

**MONTANA MUNICIPAL INSURANCE  
AUTHORITY**

**MEMORANDUM OF LIABILITY COVERAGE**

**EFFECTIVE**

**July 1, 2007**



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# **MONTANA MUNICIPAL INSURANCE AUTHORITY**

## **MEMORANDUM OF LIABILITY COVERAGE**

**EFFECTIVE July 1, 2007**

In consideration of the payment of the premium, the Montana Municipal Insurance Authority (Authority) agrees, subject to the LIMITS OF LIABILITY, EXCLUSIONS, CONDITIONS and other terms of this Memorandum and DECLARATIONS, to pay on behalf of the named Entity in the DECLARATIONS (the Entity) as follows:

### **I. COVERAGE**

The Authority agrees to pay on behalf of the Entity all sums in excess of the DEDUCTIBLE which the Entity shall become legally obligated to pay as Damages because of:

- A. Bodily Injury
- B. Personal Injury
- C. Property Damage
- D. Public Officials Errors and Omissions

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

### **II. DEFENSE, JUDGMENT, AND SETTLEMENT**

The Authority shall have the right and duty to defend any suit against the Entity claiming monetary damages for which coverage is afforded under this Memorandum for an Occurrence during the COVERAGE PERIOD, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient. The Authority's duty to defend shall arise when the complaint or claim alleges facts which would obligate the Authority to indemnify the insured if the alleged facts were proven. The Authority shall be responsible for payment of all reasonable attorney 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 suit after the applicable LIMITS OF LIABILITY have been exhausted by payment of settlements or judgments.

### **III. COVERED PARTY**

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

- A. The Entity
- B. While acting within the scope of his or her duties for the Entity:
  - 1. Those individuals who were, or are now, elected or appointed officials of the Entity, whether or not compensated (including volunteers), 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.
  - 2. Past or present employees of the Entity, whether or not compensated (including volunteers), while acting for or on behalf of the Entity during the Coverage Period.
  - 3. 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. (Retro-active to 7/1/96 and each Policy Year thereafter).
  - 4. 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 MCA 7-3-4112, (2002), or pursuant to a request for assistance made under MCA 10-3-209, (2002).
- C. A 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.
- D. Additional Covered Party.

### **IV. TERRITORY**

This Memorandum applies to any Personal Injury, Property Damage, Bodily Injury, or Public Officials Error or Omission occurring during the Coverage Period anywhere in the world provided a claim is made or suit is brought within the United States of America, its territories or possessions, or Canada.

### **V. 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.

**“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 X of this Memorandum, below.

**“Aircraft”** means any contrivance invented, used, or designed to navigate, or fly in, the air.

**“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, taxing, or taking off of Aircraft, but does not include Airport Premises.

**“Airport Premises”** means those premises including buildings, parking lots, sidewalks, streets, alleys, and structures that are not Air Navigation Facilities and are used for sheltering, receiving or discharging passengers or cargo.

**“Authority”** means the Montana Municipal Insurance Authority.

**“Automobile”** means a land motor vehicle, trailer or semi-trailer.

**“Bodily Injury”** means physical injury, sickness or disease sustained by a person including death resulting therefrom.

**“Contractors for Residential Construction”** means an Entity acting as a developer, general contractor, subcontractor or trade person or organization involved in or undertaking Residential Construction.

**“Covered Party”** means any person or Entity qualifying as a Covered Party as set forth in Section III of this Memorandum.

**“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 Montana Code Annotated Sections 85-15-106 and 85-15-209.

**“Damages”** means Loss(es).

**“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 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 Entity nor expenses of claims administrators engaged by any Entity.

**“Entity”** means the city or town named in the DECLARATIONS, including any and all commissions, agencies, districts, authorities, councils or similar entities coming under the Entity’s direction or control or for which the Entity’s council members sit as the sole governing body.

**“Loss(es)”** means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which the Entity is liable either by adjudication or by compromise after making proper deduction for all recoveries and salvages.

**“Memorandum”** means this Memorandum of Liability Coverage for the Montana Municipal Insurance Authority and any endorsements attached thereto.

