority or any COVERED PARTY.
- 8.15. **Entity or Member Entity** means the city, town or political subdivision named in the DECLARATIONS.
- 8.16. **Fungal Pathogen** means any fungus or mycota, or any byproduct or type of infestation produced by such fungus or mycota including but not limited to mold, mildew, mycotoxins, spores, or biogenic aerosols.
- 8.17. **Memorandum** means this Memorandum of Liability Coverage for the Montana Municipal Interlocal Authority and any endorsements or attachments or amendments thereto.
- 8.18. **Non-structural Repair Work** means any Residential Construction except Residential Construction that adds or involves a load bearing portion of any structure or involves any defect that significantly and adversely affects use or utility for residential habitation.
- 8.19. **Nuclear Material** means source material, special nuclear material, or by-product

material. Source material, special nuclear material and by-product material have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

- 8.20. **Occurrence** means an accident or event, including injurious exposure to conditions, which results, during the COVERAGE PERIOD, in Bodily Injury, Property Damage, Personal Injury, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, Employment Practices, Employee Benefits Liability, or Land Use Practices Liability neither expected nor intended from the standpoint of the COVERED PARTY. An Ultimate Net Loss arising out of a continuous or repeated exposure to substantially the same general conditions, regardless of the frequency, timing, repetition, the number or kind of events or offenses or the number of claimants, shall be considered arising out of one Occurrence and shall be deemed to have first occurred on the date of the first event or offense alleged to have caused the Damages for the Ultimate Net Loss.
- 8.21. **Personal Injury** means injury, other than Bodily Injury, that is limited to one or more of the following:
- 8.21.1. False arrest, detention, imprisonment, or malicious prosecution;
  - 8.21.2. Wrongful entry or eviction of any person from a room, dwelling or premises that a person occupies, or other invasion of private occupancy;
  - 8.21.3. The publication or utterance of a libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property; or a publication or utterance in violation of the rights of privacy;
  - 8.21.4. Unlawful discrimination or violation of civil rights.
- 8.22. **Pollutant** means:
- 8.22.1. any solid, liquid, gaseous, or thermal irritant or contaminant, including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic radiation, fiberglass, lead, lead paint, lead pigment, lead in water, lead products or materials containing lead, refrigerants, green house gasses, or any hazardous or toxic substance or waste of whatever kind. Waste material included materials that are intended to be or have been recycled, reconditioned or reclaimed.
  - 8.22.2. any fungal pathogens or bacteria, including any fungus or mycota or any byproduct or type of infestation produced by such fungus or mycota, including but not limited to mold, mildew, mycotoxins, spores, or any biogenic aerosols, whether indoors or outdoors.
- 8.23 **Professional Liability** means any act, omission, neglect, or breach of duty, including but not limited to such acts as negligence, misrepresentation, and inaccurate advice, by a COVERED PARTY who holds himself or herself out to the general public as having greater than average expertise in particular areas in the discharge of his or her duties with the Member Entity that results in legal liability to a third party which is neither the Entity nor a COVERED PARTY. Professional Liability does not include Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Public Officials Errors and Omissions, Employment Practices, Employee Benefit Liability, or Land Use Practices Liability; nor does it include an act, omission, neglect, or breach of duty which causes injury or Damage to the Member Entity itself or a COVERED PARTY.

- 8.24. **Property Damage** means:
- 8.24.1. Physical injury to, or destruction of, tangible property which occurs during the COVERAGE PERIOD, including loss of use thereof at any time resulting therefrom; or
- 8.24.2. Loss of use of tangible property that is not physically injured provided such loss of use is caused by an Occurrence during the COVERAGE PERIOD.
- 8.25. **Public Officials Errors and Omissions** means any act, omission, neglect, or breach of duty, including nonfeasance, misfeasance, and malfeasance by a COVERED PARTY in the discharge of their duties with the Entity, but shall not mean or include Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Employment Practices, Employee Benefit Liability, or Land Use Practices Liability.
- 8.26. **Quantum Meruit** means “as much as he deserves”. An equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched. Under those circumstances, the law implies a promise to pay a reasonable amount of the labor and materials furnished, even absent a specific contract.
- 8.27. **Residential Construction** means all development, design, building or other construction, improvements, site selection, surface or subsurface site preparation, or any work, products or component parts thereof or services provided in relation to any of the foregoing, involving property intended in whole or in part for residential habitation, or any common or public areas or facilities related thereto, involving or undertaken by a COVERED PARTY. As used herein, Residential Construction does not include Non-structural Repair Work which is begun after the date of initial occupancy provided such work is unrelated to or not completing work begun prior to the date of initial occupancy.
- 8.28. **Terrorism** means activities against persons, organizations or property of any nature:
- 8.28.1 That involve the following or preparation for the following:
- (a) use or threat of force or violence; or
  - (b) commission or threat of a dangerous act; or
  - (c) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- 8.28.2 When one or both of the following applies :
- (a) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - (b) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
- 8.29. **Ultimate Net Loss** means the sums for which a COVERED PARTY is legally liable as covered Damages for Claims for monetary relief, or for Defense Costs only for Claims for non-monetary relief as defined under Section 2.3, by reason of a judgment, arbitration award, entered as a judgment, or settlement, including any prejudgment or postjudgment interest on a judgment arising out of an Occurrence subject to the LIMITS OF LIABILITY as provided in the DECLARATIONS.
- 8.30. **War** means war whether or not declared, civil war, martial law, insurrection, revolution, invasion, bombardment or any use of military force, usurped power or confiscation, nationalization or damage of property by any government, military or other authority.

## **SECTION 9. GENERAL EXCLUSIONS**

The following EXCLUSIONS shall apply to all coverages, Section 10 through Section 14, contained in this Memorandum:

- 9.1. Any liability arising out of Claims, demands, or actions seeking relief or redress in any form other than Damages; or for fees or expenses relating to Claims, demands or actions seeking relief or redress in any form other than Damages, except to the extent otherwise provided under Section 2 of this Memorandum related to the payment of Defense Costs.
- 9.2. Any liability arising out of fines, punitive damages, penalties, exemplary damages, or damage multiples such as double or treble damages awardable pursuant to statute.
- 9.3. Any liability arising out of the willful violation of a statute, ordinance or regulation, where the violation can result in the imposition of criminal or civil penalties, committed by or with the knowledge or consent of a COVERED PARTY; except that no violation by any COVERED PARTY shall be imputed to any other COVERED PARTY.
- 9.4. Any liability of a COVERED PARTY arising in whole or in part out of the COVERED PARTY obtaining remuneration or financial gain to which the COVERED PARTY was not legally entitled.
- 9.5. Any liability arising out of any deliberately dishonest or fraudulent act or omission, or any criminal or malicious act or omission, or any willful violation of the law.

However, a COVERED PARTY shall be covered under the terms of this Memorandum for any Claims against them by reason of any alleged dishonesty on the part of the COVERED PARTY unless a judgment or other final adjudication thereof adverse to the COVERED PARTY shall establish that acts of deliberate dishonesty committed by the COVERED PARTY were material to the Claim.

- 9.6. Any liability arising out of a COVERED PARTY's contractual assumption of indemnification for liability for Damages, unless the COVERED PARTY would otherwise have been liable for such Damages in the absence of the assumption.
- 9.7. Any liability based on or arising out of a notarized certification of a signature without the physical appearance before a notary public.
- 9.8. Any liability for Claims arising out of or related to a Collective Bargaining Agreement.

