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Memorandum of Coverage Declarations Page

MEMORANDUM OF COVERAGE

Preamble

Throughout this **Memorandum of Coverage** certain words and/or phrases appear in boldface type; these words or phrases have special meanings set forth under definitions. This **Memorandum of Coverage** has been drafted and authorized by the **Authority** on behalf of its **Covered Party** and, in accordance with the **Authority's** Bylaws, each **Covered Party** has accepted the form of this **Memorandum of Coverage**, and ratified its contents, including the language contained herein. In Consideration of the payment of the contributions and compliance with the provisions of the Joint Powers Agreement and Bylaws, the **Authority** agrees with all **Covered Parties** as follows:

Purpose

The purpose of this **Memorandum of Coverage** is to provide Property and Casualty Programs for its **Covered Parties**. Some of the **Authority's** coverages, deductibles, and limitations are unique to the **Authority** and may not be available elsewhere through other coverage providers.

Intent

It is the intent of the **Authority** to provide the broadest form of Coverages to each **Covered Party** to avoid coverage disputes; to eliminate misunderstandings regarding coverages; to clarify the claims handling process; and to provide the **Authority** with a document that easily identifies what is or isn't covered. It is not the intent of the **Authority** to cover fraudulent conduct, or that which constitutes knowing and intentional breach of fiduciary duty, whether within or outside the course and scope of duties, or willful acts which are intended, or motivated by a desire, to cause Damage or injury to another, or the Property of another. Coverage is subject to policy and procedure enacted by the Authority.

The **Memorandum of Coverage** is not an insurance policy. The **Authority** is not a commercial insurer, nor is it subject to regulation under the California Insurance Code. (Gov. Code § 990.8(c); *City of South El Monte v. Southern California Joint Powers Insurance Authority* (1995) 38 Cal.App.4th 1629.) The parties' mutual intent under the **Memorandum of Coverage** shall control interpretation, and shall be determined, if possible, solely from the written terms of the **Memorandum of Coverage**. The **Authority** has not adopted principles of insurance law as the basis to control obligations to the **Covered Parties** under the **Memorandum of Coverage**; therefore, insurance law principles are not controlling. (*City of South El Monte, supra*, 38 Cal.App.4th at 1638).

Section I. Who is Covered

Any person included in the definition of **Covered Party** is covered by this **Memorandum of Coverage**.

Section II. What is Covered

Coverage A - Liability

- A.** The **Authority** will pay **Ultimate Net Loss** in excess of the **Member Retained Limit** for each **Loss Occurrence**, for which the **Covered Party** shall become legally obligated to pay for **Damages** as a result of:
1. liability imposed upon the **Covered Party** by law
 2. liability of others that a **Covered Party** has assumed under contracts and
 3. **Automobile** liability. In the event that a covered loss results in both **Automobile** liability and **Property Damage**, the **Authority** will pay the **Ultimate Net Loss** in excess of the **Members Retained Limit** for Liability

or for any **Covered Party's** entitlement to **Uninsured or Underinsured Motor Vehicle** coverages.

- B.** The Authority will pay, in excess of any applicable **Member Retained Limit** each **Loss Occurrence**, up to the sums specified in Paragraphs A, B or C of Part III of the Declarations, for the following:
1. **Legal expense** for **Employee Benefit Programs**
 2. **Legal Expense** for Breach of Contract, Except Employment Contract
 3. Liability as a result of Asbestos Claims

Coverage B - Property

- A.** The **Authority** will pay **Ultimate Net Loss** in excess of the **Member Retained Limit** each **Loss Occurrence** for **Property Damage** to:
1. the **Covered Party's Real Property** and **Personal Property**
 2. **Personal Property** of officials, **employees**, or volunteers of the **Covered Party** and
 3. **Personal Property of Others** in the custody of a **Covered Party** for which the **Covered Party** is legally liable.
 4. the **Covered Party's Automobile**, when a loss involves **Property Damage** only

- B. Under property, the **Authority** will pay actual cash value in excess of the member retained limit for **Property Damage to Automobiles and Mobile Equipment**
- C. The **Authority** will pay, up to the limit specified in Paragraphs A through L of Part IV in the **Declarations**, sums in excess of the **Member Retained Limit**, for the following Coverage Extensions:
1. **Construction and /or Installation-**
(See Section VII, General Conditions/Reporting)
 2. **Sprinkler Leakage Damage** caused by Earthquake
 3. **Equipment Breakdown**, Excluding Electronic Data Processing Equipment
 4. **Electronic Data Processing Equipment**
 5. **Newly Acquired Property**
 6. **Personal Property of Others**
 7. **Property in Transit**
 8. **Rental Value Including Rental Payments and Loss of Use**
 9. **Transmission or Distribution Lines**
 10. **Back Up of Sewers or Drains**
 11. **Valuable Papers or Records**
 12. **Loss of Revenues/Extra Expense**

Coverage C - Defense Costs for Injunctive Relief or Non-Monetary Recourse Actions

The **Authority** will pay all sums in excess of the **Member Retained Costs** up to the limit outlined on **Memorandum of Coverage** of the **Declarations** page, for the defense of suits that seek solely **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress** filed during the **Memorandum of Coverage** period.

Coverage D – Builders’ Risk

- A. The **Authority** will pay **Ultimate Net Loss** in excess of the **Builders Risk Member Retained Limit** each **Loss Occurrence** for **Property Damage** at the site of the **Covered Project(s)** during construction, reconstruction, modernization or renovation to:
1. **The Covered Party’s** property, including but not limited to, materials, supplies, machinery, fixtures, equipment, and similar property that has become or is intended to become a permanent part of the building(s) or

Structure(s) while at the project site, in transit to the project site or at a temporary location.

2. Foundations, excavations, grading, filling, backfilling, fill dirt and other underground work of buildings or structures in the course of construction at the **Covered Project** and intended to become a permanent part of the building(s) or structures(s) provided the value is included in the total project value.
 3. Sidewalks, curbs, gutters, streets, parking lots, paving, signs and antenna provided the value is included in the total project value.
 4. Temporary structures on the project site including but not limited to office trailers, fencing, false work, cribbing, and scaffolding and construction forms; provided the value of such temporary structures is included in the total project value.
- B.** The **Authority** will pay, up to the limit specified in the endorsement sums in excess of the **Member Retained Limit**, for the following Coverage Extensions:
1. **Temporary Offsite Storage: \$500,000 per occurrence**
 2. **Architects and Engineering Fees: \$250,000 per occurrence**
 3. **Plans, Blueprints and Drawings: \$250,000 per occurrence**
 4. **Valuable Papers: \$250,000 per occurrence**
 5. **Trees, Shrubs and Plants: \$50,000 per occurrence**
 6. **Debris Removal: 25% of loss up to a maximum \$250,000 per occurrence**
 7. **Pollutant Cleanup and Removal: \$25,000 per occurrence and in the annual aggregate**
 8. **Preservation of Property: \$100,000 per occurrence and project aggregate**
 9. **Expediting Expenses: \$250,000 per occurrence**
 10. **Transit: \$500,000 per occurrence**
 11. **Ordinance or Law: \$250,000 per occurrence**
 12. **Soft Costs: \$ per endorsement if included**

Section III. Member Retained Limit or Cost

As respects Coverage A - Liability, the **Covered Party** shall retain the amount of per **Loss Occurrence** set out in item **VII, A.** of the Declarations, **Member Retained Limit** for Liability.