**“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.

**“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.

**“Occurrence”** means an accident or event, including injurious exposure to conditions, which results, during the COVERAGE PERIOD, in Bodily Injury, Property Damage, Personal Injury, or Public Officials Errors and Omissions neither expected nor intended from the standpoint of the Covered Party. All Losses or Damages arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered arising out of one Occurrence.

**“Personal Injury”** means injury, other than Bodily Injury, including but not limited to one or more of the following:

1. False arrest, detention, imprisonment, or malicious prosecution;
2. Wrongful entry or eviction or other invasion of private occupancy;
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;
4. Unlawful discrimination or violation of civil rights;
5. Shock, fright, mental anguish or mental injury;

6. Assault and battery, committed by, at the discretion of, or with the consent of a COVERED PARTY, for the purpose of protecting persons from injury, death, or property from damage.

**“Pollutants”** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

**“Property Damage”** means:

- 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
- 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.

**“Public Officials Errors and Omissions”** means any act, omission, neglect, or breach of duty, including nonfeasance, misfeasance, and malfeasance by the COVERED PARTY in the discharge of their duties with the Entity, but shall not mean or include Bodily Injury, Personal Injury, or Property Damage.

**“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.

**“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 an Entity. 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.

**“Workplace Torts”** means defamation, negligent infliction of emotional distress, invasion of privacy, wrongful discipline, negligent evaluation, and other torts arising from the facts or circumstances underlying any claim of Employment Termination, Unlawful Discrimination, or Sexual Harassment. Workplace Torts does not mean failure to hire or promote.

**“Wrongful Land Use Practices”** means actual or alleged liability, including property damage or diminution of property value, arising out of, or based upon, the principles of eminent domain, condemnation, inverse condemnation, land use regulation, precondemnation activities, interim takings, takings, down-zoning, zoning, general

planning regulations, easements, nuisance, or annexation, including deprivation of constitutional or civil rights related thereto, regardless of whether such claims are made directly against the Entity or pursuant to an agreement entered into by, or on behalf of, the Entity.

**“Wrongful Employment Practice”** means the actual or alleged wrongful employment termination, unlawful discrimination, sexual harassment, the violation of civil rights, or the commission of Workplace Torts by the Entity of any member of the governing body of the Entity, any member of any board or commission of the Entity or in which the Entity participates as a member, any elected or appointed official of the Entity, or any employee or authorized volunteer of the Entity.

## **VI. DEDUCTIBLE**

The obligation of the Authority to pay Damages on behalf of the Entity shall apply only to the amount of Loss and Defense Costs in excess of the DEDUCTIBLE amount stated in the DECLARATIONS. The DEDUCTIBLE amount so stated applies on a per occurrence basis to all Loss(es) and Defense costs caused by an Occurrence.

The terms of the Memorandum, including those with respect to the Authority’s rights and duties for the defense of suits, apply irrespective of the application of the DEDUCTIBLE amount.

The Authority may pay any part or all of the DEDUCTIBLE amount to effect a settlement of any claim or suit, and upon notification of the action, the Entity shall promptly reimburse the Authority for such part of the DEDUCTIBLE amount as has been paid by the Authority.

## **VII. LIMIT OF LIABILITY**

Regardless of the number of (1) Covered Parties under the Memorandum, (2) persons or organizations who sustain injury or damage, (3) claims made or suits brought on account of Personal Injury, Property Damage, Bodily Injury, or Public Officials Errors and Omissions the Authority’s liability for Damages as the result of any one Occurrence shall be only the MAXIMUM POLICY LIMIT less the amount of the Entity’s DEDUCTIBLE as specified in the DECLARATIONS.

For the purpose of determining the LIMIT OF LIABILITY, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one Occurrence.

In the event that any combination of the COVERAGE applies to the same Entity for a loss, claim or suit, the Authority’s liability shall be limited to the LIMIT OF LIABILITY for one Occurrence.