## **SECTION 10. GENERAL LIABILITY COVERAGE**

### **10.1. General Liability Coverage**

The MMIA agrees to pay on behalf of a COVERED PARTY those sums as part of the Ultimate Net Loss up to the LIMITS OF LIABILITY which the COVERED PARTY shall

become obligated to pay by reason of liability imposed by law because of a covered Claim for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, or Professional Liability to which this Coverage Section applies, caused by an Occurrence during the COVERAGE PERIOD.

## 10.2. General Liability Coverage EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following are excluded from coverage under the General Liability Coverage provided by this Memorandum:

- 10.2.1. Any liability for Public Officials Errors or Omissions, Employment Practices, Employee Benefit Liability, or Land Use Practices Liability .
- 10.2.2. Any liability arising out of the discharge, dispersal, release or escape of Pollutants, anywhere in the world;
  - (1) Any obligation to defend any Claim against a COVERED PARTY alleging Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, or Land Use Practices Liability and seeking Damages, if such Claim arises from Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, or Land Use Practices Liability arising out of the discharge, dispersal, release or escape of Pollutants, anywhere in the world;
  - (2) Any liability arising out of any governmental direction or request that a COVERED PARTY test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of Pollutants;
  - (3) Any liability incurred by a COVERED PARTY or other third party, including but not limited to cost of investigation and monitoring, and attorneys' fees, relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize Pollutants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), or any other environmental statute or regulation promulgated by any federal, state or local authority, including any liability arising out of any governmental directions or request that a COVERED PARTY test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants situated on any premises which the COVERED PARTY owns, rents or otherwise occupies, or will own, rent or occupy in the future.
  - (4) Any liability directly or indirectly arising out of, resulting from or in any manner related to Fungal Pathogens or bacteria whether or not there is another cause that may have contributed to concurrently or in any sequence to an Occurrence.

Notwithstanding the above EXCLUSION, the following shall be exempted from this EXCLUSION:

- (1) 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 the police use of mace, oleoresin, capsicum (O.C.), pepper gas or tear gas, or any other chemical recognized and authorized for use by law enforcement authorities; or to weed abatement, tree spraying or insect or mosquito control conducted by a licensed operator using herbicides or pesticides which have been duly licensed by any federal, state or local governmental agency and are being used or applied by the operator for the intended use.
  - (2) Bodily Injury or Property Damage caused by heat, smoke, or fumes from a hostile fire. As used in this EXCLUSION, a hostile fire means one which becomes uncontrollable or breaks out where it was not intended to be.
  - (3) The discharge, dispersal, release or escape of Pollutants caused by a collision, upset, or overturn of any Automobile .
  - (4) Any Claim arising from materials being collected as part of any drop -off or curbside recycling program implemented and operated by a COVERED PARTY, or any Claim arising from materials collected by the COVERED PARTY which were abandoned on public property; if the materials have not been stored by the COVERED PARTY for a continuous period exceeding ninety (90) days.
  - (5) Any Claim arising from sudden and accidental sanitary and storm sewer backups on any property intended for use or occupancy.
  - (6) Any Claim arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine or other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or waste water treatment or in water used in swimming pools, wading pools, or decorative fountains owned and operated by a COVERED PARTY.
- 10.2.3. Any liability for Bodily Injury or Personal Injury to an employee of a COVERED PARTY arising out of and in the course of employment by the COVERED PARTY, or for the spouse, child, parent, brother or sister of that employee as a consequence of actions of the employee arising out of and in the course of employment by a COVERED PARTY.

This EXCLUSION applies whether a COVERED PARTY may be liable as an employer or in any other capacity, except with respect to liability of others assumed under contract.

This EXCLUSION shall not apply where the Bodily Injury or the Personal Injury alleged to have occurred is determined not to be a compensable injury within the meaning of the Workers' Compensation and Occupational Disease Acts of the State of Montana.

- 10.2.4. Any obligation for which a COVERED PARTY, or any insurance company or self-insurance pool of which the COVERED PARTY is a member as its insurer, may be held liable under any workers' compensation or disability benefits law or

any similar law.

- 10.2.5. Any liability arising out of the ownership, loading or unloading, rental, lease, borrowing, loaning, navigation, operation, piloting, use or maintenance of any Aircraft or Air Navigation Facility, including skydiving, hot air ballooning, hang gliding or other similar aerial activities.

However, in connection with airfields, runways, hangars, buildings or other properties in connection with aviation activities, this EXCLUSION shall not apply to those areas open to the public for the purpose of entering, leaving, or using the Airport Premises; and as respects vendors and tradesmen, this coverage shall be excess over any valid and collectible insurance. Provided, however, that this coverage may be waived by written ENDORSEMENT with the express written consent of the Member Entity. "Loading" and "unloading" of aircraft as set forth above shall not apply to paramedics, nurses or emergency medical technicians employed or acting on behalf of the Entity.

- 10.2.6. Any liability arising out of, or in connection with, the ownership or operation of any hospital, clinic, veterinary clinic, pharmacy, or established health care facility, including but not limited to:

- (1) The rendering of or failure to render:
  - (a) Medical, surgical, dental, X-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
  - (b) Any service or treatment related to physical or mental health or of a professional nature or;
  - (c) Any cosmetic or tonsorial service or treatment;
  - (d) Any veterinary service or treatment;
- (2) The furnishing of or dispensing of drugs or medical, dental, or surgical supplies or appliances.

This EXCLUSION shall not apply, however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or emergency medical technicians.

- 10.2.7. Any liability arising out of partial or complete structural failure of a Dam.
- 10.2.8. Any liability for Property Damage to property owned by a COVERED PARTY, or property rented to or leased to the COVERED PARTY where it has assumed liability for damage to or destruction of such property, unless the COVERED PARTY would have been liable in the absence of such assumption of liability.
- 10.2.9. Any liability arising out of the failure to supply or provide an adequate supply of gas, water or electricity when such failure is a result of the inadequacy or interruption of a COVERED PARTY's facilities to supply or produce sufficient gas, water or electricity to meet the demand.
- 10.2.10. Any liability:

- (1) With respect to which a COVERED PARTY is also an insured under a nuclear energy liability Coverage Document issued by Nuclear Energy

- Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, any similar Coverage Document or would be an insured under any such Coverage Document but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of Nuclear Material and with respect to which:
    - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
    - (b) The COVERED PARTY is, or had this coverage document not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - (3) With respect to expenses incurred resulting from the "hazardous properties" of Nuclear Material and arising out of the operation of a "nuclear facility" by any person or organization.
  - (4) Resulting from the "hazardous properties" of Nuclear Material, if:
    - (a) The Nuclear Material:
      - (i) Is at any "nuclear facility" owned by, operated by, or on behalf of, a COVERED PARTY; or
      - (ii) Has been discharged or dispersed there from;
    - (b) The Nuclear Material is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a COVERED PARTY; or
    - (c) The injury or damage arises out of the furnishing by a COVERED PARTY of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this EXCLUSION (iii) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this EXCLUSION:

- (1) "Byproduct material, source material and special nuclear material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- (2) "Hazardous properties" include radioactive, toxic or explosive properties.
- (3) "Nuclear facility" means:
  - (a) Any "nuclear reactor";
  - (b) Any equipment or device designed or used for:
    - (i) Any "nuclear reactor";
    - (ii) Any equipment or device designed or used for:
      - (a) Separating the isotopes of uranium or plutonium;
      - (b) Processing or unitizing "spent fuel"; or
      - (c) Handling, processing or packaging "waste";
  - (c) Any equipment or device used for the processing, fabricating or alloying of a "special nuclear material" if at any time the total amount of such material in the custody of the COVERED PARTY at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any

- combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage of disposal of "waste"; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
  - (4) "Nuclear material" means "byproduct material", "source material" or "special nuclear material".
  - (5) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
  - (6) "Property damage" includes all forms of radioactive contamination of property.
  - (7) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
  - (8) "Waste" means any waste material:
    - (a) Containing "byproduct material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and
    - (b) Resulting from the operation by any person or organization or any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

10.2.11. Any liability arising out of the following special activities:

- (1) Air shows involving the aerial display of Aircraft;
- (2) Circuses;
- (3) Rodeos;
- (4) Fireworks involving the ignition of a commercial or COVERED PARTY's sponsored display;
- (5) Animal racing;
- (6) Carnival or amusement rides;
- (7) Motorized vehicle racing;
- (8) Water sports other than those associated with municipal swimming pools, lakes or other municipal designated aquatic areas;
- (9) The rental of any motorized vehicle or apparatus used for individual conveyance or entertainment;
- (10) Boxing or other martial arts competition.

10.2.12. Any liability arising out of a publication or utterance concerning any organization or business enterprise, or its products or services, made by or at the direction of any COVERED PARTY with knowledge of the falsity thereof.

10.2.13. Any liability arising out of the assessment of taxes, fees or other assessments, or failure to refund taxes, fees or other assessments.

10.2.14. Any liability arising out of failure to perform, or breach of, a contractual obligation.

This EXCLUSION also applies to liability arising out of defaulting on municipal financing instruments, including but not limited to:

- (1) Special Obligation Bonds
- (2) Special Tax Bonds
- (3) Special Assessment Bonds and Notes
- (4) Revenue Bonds
- (5) Industrial Revenue Bonds
- (6) Moral Obligation Bonds
- (7) Short-term Debt Bonds
- (8) Particular Obligations Issued Pursuant to Federal Programs

- 10.2.15. Any liability arising out of estimates of probable costs or cost estimates being exceeded or faulty preparation of bid or contract specifications or plans, including architectural plans, or failure to award contracts in accordance with a statute or ordinance which under law must be submitted for bids.
- 10.2.16. Any liability arising out of the Employee Retirement Income Security Act of 1974, and any law amendatory thereof, or similar provisions of any federal, state or local statutory law or common law.
- 10.2.17. Any liability for failure to fund or to pay any principal or interest owed for any retirement, health or welfare benefit provided by a COVERED PARTY whether voluntarily or pursuant to any federal, state or local law, statute or ordinance.
- 10.2.18. Any liability for Property Damage arising solely out of an act of vandalism, theft or other criminal act.
- 10.2.19. Any liability arising out of Property Damage to personal property loaned to a COVERED PARTY for temporary use or claim arising out of Property Damage to personal property belonging to another, but stored by the COVERED PARTY, with or without charge. However, this EXCLUSION does not apply to (a) property of persons who are involuntarily confined by the COVERED PARTY, or (b) property held as evidence or otherwise seized or impounded by the COVERED PARTY; provided that in either the case of (a) or (b), above, the property has been accurately recorded by the COVERED PARTY and is reasonably secured by the COVERED PARTY.
- 10.2.20. Any liability arising out of the use of a structure designed to facilitate the operation or use of a skateboard, whether or not the structure is utilized for skateboarding purposes.
- However, this EXCLUSION does not apply to liability arising out of the use of a structure designed to facilitate the operation or use of a skateboard if the COVERED PARTY has applied for and received from the Authority an ENDORSEMENT for Skateboard Facilities.
- 10.2.21. Any liability arising out of, or based on, principles of Quantum Meruit.
- 10.2.22. Any liability arising out of any Claim for salary or hourly wages and benefits, back wages and benefits, front wages, or overtime, future benefits, severance obligations, or similar demands, even if liquidated damages under federal, state, or local statute, rule or regulation.
- 10.2.23. Any liability, including all Damages, directly or indirectly arising out of or related

to the liability of a COVERED PARTY involved in or acting as Contractors for Residential Construction.

10.2.24. Any liability arising, directly or indirectly, out of Terrorism, including any action taken in hindering or defending against an actual or expected incident of terrorism regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

10.2.25. Any liability arising, directly or indirectly, out of War. This includes all Damages directly or indirectly arising out of, resulting as a consequence of or related to War.

This EXCLUSION shall apply whether or not there is another cause of injury or Damages which may have contributed concurrently or in any sequence to an injury or Damages.

10.2.26. Any liability arising out of an Employment Practices Claim seeking damages or other relief, direct or consequential, for or arising out of Bodily Injury or loss of consortium.

10.2.27. Any liability for any Employment Practices Claim seeking Damages or other relief, direct or consequential, arising from physical injury to or destruction of any tangible property, including loss of use thereof.

10.2.28. Any liability arising out of the Federal Fair Labor Standards Act or similar state laws.

10.2.29. Any liability arising out of a lock-out, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations.

10.2.30. Any liability arising out of the Workers' Adjustment and Retraining Act or any similar federal, state, or local law.

10.2.31. Any liability for any Employment Practices Claim seeking insurance benefits which the claimant may have been entitled to receive pursuant to any federal or state law or regulation regarding the continuation of insurance after termination of employment.

## **SECTION 11. PUBLIC OFFICIALS ERRORS AND OMISSIONS**

### 11.1. Public Officials Errors and Omissions Coverage

The MMIA agrees to pay on behalf of a COVERED PARTY those sums as part of the Ultimate Net Loss up to the LIMITS OF LIABILITY which the COVERED PARTY shall become obligated to pay by reason of liability imposed by law because of a covered Claim for Public Officials Errors and Omissions to which this Coverage Section applies, caused by an Occurrence during the COVERAGE PERIOD.

### 11.2. Public Officials Errors and Omissions EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following EXCLUSIONS apply to Public Officials Errors and Omissions coverage provided by this Memorandum:

- 11.2.1 Any liability for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Employment Practices, Employee Benefit Liability, or Land Use Practices Liability.
- 11.2.2. Any liability arising out of the discharge, dispersal, release or escape of Pollutants, anywhere in the world;
  - (1) Any obligation to defend any Claim against a COVERED PARTY alleging Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, or Land Use Practices Liability and seeking Damages, if such Claim arises from Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, or Land Use Practices Liability arising out of the discharge, dispersal, release or escape of Pollutants, anywhere in the world;
  - (2) Any liability arising out of any governmental direction or request that a COVERED PARTY test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of Pollutants;
  - (3) Any liability incurred by a COVERED PARTY or other third party, including but not limited to cost of investigation and monitoring, and attorneys' fees, relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize Pollutants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), or any other environmental statute or regulation promulgated by any federal, state or local authority, including liability or expense arising out of any governmental directions or request that a COVERED PARTY test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants situated on any premises which a COVERED PARTY owns, rents or otherwise occupies, or will own, rent or occupy in the future.
  - (4) Any liability directly or indirectly arising out of, resulting from or in any manner related to Fungal Pathogens or bacteria whether or not there is another cause that may have contributed to concurrently or in any sequence to an Occurrence.