As respects Coverage B - Property, the **Covered Party** shall retain the amount of per **Loss Occurrence** set out in item **VII, B.** of the Declarations, **Member Retained Limit** for Property.

As respects Coverage C - Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions**, the **Covered Party** shall retain the amount per suit set out in item **VII, C.** of the Declarations, **Member Retained Cost** for Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions**.

As respects Coverage D – **Builders Risk**, if included, the **Covered Party** shall retain the amount per **Loss Occurrence** as set out in the Builders Risk Endorsement.

Section IV. Limits of the Authority

Limits as respects Coverage A - Liability, Coverage B – Property

The Limit stated in the Declarations applicable to each **Loss Occurrence** is the limit of the **Authority's** liability for the total of all **Damages** and **Legal Expense** resulting from any one **Loss Occurrence**. In the event other coverage for the **Loss Occurrence** is available to the **Covered Party** under any insurance contract or other group self-insurance, coverage under this Memorandum will be excess pursuant to the **Other Coverage** condition in section VII below. All loss or injury arising out of the continuation or repetition of substantially the same or similar harmful conditions or the same proximate cause shall be considered as arising out of a single **Loss Occurrence**, and that single **Loss Occurrence** will be allocated in its entirety to a single Memorandum Period, even though the **Loss Occurrence** may span multiple Memorandum Periods. In no event will more than one Memorandum Period apply to the entirety of all loss or injury arising out of any one **Loss Occurrence**. If loss or injury arising out of a single **Loss Occurrence** takes place during more than one Memorandum Period, the Memorandum Period to which the **Loss Occurrence** shall be allocated will be the Memorandum Period during which the earliest of the following takes place: (1) The date when the loss or injury had indisputably ceased to occur but only if such date can be identified at the time that the Authority first receives notice of the claim, (2) the first date that the **Covered Party** received a claim pursuant to the Government Code regarding such loss or injury, (3) the first date that a **Covered Party** received any other unequivocal notice that a claim was being made, or (4) the initial filing date of any lawsuit alleging such loss or injury in which the **Covered Party** is named as a party or is later added as a party.

In the event more than one **Covered Party** is liable for **Damages**, and **Legal Expense** from a single **Loss Occurrence**, this **Memorandum of Coverage** shall protect each **Covered Party** as though a separate **Memorandum of Coverage** had been issued to each.

Uninsured and Underinsured Motor Vehicle Coverage Limits

1. Regardless of the number of **Automobiles, Covered Parties**, contributions paid, claims made, **Uninsured or Underinsured Motor Vehicles** involved in the **Loss Occurrence**, the most the **Authority** will pay as **Ultimate Net Loss** sums for **Damages** resulting from any one **Loss Occurrence** is the Limit of Liability for **Uninsured or Underinsured Motor Vehicle** coverage shown in Part III, D of the Declarations .
2. Any amount payable under **Uninsured or Underinsured Motor Vehicle** coverage shall be reduced by: (a) all sums paid or payable workers' compensation exclusive of non-occupational disability benefits; and (b) all sums paid on behalf of anyone legally responsible, including all sums paid under coverage provided under **Section II. Coverage A – Liability**, paragraph A.1. and **Automobile** liability coverage of this **Memorandum of Coverage**.
3. Under no circumstance will the **Authority** pay more than \$500,000 combined single limit.

Excess Liability

The **Authority** will be liable in respect of each and every **Loss Occurrence** for the **Ultimate Net Loss** over and above an initial **Ultimate Net Loss** of \$1,000,000 each and every **Loss Occurrence**, subject to a limit of liability to the **Authority** of \$4,000,000 each and every **Loss Occurrence**.

Aggregate limitations as shown on the Declarations page apply during the program year.

In the event that the aggregate(s) limit is exceeded during the program year all loss amounts in excess of the aggregate(s) limit will be the responsibility of the Schools Association For Excess Risk JPA members, which includes the **Authority**.

Limits as respects Coverage C - Defense Costs for Injunctive Relief or Non-Monetary Recourse Actions

The Limit stated in item V of the Declarations applicable to each suit under Coverage C – Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions** is the limit of the **Authority's** liability for the total of all costs resulting from any one suit, regardless of the number of **Covered Parties** or **Additional Covered Parties**.

Coverage D – Builders Risk

The Limit stated in the Endorsement or item VI of the Declarations applicable each **Loss Occurrence** is the limit of the **Authority's** liability for the total of all **Damages** and **Legal Expense** resulting from any one **Loss Occurrence** at the **Covered Project(s)**.

Section V. Exclusions

Under Coverage A - Liability, this **Memorandum of Coverage** does not apply to:

1. loss, claim or suit due to **Bodily Injury** sustained by any **employee** of the **Covered Party** arising out of and in the course of such **employee's** employment by the **Covered Party**, or to the spouse, child, parent, brother or sister of an **employee** as a consequence thereof or to any obligation to share or contribute to **Damages** with (or to repay) someone else because of such **Bodily Injury** except liability assumed by the **Covered Party** under a contract or agreement with a party other than an **employee** or association of employees. As respects this paragraph, **Bodily Injury** means "bodily injury", sickness or disease including death resulting from any of these, but does not include mental anguish or emotional distress.
2. any obligation for which the **Covered Party** may be held liable under any workers' compensation, unemployment insurance, social security or disability benefits law or under any similar law, plan or agreement.
3. loss, claim or suit arising out of **In-Flight** operations of **Aircraft** or any **Airborne Craft** by or in the interest of the **Covered Party** except with respect to operations performed by scheduled common carriers or the United States Military. This exclusion shall not apply to **Aircraft** or any **Airborne Craft** used for instructional purposes while located on property the **Covered Party** owns, leases, rents or occupies.
4. loss, claim or suit arising out of the ownership, maintenance, operation, use, loading or unloading of:
 - a. Any **Watercraft** owned or operated by or rented or loaned to any **Covered Party**, or operated by any person. This exclusion shall not apply to manually powered **Watercraft**, sailboats under 25 feet in length, powerboats of less than 25 horsepower, charter operators or common carriers, **Watercraft** owned or operated by the United States Military, houseboats, or **Watercraft** used by the **Covered Party** within its curriculum and specifically endorsed to this Memorandum, and