## **VIII. PAYMENT IN ADDITION TO LIMIT OF LIABILITY**

The Authority will pay, in addition to the applicable LIMIT OF LIABILITY all expenses incurred by the Authority, all costs taxed against the COVERED PARTY at any inquest or criminal proceeding or in any suit defended by the Authority and all interest on the entry of any judgment therein which accrues after entry of the judgment and before the Authority has paid or tendered or deposited in court that part of the judgment which does not exceed the Authority's LIMIT OF LIABILITY thereon:

- 1 Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable LIMIT OF LIABILITY;
- 2 Expenses incurred by the COVERED PARTY for first aid to others at the time of an accident, for Bodily Injury to which this Memorandum applies;
- 3 Reasonable expenses incurred by the COVERED PARTY at the Authority's request, including loss of wages or salary (but not loss of other income) not to exceed \$100 per day, because of attendance of the COVERED PARTY at hearings or trials;
- 4 Defense Costs.

## **IX. EXCLUSIONS**

This Memorandum does not cover:

1. Any liability arising out of claims, demands, or actions seeking relief or redress in any form other than money damages; or for fees or expenses relating to claims, demands or actions seeking relief or redress in any form other than money damages, unless otherwise provided under Article II of the Memorandum.
2. Any liability arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of Pollutants:
  - A. At or from any premises, site or location which is or was at any time owned, leased to, or occupied by the Entity, but this exclusion does not apply if an actual discharge, dispersal, release or escape of Pollutants arises out of an Automobile not owned by, leased to, hired by, or loaned to the Entity while being used on a public street or road owned or maintained by the Entity;
  - B. At or from any premises, site or location which is or was used at any time by or for the Entity or others for the handling, storage, disposal

processing or treatment of waste;

- C. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the Entity or any person or organization for whom the Entity may be legally responsible; or from any site or location on which the Entity or any contractors or subcontractors working directly or indirectly on the Entity's behalf are performing operations:
- 1 If the Pollutants are brought on or to the site or location in connection with such operations; or
  - 2 If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize the Pollutants.
- D. This exclusion does not apply to fire fighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or the discharge of pollutants for the purpose of controlling a fire; or to 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 are being used or applied by the operator for the intended use.
- E. This exclusion does not apply to claims arising from sudden and accidental sewer backups on any property intended for use or occupancy.
- F. This exclusion does not apply to claims 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 Entity.
- G. This exclusion does not apply to claims arising from materials being collected as part of any drop-off or curbside recycling program implemented and operated by the Entity, or any claims arising from materials collected by the Entity which were abandoned on public property; if the materials have not been stored by the Entity for a continuous period exceeding ninety (90) days.
- H. This exclusion does not apply to 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. Any loss, cost or expense arising out of:
  - A. Any governmental directions or request that the Entity test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effect of 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 Loss, cost or expense arising out of any governmental directions or request that the Entity test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants situated on any premises which the Entity owns, rents or otherwise occupies, or will own, rent or occupy in the future.
  - B. Any claim or suit by or on behalf of a governmental authority for damages because of testing for monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of Pollutants.

4. Any Liability arising out of Wrongful Employment Practices.

However, the Authority agrees to pay on behalf of an Entity that has applied for and received from the Authority an Employment Practices Liability Endorsement, all reasonable and necessary Defense Costs, on behalf of the Entity in the defense of a Wrongful Employment Practice claim. The payment of Defense Costs on behalf of the Entity in defense of a Wrongful Employment Practice claim shall not be construed to require the Authority to pay any Loss or Damages other than Defense Costs in connection with any Wrongful Employment Practices claim. The following are not covered for purposes of this Defense Cost coverage for Wrongful Employment Practice:

- A. Claims and grievances resulting from collective bargaining negotiations or collective bargaining agreements.
  - B. Claims involving the failure or refusal to modify buildings for disabled access.
  - C. Claims involving retaliation for whistle blowing.
  - D. Claims arising from strikes or lockouts.
  - E. Claims arising out of the Entity's failure to pay wages or overtime compensation to an employee.
5. Bodily Injury or Personal Injury to an employee of the Entity arising out of and in the course of employment by the Entity, 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 the Entity.

This exclusion applies whether the Entity 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.