Notwithstanding the above EXCLUSION the following shall be exempted from this EXCLUSION:

- (1) 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 the police use of mace, oleoresin, capsicum, (O.C.), pepper gas or tear gas, or any other chemical recognized and authorized for use by law enforcement authorities; or to

weed abatement, tree spraying or insect or mosquito control conducted by a licensed operator using herbicides or pesticides which have been duly licensed by any federal, state or local governmental agency and are being used or applied by the operator for the intended use.

- (2) Bodily Injury or Property Damage caused by heat, smoke, or fumes from a hostile fire. As used in this EXCLUSION, a hostile fire means one which becomes uncontrollable or breaks out where it was not intended to be.
- (3) The discharge, dispersal, release or escape of Pollutants caused by a collision, upset, or overturn of any Automobile.
- (4) Any Claim arising from materials being collected as part of any drop-off or curbside recycling program implemented and operated by a COVERED PARTY, or any Claim arising from materials collected by the COVERED PARTY which were abandoned on public property; if the materials have not been stored by the COVERED PARTY for a continuous period exceeding ninety (90) days.
- (5) Any Claim arising from sudden and accidental sanitary and storm sewer backups on any property intended for use or occupancy.
- (6) Any Claim arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine or other chemicals (gas, liquid or solid) which are being used or being prepared for use in fresh or waste water treatment or in water used in swimming pools, wading pools, or decorative fountains owned and operated by the COVERED PARTY.

11.2.3. Any liability arising out of partial or complete structural failure of a Dam.

11.2.4. Any liability arising out of the failure to supply or provide an adequate supply of gas, water or electricity when such failure is a result of the inadequacy or interruption of a COVERED PARTY's facilities to supply or produce sufficient gas, water or electricity to meet the demand.

11.2.5. Any liability:

- (1) With respect to which a COVERED PARTY is also an insured under a nuclear energy liability Coverage Document issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, any similar Coverage Document or would be an insured under any such Coverage Document but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of Nuclear Material and with respect to which:
  - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
  - (b) The COVERED PARTY is, or had this coverage document not been issued would be, entitled to indemnity from the United States of

America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- (3) With respect to expenses incurred resulting from the “hazardous properties” of Nuclear Material and arising out of the operation of a “nuclear facility” by any person or organization.
- (4) Resulting from the “hazardous properties” of Nuclear Material, if:
  - (a) The Nuclear Material:
    - (i) Is at any “nuclear facility” owned by, operated by, or on behalf of, a COVERED PARTY; or
    - (ii) Has been discharged or dispersed therefrom;
  - (b) The Nuclear Material is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a COVERED PARTY; or
  - (c) The injury or Damage arises out of the furnishing by a COVERED PARTY of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any “nuclear facility”, but if such facility is located within the United States of America, its territories or possessions or Canada, this EXCLUSION (iii) applies only to “property damage” to such “nuclear facility” and any property thereat.

As used in this EXCLUSION:

- (1) “Byproduct material, source material and special nuclear material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- (2) “Hazardous properties” include radioactive, toxic or explosive properties.
- (3) “Nuclear facility” means:
  - (a) Any “nuclear reactor”;
  - (b) Any equipment or device designed or used for:
    - (i) Any “nuclear reactor”;
    - (ii) Any equipment or device designed or used for:
      - (a) Separating the isotopes of uranium or plutonium;
      - (b) Processing or unitizing “spent fuel”; or
      - (c) Handling, processing or packaging “waste”;
  - (c) Any equipment or device used for the processing, fabricating or alloying of a “special nuclear material” if at any time the total amount of such material in the custody of the COVERED PARTY at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of “waste”; and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- (4) “Nuclear material” means “byproduct material”, “source material” or

- “special nuclear material”.
- (5) “Nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
  - (6) “Property damage” includes all forms of radioactive contamination of property.
  - (7) “Spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a “nuclear reactor”.
  - (8) “Waste” means any waste material:
    - (a) Containing “byproduct material” other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its “source material” content; and
    - (b) Resulting from the operation by any person or organization or any “nuclear facility” included under the first two paragraphs of the definition of “nuclear facility”.

11.2.6. Any liability arising out of a publication or utterance concerning any organization or business enterprise, or its products or services, made by or at the direction of any COVERED PARTY with knowledge of the falsity thereof.

11.2.7. Any liability arising out of the assessment of taxes, fees or other assessments, or failure to refund taxes, fees or other assessments.

11.2.8. Any liability arising out of failure to perform, or breach of, a contractual obligation.

This EXCLUSION also applies to liability arising out of defaulting on municipal financing instruments, including but not limited to:

- (1) Special Obligation Bonds
- (2) Special Tax Bonds
- (3) Special Assessment Bonds and Notes
- (4) Revenue Bonds
- (5) Industrial Revenue Bonds
- (6) Moral Obligation Bonds
- (7) Short-term Debt Bonds
- (8) Particular Obligations Issued Pursuant to Federal Programs

11.2.9. Any liability arising out of estimates of probable costs or cost estimates being exceeded or faulty preparation of bid or contract specifications or plans including architectural plans or failures to award contracts in accordance with a statute or ordinance which under law must be submitted for bids.

11.2.10. Any liability arising out of the Employee Retirement Income Security Act of 1974, and any law amendatory thereof, or similar provisions of any federal, state or local statutory law or common law.

11.2.11. Any liability for failure to fund or to pay any principal or interest owed for any retirement, health or welfare benefit provided by a COVERED PARTY whether voluntarily or pursuant to any federal, state or local law, statute or ordinance.

- 11.2.12. Any liability arising out of, or based on, principles of Quantum Meruit.
- 11.2.13. Any liability arising out of any Claim for salary or hourly wages and benefits, back wages and benefits, front wages, or overtime, future benefits, severance obligations, or similar demands, even if liquidated damages under federal, state, or local statute, rule or regulation.
- 11.2.14. Any liability, including all Damages directly or indirectly arising out of or related to the liability of a COVERED PARTY involved in or acting as Contractors for Residential Construction.
- 11.2.15. Any liability arising, directly or indirectly, out of Terrorism, including any action taken in hindering or defending against an actual or expected incident of terrorism regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.
- 11.2.16. Any liability arising, directly or indirectly, out of War. This includes all Damages directly or indirectly arising out of, resulting as a consequence of or related to War.

This EXCLUSION shall apply whether or not there is another cause of injury or Damages which may have contributed concurrently or in any sequence to an injury or Damages.