- b. Any **Motorized Vehicle** or **Watercraft**, licensed or unlicensed, while participating in any speed contest or off-road recreational activity. This exclusion shall not apply to fire and/or police driving programs.
- 5. loss, claim or suit arising from the ownership, maintenance, supervision, use or misuse of any trampoline, except for small rebound devices such as those known as “mini-tramps”, “springers” or “gym tramps”.
- 6. loss, claim or suit resulting from or in any way related to, the hazardous properties of anything connected with nuclear materials to which the **Covered Party** is or has been involved.
- 7. that portion of any loss, claim or suit that represents a multiple of compensatory awards, whether imposed by statute or as result of the operation of common law, civil fines, penalties, or punitive damages.
- 8. loss, claim or suit for restitutionary relief or based upon or attributable to the **Covered Party** gaining any profit, advantage or remuneration to which the **Covered Party** is not entitled.
- 9. any loss, cost, civil fine or penalty, or expense against or incurred by any **Covered Party** arising from any complaint investigation, enforcement action, regulatory or administrative proceeding by any federal, state, local or other governmental regulatory agency.
- 10. loss, claim or suit for employee back and/or future wages, overtime, a failure to provide retirement, health and related benefits, or similar claims, including interest, expenses, legal fees and costs.
- 11. loss, claim or suit:
 - a. for refund of taxes, fees or assessments or failure to collect and/or to assess taxes, fees or assessments
 - b. arising out of estimates of probable costs or cost estimates being exceeded or faulty preparation of bid specifications or plans, including architectural plans and
 - c. based upon or alleging failure to procure adequate types or amounts of insurance or bonds.
- 12. loss, claim or suit arising from the formation, governance, or operation of a **Charter School** as defined under California Education Code unless such Charter School has been endorsed to this Memorandum.
- 13. loss, claim or suit arising from the actual or alleged use, misuse or loss of funds, grants or appropriations, or for the return of such funds, grants or appropriations for any reason; however, the **Authority** will provide **Legal Expense** for any action brought against the **Covered Party** seeking resulting **Damages**.
- 14. loss, claim or suit arising from the use, sale or distribution of any **Explosives, Fireworks or Pyrotechnic Devices**, but this exclusion shall not apply to losses

arising out of, or resulting from the use of **Explosives, Fireworks or Pyrotechnic Devices** during the regular curriculum.

15. loss, claim or suit arising from any **Rodeo** activities.
16. any loss, claim or suit for failure of performance of contract by any insurer.
17. any loss, claim or suit based upon:
 - a. failure of any investment program, individual securities or savings program to perform as represented by a covered party and
 - b. advice given by a covered party in connection with participation or non-participation in stock subscription plans or savings programs.
18. any loss, claim or suit for the return of compensation paid to a covered party if a court determines that the payment was illegal.
19. any loss, claim or suit for benefits that are lawfully paid or payable to a beneficiary from the funds of an **Employee Benefit Program**.
20. any loss, claim or suit that results from not having adequate insurance or bonds to protect the assets of an **Employee Benefit Program** and
21. except as respects a **Wrongful Act**, any loss, claim or suit arising from the actual or alleged breach of any contract; however, the **Authority** will provide limited **Legal Expense** for any action brought against the **Covered Party** seeking resulting **Damages**, as set forth in Section III, paragraph B the **Memorandum of Coverage Declarations**.
22. any time element, indirect or consequential loss, claim, or suit of any nature resulting from the ownership, maintenance, use or design of any power and/or energy generation or co-generation facility, whether actively or inactively engaged in the generation of energy and/power.

This exclusion does not apply to solar energy panels

Under Coverage B - Property, this **Memorandum of Coverage** does not apply to:

1. loss resulting from earth movement, including but not limited to landslide, mud flow, earth sinking, earth rising or shifting; but this exclusion shall not apply to loss from fire or **Sprinkler Leakage** where the, efficient proximate cause of loss is earthquake.
2. loss resulting from flood, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not, but this exclusion shall not apply to loss caused by sudden and accidental discharge from a water supply line.

However, if electrical **Covered Equipment** requires drying out because of the above, this **Memorandum of Coverage** shall cover the direct expenses of such drying out.

3. loss resulting from any unexplained, mysterious disappearance, or shortage in **Real or Personal Property** disclosed upon taking inventory, or by pilferage, appropriation, or concealment due to a fraudulent, dishonest or criminal act of the **Covered Party**.
4. loss caused by wear and tear, marring or scratching; deterioration, inherent vice, latent defect; rust, mold wet or dry, contamination; dampness or dryness of atmosphere, changes in or extremes of temperatures; seepage or leakage of water or steam not sudden and accidental; smog, smoke from agricultural smudging or industrial operations; or birds, vermin, rodents, insects or animals.

If loss by water not otherwise excluded ensues, this **Memorandum of Coverage** shall cover the sums to effect repairs to the **Property Damaged**, excluding the system or appliance from which the water escaped.

5. loss from rain, snow or sleet to **personal property** in the open.
6. loss to any accounts, bills, deeds, evidences of debt, **money**, notes, **securities**, bullion, stamps, letters of credit, passports, tickets, manuscripts; contraband or property in the course of illegal transportation or trade.
7. loss to any walks, roadways or paved surfaces, curbs, piers, bulkheads, wharves or docks; beach or diving platforms, retaining walls not constituting a part of the building, this exclusion does not apply to permanently installed composite or synthetic surfaces used in the covered party's operations.
8. loss to any fur, fur garments, jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, gold, silver, platinum and other precious metals or alloys.
9. loss to any land, land value, cost of grading, excavations or fillings; engineer's fees; water; underground flues, underground foundations, pipes, pipelines, tanks or drains; except as respects Coverage D. **Builders Risk**.
10. loss to any property while waterborne outside of the United States territorial waters.
11. loss to any **real or personal property** shipped by mail from the time it passes into the custody of the United States Postal Service or any other common carrier.
12. loss to any **real or personal property** which is more specifically covered in whole or in part under a contract of insurance.
13. loss to any actual work upon, installation or testing of covered **personal property**, unless loss by fire not otherwise excluded ensues, and then this **Memorandum of Coverage** shall cover only such ensuing loss.
14. loss resulting from programming errors, which includes the inability of a program to function properly beyond a naturally occurring calendar date.