6. Any obligation for which the Entity or any insurance company as its insurer may be held liable under any workers' compensation or disability benefits law or any similar law.
7. Any liability arising out of any Air Navigation Facility, or any activities associated with, or related to the ownership or operation of any Air Navigation Facility. This exclusion shall not apply to liability arising out of the ownership or operation of Airport Premises, or to emergency activities and vehicles responding to an aviation emergency.
8. Any liability arising out of, or in connection with, the ownership or operation of any hospital, clinic, or established health care facility. This exclusion also applies to liability arising out of, or in connection with, the ownership or operation of any hospital, clinic, or established health care facility owned or operated by the Entity due to:
  - A. The rendering of or failure to render:
    - (1) Medical, surgical, dental, X-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
    - (2) Any service or treatment related to physical or mental health or of a professional nature or;
    - (3) Any cosmetic or tonsorial service or treatment;
  - B. 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 occupation physical examinations, paramedics, emergency first aid, or emergency medical technicians.

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

10. Any liability arising out of fines, punitive damages, penalties, exemplary damages, or damage multiples such as double or treble damages awardable pursuant to statute.
11. Any liability for Property Damage to property owned by the Entity, or property rented to or leased to the Entity where it has assumed liability for damage to or destruction of such property, unless the Entity would have been liable in the absence of such assumption of liability.
12. Any liability arising out of the ownership, rental, lease, borrowing, loaning, navigation, operation, piloting, use or maintenance of any Aircraft.
13. Any liability arising out of Wrongful Land Use Practices. This exclusion shall apply to any substantive decisions of the Entity or other Covered Party, but shall not apply to alleged procedural defects in the decision making process employed by the Covered Party.

However, the Authority agrees to pay on behalf of the Entity all reasonable and necessary Defense Costs, on behalf of the Entity in the defense of a Wrongful Land Use Practices claim that is otherwise excluded from coverage under this Exclusion. The payment of Defense Costs shall not be construed to require the Authority to pay any Loss or Damages other than Defense Costs in connection with any claim subject to this Exclusion.

14. 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 of the Entity's facilities to supply or produce sufficient gas, water or electricity to meet the demand.
15. Any liability for Bodily Injury or Property Damage arising out of the hazardous properties of Nuclear Material.
16. Any liability arising out of sexual abuse, mistreatment, or harassment.
17. Any liability arising out of the following special events:
  - (1) Air shows involving the aerial display of Aircraft;
  - (2) Circuses;
  - (3) Rodeos;
  - (4) Fireworks involving the ignition of a commercial or Entity sponsored display;
  - (5) Animal racing;
  - (6) Carnival of 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 competition.
18. 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 the Entity; except that no violation by any COVERED PARTY shall be imputed to any other COVERED PARTY.
  19. 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 Entity with knowledge of the falsity thereof.
  20. Any liability arising out of any employee benefit plan, whether the plan is voluntarily established by the Entity or mandated by statutes, because of unlawful discrimination.
  21. Any liability arising out of failure to refund taxes, fees or assessments.
  22. Any liability arising out of failure to perform, or breach of, a contractual obligation.

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

- (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
23. Any liability of the 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.
  24. 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, the COVERED PARTY shall be protected 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.

25. Any liability arising out of estimates of probable costs or cost estimates being exceeded or faulty preparation of bid 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.
26. 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.
27. Any claim based on or arising out of a notarized certification of a signature without the physical appearance before a notary public.
28. Any claim for Property Damage arising solely out of an act of vandalism, theft or other criminal act.
29. Any claim arising out of Property Damage to personal property loaned to the Entity for temporary use or claim arising out of Property Damage to personal property belonging to another, but stored by the Entity, with or without charge. However, this exclusion does not apply to (a) property of persons who are involuntarily confined by the Entity, or (b) property held as evidence or otherwise seized or impounded by the Entity; provided that in either the case of (a) or (b), above, the property has been accurately recorded by the Entity and is reasonably secured by the Entity.
30. 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 Entity has applied for and received from the Authority an Endorsement for Skateboard Facilities.

31. The Entity's contractual assumption of liability for damages, unless the Entity would otherwise have been liable for such damages in the absence of the assumption.
32. Any liability arising out of, or based on, principles of Quantum Meruit.
33. Any liability arising out of the Entity's failure to pay wages or overtime compensation to employees of the Entity.
34. Any liability, including all Loss(es), cost or expense, directly or indirectly arising out of or related to the liability of an Entity involved in or acting as Contractors for Residential Construction.