- 11.2.17. Any liability arising out of an Employment Practices Claim seeking damages or other relief, direct or consequential, for or arising out of Bodily Injury or loss of consortium.
- 11.2.18. Any liability for any Employment Practices Claim seeking Damages or other relief, direct or consequential, arising from physical injury to or destruction of any tangible property, including loss of use thereof.
- 11.2.19. Any liability arising out of the Federal Fair Labor Standards Act or similar state laws.
- 11.2.20. Any liability arising out of a lock-out, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations.
- 11.2.21. Any liability arising out of the Workers' Adjustment and Retraining Act or any similar federal, state, or local law.
- 11.2.22. Any liability for any Employment Practices Claim seeking insurance benefits which the claimant may have been entitled to receive pursuant to any federal or state law or regulation regarding the continuation of insurance after termination of employment.
- 11.2.23. Any liability arising out of the ownership, loading or unloading, rental, lease, borrowing, loaning, navigation, operation, piloting, use or maintenance of any Aircraft or Air Navigation Facility, including skydiving, hot air ballooning, hang gliding or other similar aerial activities.
- 11.2.24. Any liability arising out of, or in connection with, the ownership or operation of

any hospital, clinic, veterinary clinic, pharmacy, or established health care facility, including but not limited to:

- (1) The rendering of or failure to render:
  - (a) Medical, surgical, dental, X-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
  - (b) Any service or treatment related to physical or mental health or of a professional nature or;
  - (c) Any cosmetic or tonsorial service or treatment;
  - (d) Any veterinary service or treatment;
- (2) The furnishing of or dispensing of drugs or medical, dental, or surgical supplies or appliances.

This EXCLUSION shall not apply, however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or emergency medical technicians.

11.2.25. Any liability arising out of the following special activities:

- (1) Air shows involving the aerial display of Aircraft;
- (2) Circuses;
- (3) Rodeos;
- (4) Fireworks involving the ignition of a commercial or COVERED PARTY sponsored display;
- (5) Animal racing;
- (6) Carnival or amusement rides;
- (7) Motorized vehicle racing;
- (8) Water sports other than those associated with municipal swimming pools, lakes or other municipal designated aquatic areas;
- (9) The rental of any motorized vehicle or apparatus used for individual conveyance or entertainment;
- (10) Boxing or other martial arts competition.

11.2.26. Any liability arising out of the use of a structure designed to facilitate the operation or use of a skateboard, whether or not the structure is utilized for skateboarding purposes.

## **SECTION 12. EMPLOYMENT PRACTICES COVERAGE**

### 12.1. Employment Practices Coverage

The MMIA agrees to pay on behalf of a COVERED PARTY which has completed the qualifications for and has obtained an ENDORSEMENT with respect to Employment Practices Coverage those sums as part of the Ultimate Net Loss up to the LIMITS OF LIABILITY which the COVERED PARTY shall become obligated to pay by reason of liability imposed by law because of a covered Claim for Employment Practices, under Coverage C, to which this Coverage Section applies, caused by an Occurrence during the COVERAGE PERIOD. Coverage C for Employment Practices is subject to the per

Occurrence sublimit Ultimate Net Loss and for the COVERAGE PERIOD as set forth in the DECLARATIONS.

## 12.2. Employment Practices Coverage Definitions

“Employment Practices” with respect to Coverage C means any act relating to a past, present, or prospective employee of a COVERED PARTY for or arising out of any actual or alleged wrongful dismissal, discharge, or termination, either actual or constructive, of employment, employment related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful discipline, failure to grant tenure or negligent employee evaluation; or sexual or workplace harassment of any kind, including, but not limited to, the alleged operation of a harassing workplace environment, or unlawful discrimination, whether direct, indirect, intentional or unintentional, or failure to provide adequate employee policies and procedures.

Employment Practices Coverage shall include coverage for Claims brought under state, local, or federal law, whether common or statutory, including but not limited to Equal Employment Opportunity Commission and Montana Human Rights Commission complaints alleging an Occurrence during the COVERAGE PERIOD. Employment Practices Coverage shall include, but is not limited to, coverage for allegations of violations of the following federal laws, as amended, including regulations promulgated thereunder to the extent that the Claim alleges an act within the definition of Employment Practices and not otherwise excluded pursuant to this Memorandum :

- 12.2.1. Americans with Disabilities Act of 1992 (ADA) and ADA Amendments Act of 2008;
- 12.2.2. Civil Rights Act of 1991;
- 12.2.3. Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990;
- 12.2.4. Title VII of the Civil Rights Law of 1964, as amended (1983), including the Pregnancy Discrimination Act of 1978;
- 12.2.5. Civil Rights Act of 1866, Section 1981; or
- 12.2.6. Fifth and Fourteenth amendments of the U.S. Constitution.

## 12.3. Employment Practices Coverage EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following EXCLUSIONS apply to Employment Practices coverage provided by this Memorandum:

- 12.3.1. Any liability for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors and Omissions, Employee Benefit Liability, or Land Use Practices Liability.
- 12.3.2. Any liability arising out of Employment Practices where a COVERED PARTY has not completed the qualifications for and has not obtained an ENDORSEMENT with respect to Employment Practices coverage.
- 12.3.3. Any liability arising out of any Claim for loss arising out of a lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations.
- 12.3.4. Any liability arising out of any Claim for loss 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.

- 12.3.5. Any liability arising out of any Claim related to the modification of any building or property in order to make said building or property more accessible or accommodating to any disabled person. However, Damages from failure to make such an accommodation shall be a covered Employment Practice .
- 12.3.6. Any liability arising out of any Claim , other than a Claim alleging wrongful Employment Practices as defined under Section 12.2, for salary or hourly wages and benefits, back wages and benefits, front wages, or overtime, future benefits, severance obligations, or similar demands, even if liquidated damages under federal, state, or local statute, rule or regulation .
- 12.3.7. Any liability arising out of the Employee Retirement Income Security Act of 1974, and any law amendatory thereof, or similar provisions of any federal, state or local statutory law or common law.
- 12.3.8. Any liability for failure to fund or to pay any principal or interest owed for any retirement, health or welfare benefit provided by a COVERED PARTY whether voluntarily or pursuant to any federal, state or local law, statute or ordinance.

## **SECTION 13. EMPLOYEE BENEFIT LIABILITY COVERAGE**

### 13.1. Employee Benefit Liability Coverage.

The MMIA agrees to pay on behalf of a COVERED PARTY those sums as part of the Ultimate Net Loss up to the LIMITS OF LIABILITY which the COVERED PARTY shall become obligated to pay by reason of liability imposed by law because of a covered Claim for Employee Benefit Liability, under Coverage D, to which this Coverage Section applies, because of an Occurrence during the COVERAGE PERIOD . Coverage D for Employee Benefit Liability is subject to the per Occurrence sublimit Ultimate Net Loss and for the COVERAGE PERIOD as set forth in the DECLARATIONS.

### 13.2. Employee Benefit Liability Coverage Definitions.

“Employee Benefit Liability“ under Coverage D s means legal liability which a COVERED PARTY shall become obligated to pay by reason of liability imposed by law for any wrongful act, error or omission of a COVERED PARTY for whose acts the COVERED PARTY is legally liable in the administration of the COVERED PARTY’s Employee Benefits Programs as defined herein , caused by an Occurrence during the COVERAGE PERIOD.

“Employee Benefits Programs” means group life insurance, group accident or health insurance, pension plans, workers’ compensation, unemployment insurance, social security benefits, disability benefits, retirement plans, dependent care assistance plans and any other similar benefit program.

“Administration“ under Coverage D shall mean one of the following actions performed by a COVERED PARTY of the Entity:

- 13.2.1. giving counsel to employees with respect to the Employee Benefits Programs;
- 13.2.2. interpreting the Employee Benefits Programs;
- 13.2.3. handling of records in connection with the Employee Benefits Programs; or
- 13.2.4. affecting enrollment, termination or cancellation of employees or omission of the Entity or COVERED PARTY in the Administration (as defined herein) of the Entity's or COVERED PARTY's Employee Benefits Program (as defined herein) occurring during the COVERAGE PERIOD.