15. loss to **Data Processing Equipment** or **Media** that is the property of others that the **Covered Party** leases or rents that is in the **Covered Party's** care, custody or control and for which the **Covered Party** is legally liable when such loss is covered by an insurance policy or **Memorandum of Coverage** the owner has or is required to have under the lease or rental agreement, whether collectible or not.
16. loss to **Data Processing Equipment** or **Media** caused by electrical surge, *or* lightning unless at the time of loss there is an **Approved Surge Suppression Device** installed between said **Data Processing Equipment** and any electrical or telecommunications lines.
17. **Damages** caused by or resulting from a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel or an insulation breakdown test of any type of electrical equipment.
18. Any loss, claim or suit due to the seizure or destruction of property by order of governmental authority. But the **Authority** will pay for damage or destruction of covered property ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this **Memorandum of Coverage**

Under Coverage C - Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions**, this **Memorandum of Coverage** does not apply to:

1. any **Bodily Injury, Personal Injury or Property Damage** and
2. to any loss, claim, suit or cost for which defense or indemnity is provided by Coverage A - Liability, of this **Memorandum of Coverage**
3. to any legal fees or costs awarded to the complaining party or paid as part of a settlement.

Under Coverage D – **Builders Risk**, this **Memorandum of Coverage** does not apply to:

1. Consequential loss, damage or expense of any kind or description including but not limited to loss of market, liquidated penalties, performance penalties, penalties for non-completion, **Delay in Completion**, or non-compliance with contract conditions. This exclusion does not apply to **Delay in Completion** when **Soft Costs** are endorsed to the MOC.
2. Loss resulting from artificially generated current creating a short circuit or other electrical disturbance within covered property. This exclusion does not apply to physical loss or damage to other materials or workmanship.
3. Loss caused by explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, or steam engines.
4. Loss caused by mechanical breakdown or derangement of machinery.
5. Loss, resulting from water under the ground surface pressing on, or flowing or seeping through:

- a. Foundations, walls, floors, or paved surfaces;
 - b. Basements, whether paved or not; or
 - c. Doors, windows, or other openings.
6. Loss caused by water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
- a. You do your best to maintain heat in the building or structure; or
 - b. You drain the equipment and shut off the supply if the heat is not maintained
7. Acts or decisions, including the failure to act or decide, of any person, group, organization or a governmental body relating to the covered property.
8. Hot Testing, start-up, commissioning, examination or trial of covered property such as boilers, ovens, stoves, turbines, pumps, process equipment or equipment of a similar nature to prove their ability or function. This includes any form of testing making use of feedstock, including operational tests, performance tests, or other tests performed in conjunction with such testing.

This exclusion does not apply to "electrical testing", mechanical testing", "pneumatic testing" or "hydrostatic testing" used in the start-up and testing of building systems that are intended to service a building.

9. Any **Software Loss**. To the extent that coverage for equipment, hardware, media or device is provided under this endorsement this exclusion does not apply:
- a. If the **Software Loss** results solely from direct loss or direct physical damage to the equipment, hardware, media or device on which the program, software or operating system, programming instructions, or data are transported, processed or contained
 - b. To direct physical loss or direct physical damage to covered tangible property that results from a **Software Loss**. Software, programs, operating systems, programming instructions and data are not considered tangible property
10. Property in storage or in transit not specifically designated to the **Covered Project** covered by this endorsement
11. **Motor Vehicles, Hired or Non-Owned Automobiles** or equipment licensed for highway use, rolling stock, **aircraft**, and watercraft
12. Land (including land on which the covered property is located), water, standing timber, growing crops and animals

Under Coverage A - Liability, Coverage B - Property, Coverage C - Defense Costs for Injunctive Relief or Non-Monetary Recourse Actions, and Coverage D – **Builders Risk**, this **Memorandum of Coverage** does not apply to:

1. loss, claim or suit resulting from any voluntary parting with title or possession of any Property by the **Covered Party** or others to whom the Property may be entrusted if induced to do so by any fraudulent scheme, trick, device or false pretense.
2. loss, claim or suit arising out of the intentional violation of a penal statute or ordinance committed by or with the knowledge or consent of any **Covered Party**.
3. loss, claim or suit resulting from faulty or inadequate or defective:
 - a. Planning, zoning, development, surveying, siting
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction.
 - c. Materials, whether installed or not, used in repair, construction, renovation or remodeling

on or off the **Covered Party's** premise, except for construction projects within the **Covered Party's** curriculum.

4. loss, claim, cost, expense or suit arising, in whole or in part, out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** and/or **Hazardous Substances** into or upon land, air, or water, whether indoor or outdoor. This exclusion also relates to any liability or proceedings arising out of any governmental or quasi-governmental or any other person or organizations directions or request that the **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of **Pollutants**. This exclusion shall not apply if the discharge, disbursement, seepage, migration, release or escape of **Pollutants** and/or **Hazardous Substances** is **both** sudden and accidental. This exclusion does not apply to injury, damage, or any other liability caused by heat, smoke or fumes from a **hostile fire**, or from an automobile or **mobile equipment** part designed to hold, store, receive or dispose of such pollutants, or to any property which contains pollutants are upset, overturned or damaged as a result of the maintenance or use of a covered automobile or mobile equipment, and is caused directly by such upset, overturn or damage.

Builders Risk - Coverage D extension the **Authority** will pay a **Covered Party's** expenses to extract **Pollutants** from land or water at the covered project site if the discharges, seepage, migration, release or escape of the **Pollutants** is caused by or results from a Covered Cause of Loss to covered property during the coverage period.

5. **Nuclear:**

loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any

- of the foregoing is not covered by this Memorandum, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to or aggravated by any of the causes of loss covered against by this Memorandum; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled is not “explosion” or “smoke”. This clause applies to all causes of loss covered hereunder except for the peril of “fire”.
6. loss, claim or suit caused directly or indirectly by any:
 - a. Hostile or war-like action in time of peace or war including action hindering, combating or defending against an actual, impending or expected attack by any government or sovereign in power (de jure or de facto) and
 - b. Insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulation, confiscation by order of any government or public authority.
 7. Loss, claim or suit arising from the formation, governance, or operation of a **Foundation or Auxiliary of a Covered Party**:
 - a. not formally chartered and in good standing at the time of the **Loss Occurrence**
 - b. not under the supervision and control of the **Covered Party** at the time of the **Loss Occurrence** and
 - c. as to actions; omissions to act or other conduct outside of the scope and purpose of the **Foundation or Auxiliary’s** charter
 - d. not endorsed to the **Memorandum of Coverage**.
 8. Any Loss created under any guarantee, warranty, or other expressed or implied obligation of any manufacturer or supplier. This exclusion applies whether or not such contractor, manufacturer or supplier is a **Covered Party**.
 9. Loss caused by normal settling, cracking shrinkage, bulging, or expansion of pavements, buildings, foundations, patios, walkways, driveways, walls, floors, roofs, or ceilings.