## **X. ADDITIONAL COVERED PARTY**

- A. In order to obtain an 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 including, but not limited to, the criteria set forth in Paragraph B, below; and include the person or entity to be named in the Endorsement's executed agreement 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 Losses and Defense Costs paid on behalf of the Additional Covered Party will be assessed to the Member Entity pursuant to the MMIA's Program and Interlocal Agreements.
- B. MMIA staff 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 is not limited to:
- a. Proposed Additional Covered Party's authority to conduct business in Montana.
  - b. Experience and expertise in the Proposed Additional Covered Party's area of service or purpose
  - c. Risk management training, practices or programs by the person or entity seeking to be named in the Endorsement.
  - d. Loss or lawsuit history of the person or entity seeking to be named in the Endorsement.
  - e. Risk associated with service provided or purpose of the person or entity seeking to be named in the Endorsement.
  - f. Time period of Endorsement.
  - g. Any other criteria MMIA staff determines to be applicable.
- C. The MMIA may either issue the Endorsement as requested, issue the Endorsement with conditions, request additional information before making a decision, or deny the request for Endorsement.
- D. The MMIA reserves the right to deny an Endorsement for coverage for Proposed Additional Covered Party that in the MMIA's estimation poses unreasonable risk or exposure to the Liability Program.
- E. The MMIA's 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.

## XI. CONDITIONS

### A. Payment of Premium.

The Entity agrees to pay all risk premiums, risk premium adjustments, deferred risk premium adjustments, debt service premiums and supplemental debt service premiums as specified in the Liability Insurance Coverage Program Agreement, as the same may be amended from time to time.

### B. Inspection of Entity's Property and Operations.

The Authority shall be permitted but not obligated to inspect the Entity'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 Entity or others to determine or warrant that such property or operations are safe. The Authority may examine the Entity's books and records at any time during the COVERAGE PERIOD and extensions thereof and within three years after the final termination of this Memorandum as they relate to the subject matter of this Memorandum.

### C. Entity's Duty in the Event of any Occurrence, Claim or Suit.

1. In the event of an Occurrence reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the Entity and reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the Entity(ies) and of available witnesses, shall be given by or for the Entity to the Authority or any of its authorized agents as soon as practicable.
2. If a claim is made or suit brought against the Entity, the Entity shall forward to the Authority every demand, notice, summons or other process received by the Entity or the Entity's representative.
3. The Entity 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 Entity because of an Occurrence with respect to which coverage is afforded under this Memorandum; and the Entity shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Entity shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense.

### D. Bankruptcy or Insolvency.

Bankruptcy or Insolvency of the Entity shall not relieve the Authority of any of its obligations hereunder.

E. Other Insurance.

If the COVERED PARTY has collectible insurance for Damages 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 other insurance. This clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum.

F. Reimbursement from Entity.

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 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.

G. Occurrence.

An Occurrence with a duration of more than one COVERAGE PERIOD shall be treated as a single Occurrence arising during the COVERAGE PERIOD when the Occurrence began.

H. Opportunity to Remedy in Event of Breach.

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

I. Selection of Counsel.

The Authority shall have the sole authority to select legal counsel to defend any Covered Party in any suit brought against such Covered Party as provided in Article II of this Memorandum.

J. Authority to Settle Claims.

The Authority shall have the discretion to settle or compromise any monetary claim made against a Covered Party by paying such Loss without the consent of the Covered Party, provided, however, that in cases in which the claimant seeks

both a monetary and a non-monetary recovery against the Entity or other Covered Party, the Authority shall have the discretion to settle or compromise the monetary portion of such claim by paying such Loss only with the consent of the Covered Party. If the Covered Party shall not consent to payment of such Loss for whatever reason, the Covered Party shall then and thereafter be responsible for the amount of any Loss, whether paid by way of monetary settlement or judgment, in excess of the amount which the Authority was willing to pay to compromise or settle the claim.

K. Dispute Resolution for Contested Coverage Determinations

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 member Entity concerning determinations of coverage 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").