### 13.3. Employee Benefit Liability Coverage EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following are not covered under Coverage D, Employee Benefit Liability:

- 13.3.1. Any liability for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors or Omissions, Employment Practices, or Land Use Practices Liability.
- 13.3.2. Any liability for advice given by a COVERED PARTY to an employee to participate or not in any investment or savings plan .
- 13.3.3. Any liability for any act, error or omission occurring before the Effective Date of this Memorandum.
- 13.3.4. Any liability for any Claim which results from an activity, act or omission of a third party administrator, a firm or person, other than an employee of the COVERED PARTY, who administers the COVERED PARTY's Employee Benefit Program;
- 13.3.5. Any liability for any Claim for benefits that are lawfully paid or payable to a beneficiary from the funds of an Employee Benefit Program that results from not having adequate insurance or bonds to protect the assets of an Employee Benefit Program;
- 13.3.6. Any liability based upon changes in the ultimate cost or level of any benefit program available to any employee of a COVERED PARTY or changes made to any benefit program resulting from efforts of the COVERED PARTY to comply with any tax laws or other laws which results in changes to the benefits available to any employee of the COVERED PARTY;
- 13.3.7. Any liability for any Claim for failure or performance of a contract by any Insurer, or to any Claim based upon failure of stocks, bonds or other securities to produce financial gain, profit or growth as represented by a COVERED PARTY;
- 13.3.8. Any liability arising out of the Employee Retirement Income Security Act of 1974, and any law amendatory thereof, or similar provisions of any federal, state or local statutory law or common law:
- 13.3.9. Any liability for any Claim based upon a COVERED PARTY's failure to comply with any law concerning workers' compensation, unemployment insurance, social security or disability benefits;

- 13.3.10. Any liability for any Claim, other than a Claim alleging a wrongful act, error or omission in the administration of an Employee Benefit Program as defined under Section 13.2 due to back wages and benefits, front wages, or overtime, future benefits, severance obligations, or similar demands, even if liquidated Damages under federal, state, or local statute, rule or regulation.
- 13.3.11. Any liability for failure to fund or to pay any principal or interest owed for any retirement, health or welfare benefit provided by a COVERED PARTY whether voluntarily or pursuant to any federal, state or local law, statute or ordinance.

## **SECTION 14. LAND USE PRACTICES**

### 14.1. Land Use Practices Coverage.

The MMIA agrees to pay on behalf of a COVERED PARTY those sums as part of the Ultimate Net Loss up to the LIMITS OF LIABILITY which the COVERED PARTY shall become obligated to pay by reason of liability imposed by law because of a covered Claim for Land Use Practices, under Coverage E, to which this Coverage Section applies, caused by an Occurrence during the COVERAGE PERIOD. Coverage E for Land Use Practices is subject to the per Occurrence sub limit Ultimate Net Loss and for the COVERAGE PERIOD as set forth in the DECLARATIONS.

### 14.2. Land Use Practices Definitions.

“Land Use Practices Liability” under Coverage E means legal liability which a COVERED PARTY shall become obligated to pay by reason of liability imposed by law because of a covered Claim, including Property Damage or diminution of property value, arising out of, or based upon, land use regulation, interim takings, takings, down-zoning, zoning, general planning regulations, easements, nuisance, or annexation, including deprivation of constitutional or civil rights related thereto, caused by an Occurrence during the COVERAGE PERIOD.

### 14.3. Land Use Practices EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following are not covered under Coverage E, Land Use Practices:

- 14.3.1. Any liability for Bodily Injury, Personal Injury, Property Damage, Automobile Liability, Professional Liability, Public Officials Errors or Omissions, Employment Practices, or Employment Benefit Liability.
- 14.3.2. Any liability for a Claim arising out of or in connection with the principles of eminent domain, mandamus to compel eminent domain, precondemnation activities, condemnation proceedings, or inverse condemnation by whatever name regardless of whether such Claims are made directly against a COVERED PARTY or by virtue of any agreement entered into, by or on behalf of the COVERED PARTY.
- 14.3.3. Any liability for a Claim as a result of subsidence. “Subsidence”, with respect

to Coverage E hereunder means any earth movement, including but not limited to settling, expansion, earth sinking, earth rising or shifting, slipping, falling away, tilting, caving in, eroding, mud flows and any other movement of land or earth. This EXCLUSION does not apply to Property Damage arising out of subsidence proximately caused by the negligent act or omission of a COVERED PARTY.

- 14.3.4. Any liability, including all Damages, directly or indirectly arising out of or related to the liability of a COVERED PARTY involved in or acting as Contractors for Residential Construction.

## SECTION 15. CONDITIONS

- 15.1. Payment of Assessments.

The COVERED PARTY agrees to pay all risk assessments, risk assessment adjustments, deferred risk assessment adjustments, debt service assessments and supplemental debt service assessments as specified in the Liability Coverage Program Agreement, as the same may be amended from time to time.

- 15.2. Inspection of COVERED PARTY's Property and Operations.

The Authority shall be permitted but not obligated to inspect a COVERED PARTY's property and operations at any time. Neither such right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of, or for the benefit of, the COVERED PARTY or others to determine or warrant that such property or operations are safe. The Authority may examine the COVERED PARTY's books and records at any time during the COVERAGE PERIOD and extensions thereof and within eight years after the final termination of this Memorandum as they relate to the subject matter of this Memorandum.

- 15.3. A COVERED PARTY's Duty in the Event of any Occurrence or Claim.

- 15.3.1. In the event of an Occurrence reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the COVERED PARTY and reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the COVERED PARTY(ies) and of available witnesses, shall be given by or for the COVERED PARTY to the Authority or any of its authorized agents as soon as practicable.
- 15.3.2. If a Claim is made or brought against a COVERED PARTY, the COVERED PARTY shall timely forward to the Authority every demand, notice, summons or other process received by the COVERED PARTY or the COVERED PARTY's representative.
- 15.3.3. A COVERED PARTY shall cooperate with the Authority and upon its request 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 COVERED PARTY because of an Occurrence with respect to which coverage is afforded under this Memorandum; and the COVERED

PARTY shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The COVERED PARTY shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense.

15.4. Bankruptcy or Insolvency.

Bankruptcy or Insolvency of a COVERED PARTY shall not relieve the Authority of any of its obligations hereunder.

15.5. Insurance Coverage Separately Maintained by a COVERED PARTY .

If a COVERED PARTY has collectible insurance for an Ultimate Net Loss also covered hereunder (whether primary, excess, contributory, contingent or otherwise), the coverage provided by this Memorandum shall be in excess of and shall not contribute with such insurance. This clause does not apply with respect to excess insurance or reinsurance purchased by the Authority.

15.6. Reimbursement from Entity or a COVERED PARTY.

In the event the Authority has paid any amounts in settlement or satisfaction of Claims, judgments, or awards, including interest, or for Claim expenses in excess of the applicable LIMITS OF LIABILITY, or within the amount of the applicable DEDUCTIBLE, or if the Authority in good faith has paid any amounts for which the Authority has no liability under this Memorandum, the Entity and any COVERED PARTY shall be jointly and severally liable to the Authority for any and all such amounts, and upon demand, shall pay such amounts to the Authority. The Authority shall inform the Entity and any COVERED PARTY in writing of its request for reimbursement. In the event an Entity or COVERED PARTY contests a request for reimbursement from the Authority, Section 15.10 will be the manner for resolution of the matters contested by the Entity or a COVERED PARTY.