Section VI. Definitions

Abatement of Rental Payments means, the basic installment of payments payable by the **Covered Party** as required by written contract.

Accident means direct physical loss as follows: - Applicable to **Equipment Breakdown** if Limit of Liability is indicated on the **Memorandum of Coverage** Declarations.

1. Mechanical breakdown, including rupture or bursting caused by centrifugal force
2. any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated
3. explosion of steam boilers, steam pipes, steam engines or steam turbines if owned by, leased by or operated under the control of the **Covered Party**
4. loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment or
5. loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

Additional Covered Party means any person, organization, trustee or estate to whom or to which the **Covered Party** is obligated by virtue of a written contract to provide coverage such as is afforded by this Memorandum, but only with respect to operations performed by or on behalf of the **Covered Party** or facilities owned or used by the **Covered Party**. The coverage afforded by this Memorandum shall be no broader and for no higher limit of liability than that which is required by such contract.

Administration means the following acts authorized by the **Covered Person**:

1. giving counsel to **employees** with respect to the **Employee Benefit Programs**
2. interpreting the **Employee Benefit Programs**
3. handling of records and processing of claims in connection with the **Employee Benefit Programs** and
4. effecting enrollment, termination or cancellation of **employees** under the **Employee Benefit Programs**.

Agent means any courier, bonded courier or courier service duly authorized by the **Covered Party** to deliver and deposit **Money** and **Securities** on behalf of the **Covered Party**.

Aircraft or **Airborne Craft** means a vehicle designed for the transport of persons or property, principally in the air.

Anticipated Date of Completion means the estimated completion date of Covered Project as indicated in the Construction Schedule, provided by the Construction Manager and/or General Contractor

Approved Surge Suppression Device means a surge suppression device that is Underwriters Laboratory (UL) listed and that bears any of the following words or abbreviations:

1. transient Voltage Surge Suppressor or TVSS
2. uninterruptible Power Supply or UPS or

3. secondary protector for communications circuits.

Architects' & Engineers' Fees means the reasonable (up to 15% of the total **Loss Occurrence**) cost of architects' and engineers' fees for consultations arising from a Property **Loss Occurrence** and for supervision during reconstruction. **Builders Risk - Coverage D** extension limit of liability is \$250,000

Authority means **Statewide Association of Community Colleges** indicated on the **Memorandum of Coverage Declarations**, formed for the purpose of providing the services and other items necessary and appropriate for the establishment, operation, and maintenance of a joint program for **Property and Casualty programs** for public educational agencies/members.

Automobile means a land motor vehicle, trailer or semi-trailer, subject to motor vehicle registration and designed for use principally for public roads, including owned, leased, **Hired or Non-Owned Automobile**, but not **Mobile Equipment**.

Bodily Injury means bodily injury, sickness, emotional distress or disease sustained by any person, which occurs during the coverage period, including death at any time resulting therefrom.

Building means a permanent structure with walls and a roof that is affixed to a permanent site and capable of occupancy by the district

Builders' Risk, applicable if limit is indicated on the Builders Risk Endorsement, means the **Total Construction Price** of construction of new **Real Property** and of additions to or remodeling of existing **Real Property**, where the total construction cost value of the project's exceeds \$250,000. Only construction projects less than 40% complete are eligible for coverage.

Builders Risk Equipment Breakdown - *Applicable if Limit of Liability is indicated on the Builders Risk Endorsement* means any occurrence that meets the definition of an **Accident to Covered Equipment** and that is not otherwise excluded.

Co-generation means the simultaneous production of two types of energy, such as heat or electricity, from one source in such a way that both are usable rather than one being treated as waste energy.

Computer Systems means **Data Processing Equipment, Data and Media**, including loss or damage caused by a **Computer Virus**.

Computer Virus means any code intended to contaminate or destroy **Data**, including but is not limited to any of the following: self-replicating viruses, worms, trojans and logic bombs. It does not mean defects or programming errors, such as the inability of a program to process the year 2000 or any other naturally occurring calendar date.

Construction and Installation means the cost of construction of new **Real Property** and of additions to or remodeling of existing **Real Property** and installation of plumbing, electrical and mechanical machinery, equipment or material, including the cost or value of labor, freight, fees, taxes, overhead and profit, less the value of those items excluded from coverage up to a maximum limit of \$250,000 per occurrence.

Contingent Liability from the Operation of Building Codes means loss occasioned by enforcement of any local or state ordinance or law (in force at time of a **Loss Occurrence**) which regulates the construction, repair or demolition of buildings or structures covered hereunder and necessitates the demolition of any portion of said building(s) or structure(s) not otherwise damaged by the **Covered Causes of Loss** covered against.

Cost of Inventory and Appraisalment means the reasonable cost expended by the **Covered Party** following a covered cause of loss for an inventory or appraisalment when the **Authority** requests such inventory or appraisalment from the **Covered Party**.

Cost of Making Good – Costs that would have been incurred to rectify any:

- a. Faulty or Defective Workmanship, supplies or materials
- b. Fault, defect, error, deficiency or omission in design, plan or specification
- c. Wear and tear, gradual deterioration, inherent vice, latent defect, corrosion, rust, dampness or dryness in atmosphere

Covered Causes of Loss: Means RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE to covered project property from any external cause except those causes of loss listed in the exclusions

Covered Equipment means the **Covered Party's** property built to operate under vacuum or pressure, other than weight of contents or used for the generation, transmission or utilization of energy.

None of the following is **Covered Equipment**:

1. structure, foundation, cabinet, compartment or air supported structure or building
2. insulating or refractory material
3. sewer piping, any underground vessels or piping, any piping forming a part of a sprinkler system or water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system or
4. **Automobile and Mobile Equipment.**

Covered Party means the public agency listed on the Declarations page and persons who are past or present elected or appointed officials, **employees** or volunteers of the **Covered Party**, while acting for or on behalf of the **Covered Party**, including while acting on outside boards at the direction of the **Covered Party**. **Covered Party** also means the **Covered Party's** students while acting solely within the scope of their duties while enrolled in the **Covered Party's** curriculum to provide services to third parties and the **Covered Party's** students while serving in a supervised internship as part of their educational program, but only while completing course work required by the **Covered Party**. For purposes of **Automobile** liability, **Covered Party** also means the permissive driver of any of the **Covered Party's Automobiles**. For purposes of **Uninsured or Underinsured Motor Vehicle** coverage, **Covered Party** includes any of the aforesaid persons injured in a **Loss Occurrence** involving an **Uninsured or Underinsured Motor**

Vehicle. Covered Party also means **Foundations**, when endorsed to the **Memorandum of Coverage**.