2. Procedure for Resolving Disputes

a. Appeal to Underwriting Committee.

i. In the event that a member Entity is aggrieved by a Coverage Determination, the member Entity 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.

ii. 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.

iii. The Chief Executive Officer shall, within three (3) business days of receipt of the appeal submit the documents received from the Entity, together with such additional explanatory material as the Chief Executive Officer deems appropriate, to the members of the Underwriting Committee in writing.

iv. If either the appealing Entity or any member of the Underwriting Committee or the Chief Executive Officer so requests, the Committee shall be convened within ten (10) business days after the Chief Executive Officer 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 Entity and the Chief Executive Officer shall participate in any such conference call or

meeting of the Committee and shall have an opportunity to be heard.

v. 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 of such meeting or, if no meeting is held, within ten (10) business days after the Chief Executive Officer has sent to the Committee the appeals materials.

vi. The Chief Executive Officer 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 member Entity.

b. Appeal of the Decision of Underwriting Committee to Board of Directors.

i. If either the appealing Entity or the Chief Executive Officer is aggrieved by the decision of the Underwriting Committee, that decision may be appealed to the Board of Directors of the Authority.

ii. 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. If filed by the Authority, a copy of this notice of appeal shall be mailed to the chief appointed or elected official of the Entity.

iii. The non-appealing party shall have seven (7) business days from the date of the notice to submit to the Chief Executive Officer any additional information which it may desire to be submitted to the Board of Directors.

iv. The Chief Executive Officer shall, within three (3) business days thereafter, submit the documents received from the parties, together with such additional explanatory material as the Chief Executive Officer deems appropriate to the members of the Board of Directors in writing.

v. If either of the parties or a member of the Board of Directors so requests, the Board of Directors shall be convened within ten (10) business days after the Chief Executive Officer 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.

vi. 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, or, if no meeting is held, within ten (10) business days after the Chief Executive Officer has sent to the Board of Directors the appeals materials.

vii. The Chief Executive Officer 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. This statement of decision shall be provided to each party.

### 3. Voluntary Submission to Binding Arbitration.

- a. In the event either the Entity or the Chief Executive Officer is aggrieved by the decision of the Board of Directors, the matter may be voluntarily submitted to binding arbitration. The agreement between the Entity and the Chief Executive Officer to submit to arbitration shall be in writing and the party requesting arbitration shall submit a request to arbitrate to the other party within fourteen (14) calendar days of the date of the written decision of the Board of Directors. The request for agreement to submit to arbitration shall, if requested by the Authority, be sent to the chief elected or appointed official of the Entity or, if requested by the Entity, shall be mailed to the Chief Executive Officer of the Authority.
- b. Once a request for agreement to submit to arbitration has been made by the aggrieved party, the other party must provide its decision to the aggrieved party within ten (10) calendar days of the date the request to submit to arbitration was received. 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.
- c. Once an agreement to submit to arbitration is made, the Authority and the Entity 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 Entity 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.

- d. The arbitrator shall commence a hearing within forty-five (45) calendar days of his/her designation.
- e. The Authority and the Entity 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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.

- m. Posthearing briefs shall not be permitted.
- n. The arbitrator shall render his or her decision in writing within thirty (30) calendar days of the close of the hearing.
- o. 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 Entity.

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 Entity 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 Entity for defense costs incurred during the pendency of the appeal for the defense of the underlying claim or lawsuit.

L. Cancellation.

This Memorandum may be canceled by the Authority for non-payment of premium in accordance with Article VI, Section 6.4 of the Liability Insurance 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.

M. Action against Authority.

No action shall lie against the Authority with respect to the coverages and related provisions defined in this Memorandum unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Memorandum, nor until the amount of the Entity's obligations to pay shall have been finally determined either by judgment against the Entity after actual trial or by written agreement of the Entity, 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 Entity shall have any right under this Memorandum to join the Authority as a party to any action against the Entity to determine the Entity's liability, nor shall the Authority be impleaded by the Entity or its legal representative.

N. Subrogation.

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

- 1 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.
- 2 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.

O. Assignment.

Assignment of interest under this Memorandum shall not bind the Authority unless and until its consent is endorsed herein.

P. 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.

P. 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 to be amended to conform to such statutes, case law, regulations, or rules.

Q. 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 Insurance Authority and Liability Insurance Coverage Program Agreement, embody all agreements and constitute the entire contract existing between the Authority and the Entity pertaining to this insurance.