15.7. Opportunity to Remedy in Event of Breach.

In the event the Authority considers a COVERED PARTY in breach of a term or condition of this Memorandum, the Interlocal Agreement creating the Montana Municipal Interlocal Authority, or the Liability Coverage Program Agreement, the Authority shall first give notice to the COVERED PARTY of the alleged breach and allow the COVERED PARTY the opportunity to remedy the same. In the event the COVERED PARTY considers the Authority in breach of a term or condition of this Memorandum, the Interlocal Agreement creating the Montana Municipal Interlocal Authority, or the Liability Coverage Program Agreement, the COVERED PARTY shall first give notice to the Authority of the alleged breach and allow the Authority the opportunity to remedy the same.

15.8. Assignment of Counsel.

The Authority shall have sole discretion in the assignment of legal counsel to defend any Claim brought against a COVERED PARTY which is covered by this Memorandum. In selecting legal counsel, the Authority may take into consideration such factors as the geographic area in which the Claim originates, the judicial district in which the Claim may be venued, the experience, skill and competence of potential legal counsel in handling

similar or identical Claims, the preference, if any, expressed by the COVERED PARTY for representation by a particular attorney or law firm, and the existence of or potential for a conflict of interest which would affect the ability of the attorney to represent the interests of the COVERED PARTY; provided, however, that none of the factors listed herein shall diminish the Authority's ability to select legal counsel. Any concerns of the selection of counsel by a COVERED PARTY must be expressed prior to the commencement of the defense.

#### 15.9. Authority to Settle Claims.

15.9.1. The Authority will not pay for more than the Ultimate Net Loss as specified in Section 2 and the DECLARATIONS; and

15.9.2. If the Authority recommends a settlement to a COVERED PARTY which is acceptable to a claimant and the COVERED PARTY does not agree to such settlement, then:

- (1) The LIMITS OF LIABILITY as specified in the DECLARATIONS shall be reduced to the sum of the amount of Damages for which the Claim could have been settled plus the amount of reasonable Defense Costs incurred up to the time the Authority made such recommendation; and
- (2) The Authority will not pay any prejudgment or postjudgment interest based upon that period of time after such recommendation is made.

15.9.3. In cases in which a COVERED PARTY is obligated to pay a portion of indemnity and/or file expense because a portion of an award to a claimant is not covered under the Authority's Memorandum of Coverage, the COVERED PARTY shall also pay its allocable share of Defense Costs. If such costs can be reasonably allocated, the COVERED PARTY shall pay the same percentage of attorney's fees and file expense as it is obligated to pay for indemnity expense. Upon finalization of all known expenses, the Authority will apportion the Damages and Defense Costs with the COVERED PARTY, then subtract the amount of the Entity Deductible from the Authority portion and invoice the COVERED PARTY for reimbursement. If the COVERED PARTY contests its allocated share of Damages and Defense Costs in the request for reimbursement as noted here and in Section 15.6, the COVERED PARTY may appeal said request by the process outlined in Section 15.10 hereunder.

15.10. Dispute Resolution for Contested Coverage Determinations, settlement or satisfaction of Claims, judgments, or awards, including interest, or Claim expenses in excess of the applicable LIMITS OF LIABILITY, or within the amount of the applicable DEDUCTIBLE, and reimbursement requests made of a COVERED PARTY by the Authority.

##### 15.10.1. Scope of Coverage

The Dispute Resolution Procedures set forth in this Section shall be followed in resolving any dispute, claim, or controversy arising between the Authority and a COVERED PARTY concerning determinations of coverage, settlement or satisfaction of Claims, judgments, or awards, including interest, or Claim expenses in excess of the applicable LIMITS OF LIABILITY, or within the amount of the applicable DEDUCTIBLE, and reimbursement requests made of a COVERED PARTY by the Authority, under the applicable Memorandum of Liability Coverage, including both determinations to deny coverage and/or

defense or to provide a defense subject to a reservation of rights (“Coverage Determination”).

#### 15.10.2. Procedure for Resolving Disputes

- (1) Appeal to Underwriting Committee.
  - (a) In the event that a COVERED PARTY is aggrieved by a Coverage Determination, request for reimbursement, or settlement determination, the COVERED PARTY shall initially appeal any adverse determination to the Underwriting Committee of the Board of Directors within thirty (30) calendar days of receiving the adverse determination.
  - (b) This appeal shall be initiated by sending written notification of the desire to appeal and the basis for the appeal to the Chief Executive Officer.
  - (c) The Chief Executive Officer or a designee shall, within three (3) business days of receipt of the appeal submit the documents received from the COVERED PARTY, together with such additional explanatory material as the Chief Executive Officer or a designee deems appropriate, to the members of the Underwriting Committee in writing.
  - (d) The Committee shall be convened within ten (10) business days after the Chief Executive Officer or a designee has sent to the Committee the appeals materials. Such meeting shall be conducted either by telephone conference call or in person at the discretion of the Committee Chair. Representatives of the COVERED PARTY and the Chief Executive Officer or a designee shall participate in any such conference call or meeting of the Committee and shall have an opportunity to be heard.
  - (e) The Committee may accept, reject, or modify in whole or in part the initial coverage determination which is the subject of the appeal and shall render its decision at the time such meeting is held.
  - (f) The Chief Executive Officer or a designee shall prepare a written statement of the reason(s) for the decision of the Underwriting Committee within five (5) business days after the Committee has made its decision. This statement of decision shall be provided to the COVERED PARTY.
  
- (2) Appeal of the Decision of Underwriting Committee to the Board of Directors.
  - (a) If the COVERED PARTY is aggrieved by the decision of the Underwriting Committee, that decision may be appealed to the Board of Directors of the Authority.
  - (b) The aggrieved party shall file a written notice of appeal, together with the basis for the appeal, with the Chief Executive Officer of the Authority within thirty (30) calendar days of the date of receipt of the written decision of the Underwriting Committee.
  - (c) In the event of an appeal to the Board, the Chief Executive Officer or a designee shall have seven (7) business days from receipt of the notice to submit to the Board any additional information concerning the decision of the Underwriting Committee together with the material received from the appealing COVERED PARTY.

- (d) The Board of Directors shall be convened within ten (10) business days after the Chief Executive Officer or a designee has sent to the Board of Directors the appeals material. Such meeting shall be conducted either by telephone conference call or in person at the discretion of the Board Chair. Representatives of the parties shall participate in any such conference call or meeting of the Board of Directors and shall have an opportunity to be heard.
- (e) The Board of Directors may accept, reject, or modify in whole or in part the Coverage Determination of the Underwriting Committee and shall render its decision at the time of such meeting .
- (f) The Chief Executive Officer or a designee shall prepare a written statement of the reason(s) for the decision of the Board of Directors within five (5) business days of the Board of Directors' determination which shall be provided to the appealing COVERED PARTY within such five (5) day period.

All elements of the Dispute Resolution Procedure must be satisfied before an aggrieved COVERED PARTY may take further legal action against the Authority.