Covered Party Retained Cost means the amount that the **Covered Party** has elected to self-fund per suit as respects Coverage C - Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions**.

Covered Party Retained Limit means the amount that the **Covered Party** has elected to self-fund per **Loss Occurrence**.

Covered Project means one or more **premises** as described in the endorsement where the covered property will be permanently located at the completion of the construction, installation or erection of the covered property

Damages means, (1) as respects Coverage A-Liability, the sums owed to an entitled Claimants compensation for a covered **Loss Occurrence**, as respects Coverage B-Property, the sums owed to a **Covered Party** as a result of a covered **Loss Occurrence**. **Damages** do not include Employee Back and/or Future Wages, Benefits, Back and/or Future or Restitutionary Relief.

Data means information or instructions stored in digital code capable of being processed by machinery.

Data Processing Equipment means electronic computers and peripheral equipment used in conjunction with such computers. **Data Processing Equipment** does not mean any of the following:

1. equipment used to provide building utility service, other than communications or data processing
2. equipment used to manufacture products other than **Data** or
3. equipment used to provide a service other than data processing or communications.

Debris Removal means expense incurred in the removal of debris from a covered **property damage** loss.

Delay/Delay in Completion – Period between the **Anticipated Date of Completion** and the actual date on which the occupancy can commence

Employee means any natural person:

1. while in the **Covered Party's** service and
2. whom the **Covered Party** compensates directly by salary, wages or commissions and
3. whom the **Covered Party** has the right to direct and control while performing services for the **Covered Party** or

4. any natural person employed by an employment contract while that person is subject to the **Covered Party's** direction and control and performing services for the **Covered Party**, excluding any such person while having care and custody of property outside the described Premises.

However, **Employee** does not mean any agent, broker, person leased to the **Covered Party** by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or a director or trustee except while performing acts within the scope of the usual duties of an **employee**.

Employee Benefit Programs means group life insurance, group accident or health insurance, retirement plans, workers compensation, unemployment insurance, social security and disability benefits insurance or any other similar plan provided in whole or in part by the **Covered Party**.

Equipment Breakdown - *Applicable if Limit of Liability is indicated on Memorandum of Coverage Declarations* means any occurrence that meets the definition of an **Accident** to **Covered Equipment** and that is not otherwise excluded.

Errors and Omissions means an actual or alleged misstatement, misleading statement, act, omission, neglect or breach of duty including misfeasance, malfeasance or non-feasance by a **Covered Party** individually or collectively in the discharge of their duties for the **Covered Party** or any matter claimed against them solely by reason of their being or having been public employees, including malpractice alleged in conjunction with any medical activities but only as excess to any other existing coverage.

Expediting Expenses means the reasonable extra costs to make temporary repairs, and to expedite the permanent repair or replacement of the covered property. Reasonable costs includes additional wages for overtime, night work, and work on public holidays and the extra costs of express freight or other rapid means of transportation.

Explosives, Fireworks, or Pyrotechnic Devices means any combination of materials, which, by the agency of fire, electricity or chemical, produce an audible, visual, mechanical or thermal effect designed and intended to be useful for industrial, agricultural, personal safety, entertainment or recreational purposes.

Extra Expense means the additional costs incurred by the **Covered Party** in order to continue, as nearly as possible, the normal conduct of the **Covered Party's** operations had a **Covered Cause of Loss** not occurred, until the **Covered Party's** operations are at the level prior to the loss. Included, as **Extra Expenses** are the rental costs a **Hired Automobile** necessitated due to a loss of a **Covered Party's Automobile** up to maximum of \$2,000.

Foundation or **Auxiliary** means any auxiliary organization, non-profit group formed specifically as a school/pupil/district support or fund raising organization sanctioned by the **Covered Party**.

Gross Earnings – Gross revenues not realized due to a covered **Loss Occurrence**

Hazardous Substances - *Applicable if Limit of Liability is indicated on Memorandum of Coverage Declarations* means **Damages** resulting from the additional cost to repair

or replace damaged covered property because of contamination by a **hazardous substance** caused by an **Accident to Covered Equipment**.

Hired or Non-Owned Automobile means an automobile used on behalf of the **Covered Party** provided such automobile is not owned in full or in part by or registered in the name of (1) the **Covered Party** or (2) any **Additional Covered Party** who is granted an operating allowance of any sort for the use of such automobile.

Hostile Fire means a fire which becomes uncontrollable or breaks out from where it was intended to be.

In-Flight means the period from the time the **Aircraft or Airborne Craft** moves forward in taking off or in attempting to take off until it has completed its landing.

Increased Cost of Construction means the increased cost of repair or replacement occasioned by the enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures which necessitates repairing or replacing the building covered hereunder, which has suffered damage or destruction, a greater cost of repair or replacement, limited, however, to the minimum requirements of such ordinance or law.

Injunctive Relief or Non-Monetary Recourse, Relief, or Redress means a suit filed in a State or Federal Court naming a **Covered Party** which seeks solely non-monetary recourse, relief or redress but excluding any legal fees and costs awarded to the complaining party. For the purposes of this **Memorandum of Coverage**, any loss, claim, suit or other action is not **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress** if it pleads for or in any way requests or demands payment of any **damages** or costs in money by a **Covered Party**.

Legal Expense, as respects Coverage A - Liability, and Coverage B - Property, means all reasonable and necessary costs of investigation, and defense of claims, including court costs, interest on judgments, premiums on bonds, and legal fees covered by this Memorandum but excluding the expense of salaried employees of, counsel on retainer to, office expenses of, and claims administration fees paid by the **Covered Party**. Costs incurred by either a **Covered Party** or the **Authority** under Coverage C - Defense Costs for **Injunctive Relief or Non-Monetary Recourse Actions**, are not **Legal Expense**.

Loss Occurrence:

1. **LIABILITY** - means an accident or event, including continuous or repeated exposure to conditions, which results in **Damages** during the coverage period to which this Memorandum applies, provided that the **Damages** is neither expected nor intended from the standpoint of the **Covered Party**; An **Error or Omission, Personal Injury or Wrongful Acts** by a **Covered Party** which results in **Damages** during the coverage period to which this Memorandum applies which were not expected nor intended by the **Covered Party**; a negligent act, error or omission during the coverage period to which this **Memorandum of Coverage** applies in the **Administration** of the **Covered Party's Employee Benefit Programs**.
2. **PROPERTY** - means a single event, which causes **Property Damage** to the **Covered Parties** covered property by a **Covered Cause of Loss**.

Loss of Revenues means those sums that the **Covered Party** would have received had a **Covered Cause of Loss** not occurred, but excluding any local, state or federal funds whatsoever.

Loss of Value – Means the reduction in value as of the commencement of the Covered Project of the undamaged portion of covered property as a consequence of the enforcement of any ordinance or law

Media means all forms of electronic, magnetic and optical tapes and discs for use in any electronic computer or electronic **Data Processing Equipment**.

Memorandum of Coverage means the consensual contract between the Authority and its Members covered interests.

Mobile Equipment means any of the following types of land vehicles, whether self-propelled or not, including attached machinery or equipment: bulldozers, farm machinery, forklifts, crawler tread vehicles, power cranes, shovels, loaders, diggers or drills, graters, scrapers or rollers, snow removal equipment, street cleaning equipment, and any other vehicles designed for use principally off public roads. However, **Mobile Equipment** does not include **motor vehicles** subject to compulsory or financial responsibility law where it is licensed or principally garaged.

Motor Vehicle means a self-propelled vehicle designed for use principally on public roads and subject to motor vehicle registration.

Newly Acquired Property means property which is either purchased by the **Covered Party** or in which the **Covered Party** acquires a coverable interest during the term of this **Memorandum of Coverage**, and is reported to the Authority within 120 days of acquisition.

Occupying means in, upon, getting in, on or off.

Owned Automobile means an automobile owned in full or in part by or registered in the name of the **Covered Party**. Automobiles furnished to the **Covered Party** for driver education purposes shall be considered **Owned Automobiles**.

Period of Indemnity – Means the time period after the date when construction would have been complete had there been no loss and ends on the date construction is actually complete, provided the **Covered Party** has exercised due diligence to complete construction as soon as possible.

Personal Injury means:

1. false arrest, willful detention, imprisonment or malicious prosecution
2. publication or utterance of a libel or slander or of other defamatory or derogatory material, or a publication or utterance in violation of an individual's right to privacy
3. wrongful entry or eviction or other invasion of the right of private occupancy
4. discrimination or violation of civil rights, not intentionally committed by or at the direction of the **Covered Party**

5. Assault and Battery committed in defense of a person or property and
6. Sexual Harassment.

Personal Property means property of the **Covered Party** located in or on the **Covered Party's premises** or in the open within 1,000 feet of the **Covered Party's premises**, except **Automobiles** and **Mobile Equipment**, consisting of the following:

1. furniture and fixtures, machinery and equipment and inventory
2. all other **personal property** owned by the **Covered Party** and used in the operations of the **Covered Party** and
3. the **Covered Party's** use interest as tenant in improvements and betterments. Improvements and betterment's are fixtures, alterations, installations or additions made a part of the building or structure occupied but not owned by the **Covered Party** and acquired or made at the **Covered Party's** expense but cannot legally be removed.

Personal Property of Others means **personal property** of others that is in the **Covered Party's** care, custody and control and located in or on the **Covered Party's** property or in the open within 1,000 feet of the **Covered Party's** property.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, waste material, and spores or other byproducts or components of mold, fungi, bacteria or viruses. Waste material includes materials to be recycled, reconditioned or reclaimed. The term **Pollutants** as used herein is not defined to mean potable water or agricultural water or water furnished to commercial users or smoke and related matter resulting from a **hostile fire**.

Premises means that portion of any building the **Covered Party** occupies in conducting its business, and also includes that portion of any building occupied by an **Agent** in conducting its business.

Preservation of Property means movement of covered property from a covered construction project to preserve it from loss or damage by a **Covered Cause of Loss**:

1. While it is being moved or while temporarily stored at another location; and
2. Only if the loss or damage occurs within 30 days after the property is first moved.

Property Damage means:

1. physical injury to or destruction of tangible property, which occurs during the coverage period, including the loss of use thereof at any time resulting therefrom and
2. loss of use of tangible property, which has not been physically injured or destroyed provided such loss of use is caused by a **Loss Occurrence** during the coverage period.

Real Property means completed **Buildings**, completed **Structures**, and portable buildings the **Covered Party** owns or occupies including their permanently installed fixtures, machinery, equipment, and replacement of such components for maintenance and repair. Real Property does not mean **Buildings**, **Structures** and portables under construction where the total construction value exceeds \$250,000.

Rental Value means the:

1. income reasonably expected from tenant occupancy of the **premises** as furnished and equipped by the **Covered Party**
2. amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be the **Covered Party's** obligations and
3. fair rental value of any portion of the **premises**, which is occupied by the **Covered Party**
4. **abatement of rental payments** resulting from loss of use of improvements or any portions of the **premises** and which would otherwise be the legal obligation of the **Covered Party**.

Rodeo means any exhibition of cowboy skills, such as bronco riding, calf roping, or a roundup, steer wrestling, Brahma bull riding or the use of any mechanical rodeo apparatus.

Soft Costs – Expenditures which would not have otherwise been incurred by the **Covered Party** except for a **delay** in the expected completion date of the project.

Software Loss – Loss or damage to any program, software or operating system, programming instruction or data arising out of any failure, malfunction or corruption.

Sprinkler Leakage means leakage or discharge of any substance from an Automatic Sprinkler System, including collapse of a tank that is part of the system.

Automatic Sprinkler System means:

Any automatic fire protective or extinguishing system, including connected:

1. sprinklers and discharge nozzles
2. ducts, pipes, valves and fittings
3. tanks, their component parts and supports and
4. pumps and private fire protection mains

When supplied from an automatic fire protective system:

1. non-automatic fire protective systems and
2. hydrants, standpipes and outlets.

Start Date means the date on which mobilization begins at project site.

Structure means property built or constructed on, and attached to, land. Structures include fencing and enclosures; garages; gazebos; greenhouses; kiosks; sheds and utility buildings

Total Construction Price means the value of all Real Property and of additions to or remodeling of existing Real Property under construction, including materials, supplies, equipment, machinery, and other property of a similar nature, that will become a permanent part of the **Covered Project**, or when used or to be used in site preparation (including the demolition of existing structures as required by the contract), fabrication and assembly, installation or erection, alteration, renovation or construction of the **Covered Project**, plus site general conditions, contractor's profit and overhead, change orders, bonds, permits, and Construction Management Fees.

Transmission & Distribution Lines means owned Transmission & Distribution Lines, used to conduct business of the covered member and located on the covered party's owned, leased or rented **premises**. Transmission & Distribution Lines does not mean off premises, poles, towers, underground lines, or overhead lines used for electrical transmission or distribution.

Transit means the movement of the **Covered Party's Personal Property** from one location to another.

Ultimate Net Loss means all sums actually paid or payable in cash in the settlement or satisfaction of losses to the covered parties covered property or for which the **Covered Party** is liable either by adjudication or compromise after making proper deduction for the **Member Retained Limit**, all recoveries and salvages collectible, and includes attorney's fees, court costs, interest on any judgment or awards; and loss adjustment expenses, excluding only the salaries of the "**Covered Party's**" regular **employees**. However, **Ultimate Net Loss** shall not include any **Damages, Legal Expense** or expenses because of liability excluded by this Memorandum.