- (3) Voluntary Submission to Binding Arbitration.
  - (a) In the event that the COVERED PARTY is aggrieved by the decision of the Board of Directors, the matter may be voluntarily submitted to binding arbitration.
  - (b) If the COVERED PARTY seeks to invoke binding arbitration, a request for binding arbitration shall be submitted within fourteen (14) calendar days of the date of receipt of the written decision of the Board.
  - (c) The request for binding arbitration shall be sent to the Chief Executive Officer of the Authority.
  - (d) The agreement between the COVERED PARTY and the Chief Executive Officer to submit to arbitration shall be in writing . In entering into an agreement to submit to arbitration, both parties must certify that they are voluntarily submitting to binding arbitration for that particular dispute, and that both parties voluntarily agree that the arbitrator's decision is binding upon both parties.
  - (e) Once an agreement to submit to arbitration is made, the Authority and the COVERED PARTY shall agree upon a single arbitrator within ten (10) business days of the filing of an agreement to submit to arbitration. In the event that the Authority and the COVERED PARTY cannot agree on the choice of an arbitrator, each party shall designate in writing within five (5) business days thereafter an arbitrator and the two arbitrators shall select a single arbitrator within five (5) business days thereafter who alone shall preside at the hearing and render a decision. In selecting an arbitrator, consideration may be given to a candidate's prior experience with, and knowledge of, matters related to insurance coverage disputes.
  - (f) The arbitrator shall commence a hearing within forty-five (45) calendar days of his/her designation.
  - (g) The Authority and the COVERED PARTY shall each pay one-half of the fees and costs of the arbitrator; and, each party shall pay its own fees and costs for representation at the arbitration.

- (h) Discovery shall be limited to an exchange of documents, list of expert and lay witnesses, a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion as contemplated by Montana Rules of Civil Procedure 26(b)(4)(A)(i), and a list of exhibits to be used at the hearing.
  - (i) Written interrogatories, requests for admission, and depositions shall not be permitted unless the parties stipulate otherwise, and such discovery is completed within the time set for the arbitration hearing.
  - (j) Upon appointment, the arbitrator shall convene as soon as practicable a preliminary prehearing conference, at which time the parties shall submit their respective Statement of Facts, Contentions, Issues of Law, and preliminary disclosure of witnesses and documents relevant to the arbitration.
  - (k) At the preliminary hearing, the arbitrator and the parties shall identify factual and legal issues and establish a schedule for the exchange of documents, reports, and other prehearing matters. Thereafter, the arbitrator shall issue a prehearing order setting forth agreed facts, facts in dispute, legal issues, and the timetable for further proceedings.
  - (l) The parties may stipulate to a determination by the arbitrator by way of summary judgment rather than hearing if there are no material facts in dispute.
  - (m) The arbitrator may require the filing of prehearing memoranda by the parties, which shall set forth the contested facts, the summary of applicable law, anticipated evidentiary issues which may arise at the hearing, and any other matters which the arbitrator may identify.
  - (n) The hearing shall be governed by the Montana Rules of Civil Procedure and the Montana Rules of Evidence. Testimony shall be under oath administered by the arbitrator; however, there shall be no stenographic transcript or other "official" record of hearing.
  - (o) Post hearing briefs shall not be permitted except by agreement of the parties and the arbitrator.
  - (p) The arbitrator shall render his or her decision in writing within thirty (30) calendar days of the close of the hearing.
  - (q) All decisions on appeals, whether by the Board of Directors (after the time to request arbitration has expired) or by the arbitrator shall be final and binding upon the Authority and the COVERED PARTY.
- (4) General Provisions
- (a) Admissibility of Certain Statements.  
The deliberations of the Underwriting Committee and the Board of Directors concerning any such appeal shall be deemed to be settlement discussions within the meaning of Rule 408 of the Montana Rules of Evidence and no statements of any committee member or board member or any other participant to such appeals shall be admissible in any subsequent proceedings, and only the final written decision of the Committee or the Board of Directors, as may be the case, shall form the basis for any subsequent appeal.
  - (b) Funding of Defense and Claims Pending Resolution of Dispute.  
During the course of any appeal to the Underwriting Committee or to

the Board of Directors or during the arbitration proceedings provided herein, the COVERED PARTY will be responsible for all fees and expenses for the defense or litigation of the Claim or lawsuit, the coverage of which is the subject of the appeal as provided herein. In the event that the final decision of the appeal proceedings as set forth herein is that a duty to defend exists, the Authority will reimburse the COVERED PARTY for defense costs incurred during the pendency of the appeal for the defense of the underlying claim or lawsuit.

#### 15.11. Cancellation.

This Memorandum may be canceled by the Authority for non-payment of assessments in accordance with the Liability Coverage Program Agreement. The Authority shall mail written notice to the Entity at the address shown in this Memorandum stating when such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the COVERAGE PERIOD. Delivery of such written notice by the Authority shall be the equivalent to mailing.

#### 15.12. Action against Authority.

No action shall lie against the Authority unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Memorandum, including the Dispute Resolution procedures set forth in Section 15.10 above, nor until the amount of a COVERED PARTY's obligations to pay shall have been finally determined either by judgment against the COVERED PARTY after actual trial or by written agreement of the COVERED PARTY, the claimant and the Authority. Any person or organization or the representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recovery under this Memorandum to the extent of the coverage afforded by this Memorandum. No person or COVERED PARTY shall have any right under this Memorandum to join the Authority as a party to any action against the COVERED PARTY to determine the COVERED PARTY's liability, nor shall the Authority be impleaded by the COVERED PARTY or its legal representative.

#### 15.13. Subrogation.

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

The highest layer of coverage shall be reimbursed first and if there are sufficient recoveries, then the next highest layer until all recoveries are used up.

The expenses of all such recovery proceedings shall be paid before any reimbursements are made for the highest layer of coverage. If there is no recovery in the proceedings conducted by the Authority, it shall bear the expenses thereof.

#### 15.14. Assignment.

No party may assign its interest under this Memorandum without the prior consent of the other. Nothing in this Section shall preclude the Authority from entering into such Quota Share Agreement, Reinsurance Treaty, or other agreement with an excess insurer, reinsurer, or self-insurance pool for purposes of obtaining excess insurance or reinsurance.

15.15. Notice.

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this Memorandum or stop the Authority from asserting any right under the terms of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by ENDORSEMENT issued to form a part hereof.

15.16. Memorandum to Conform to Statutes, Case Law, Regulations, Rules.

Any and all provisions of this Memorandum which are in conflict with the statutes, case law, regulations, or rules of the United States or the State of Montana wherein this Memorandum is issued are understood, declared and acknowledged by the Authority and Member Entity to be amended to conform to such statutes, case law, regulations, or rules.

15.17. Entire Contract.

By acceptance of this Memorandum, the Entity agrees that the Entity's statements in the MMIA Exposure Survey, in the DECLARATIONS, and in the application for this Memorandum are true and correct, and the MMIA Exposure Survey, DECLARATIONS, and application form a part of this Memorandum, that this Memorandum is issued in reliance upon the truth of such representations, and that ENDORSEMENTS issued by the Authority are part of this Memorandum. The Memorandum, together with the Interlocal Agreement creating the Montana Municipal Interlocal Authority, the Liability Coverage Program Agreement, and the Policies and Procedures of the Authority embody all agreements and constitute the entire contract existing between the Authority and the Entity pertaining to this coverage as provided herein.