Uninsured or Underinsured Motor Vehicle:

1. for which no liability bond or policy at the time of a **Loss Occurrence** provides at least the amounts required by the applicable law where a covered **Automobile** is principally garaged
2. for which an insuring or bonding company denies coverage or refuses to admit coverage except conditionally or with reservation or becomes insolvent; or
3. that is a hit-and-run automobile and neither the driver nor owner can be identified. The vehicle must make physical contact with a **Covered Party**, a covered **Automobile** or a vehicle a **Covered Party** is **Occupying**.
4. **Underinsured Motor Vehicle** means a land **Motor Vehicle** for which the sum of all liability bonds or policies at the time of a **Loss Occurrence** provides at least the amounts required by the applicable law where a covered **Automobile** is principally garaged but for less than the **Uninsured or Underinsured Motor Vehicle** coverage limits stated in this **Memorandum of Coverage**.

Uninsured or Underinsured Motor Vehicle does not include any vehicle:

1. owned or operated by a self-insurer under any applicable automobile law except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law
2. owned by a governmental unit or agency or
3. designed or modified for use primarily off public roads while not on public roads.

Valuable Papers and Records means the actual cost to research, replace or restore lost information on lost or damaged valuable papers and records, including those which exist on electronic or magnetic media, for which duplicates do not exist.

Watercraft means a vessel designed to transport persons or Property in or through water.

Wrongful Acts means the actual or alleged practices as follows:

1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against public policy or in breach of an employment contract, written or implied or breach of the covenant of good faith and fair dealing in the employment contract and
2. allegations of negligent or wrongful evaluation, wrongful demotion, wrongful discipline, failure to promote, failure to grant tenure, or wrongful deprivation of career opportunity.

Section VII. General Conditions

This **Memorandum of Coverage** is subject to the following conditions:

Assistance and Cooperation of Covered Party

A **Covered Party** shall cooperate with the **Authority** and, upon the **Authority's** request, shall 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 such **Covered Party** because of a **Loss Occurrence**, and such **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

A **Covered Party** shall not, except at such **Covered Party's** own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for such immediate relief as shall be imperative at the time of the **Loss Occurrence**.

Claim Against Transit Carrier and/or Bailee

No claim for loss or damage during transit shall be payable until the **Covered Party or Additional Covered Party** has filed a claim with and made reasonable efforts to secure payment from the transporting carrier and the carrier has denied liability.

Concealment, Misrepresentation or Fraud

This **Memorandum of Coverage** is void in any case of fraud by the **Covered Party** as it relates to this **Memorandum of Coverage** at any time. It is also void if the **Covered Party**, at any time, intentionally conceals or misrepresents a material fact concerning:

1. this **Memorandum of Coverage**
2. the covered property
3. the **Covered Party's** interest in the covered property or
4. a claim under this **Memorandum of Coverage**.

Contribution Payment

The annual contribution payment shall be due and payable upon inception of coverage and each renewal thereafter. The amount of the annual contribution will be based on rates in effect at the inception of this Memorandum and on each subsequent anniversary. Contributions shall include any assessments required by the **Authority**, in accordance with the bylaws. The **Authority** shall not be required to perform any obligations under this Memorandum if all contributions and assessments are not paid in accordance with the bylaws.

Coverage Period and Territory

This **Memorandum of Coverage** applies to any **Loss Occurrence** which takes place during the Memorandum of Coverage period anywhere in the world.

Defense of Claims or Suits

The **Authority** shall have the right and opportunity to:

1. associate with any **Covered Party** in the defense of any claim or suit
2. select and appoint counsel to defend the **Covered Party** in any claim or suit
3. control any covered **Loss Occurrence** if the **Damages** appear likely to exceed the **Member Retained Limit** and
4. control any covered action for **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress** if the costs appear likely to exceed the Member Retained Cost.

No **Ultimate Net Loss, Legal Expense** or **Damages** payment obligation nor any costs for any action for **Injunctive Relief of Non-Monetary Recourse, Relief or Redress** shall be incurred on behalf of the **Authority** without its prior consent due to any **Loss Occurrence** that appears likely to exceed the **Member Retained Limit**.

If the total amount of **Ultimate Net Loss Damages** for which a **Loss Occurrence** might be settled prior to trial court judgment exceeds the **Member Retained Limit**, then, if the

Authority consents to further trial court proceedings, the **Authority** shall contribute to **Legal Expense** funding in the ratio which the **Authority's** proportion of the liability for **Damages**, by the judgment rendered or settlement, bears to the whole amount of said judgment or settlement; however, in no event shall the **Covered Party's** participation in such **Legal Expense** and **Ultimate Net Loss** exceed the **Member Retained Limit**.

The **Authority** will afford **Legal Expense** for such **Covered Party** until such conduct, on the part of the **Covered Party**, is established in fact pursuant to a civil or criminal trial or administrative proceeding to be an exclusion under the **Memorandum of Coverage**.

Delay in Completion

With regards to Coverage D – **Builders Risk**:

1. In the event a project completion date is revised to extend the completion date the **Covered Party** shall provide a revised project schedule
2. The **Covered Party and the Additional Covered Party** shall do all that is reasonably practical to minimize the extent of the **Delay**
3. The **Authority** shall not be liable during the **Period of Indemnity** for the stated project value
4. Upon request the **Covered Party and the Additional Covered Party** shall make available all records and information relevant to determination of the loss and expenses As soon as practical the **Covered Party** shall begin normal operations

Duties in the Event of Loss

As soon as the **Covered Party** discovers a loss or a situation that may result in loss of, or damage to, the **Covered Party** must:

1. notify the **Authority** as soon as possible, but not later than 30 days after discovery of the loss
2. submit to examination under oath at the **Authority's** request and give the **Authority** a signed statement of the **Covered Party's** answers
3. give the **Authority** a detailed statement of the loss within 120 days
4. with respect to any forgery loss, include with its statement of the loss any instrument involved in that forgery loss, or, if not possible, an affidavit setting forth the amount and cause of loss
5. cooperate with the **Authority** in the investigation and settlement of any claim and you must see that the following are done in the event of loss or damage to Covered Property:
 - a. notify the police if a law may have been broken

- b. take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Liability. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a **Covered Cause of Loss**. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- c. as often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.
- d. Permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

Errors and Omissions

It is agreed that this Coverage shall not be prejudiced by any unintentional delay or omission in reporting hereunder or any unintentional error, provided prompt notice be given the **Authority** as soon as said facts become known to the **Covered Party** and additional contribution paid, if required.

Excess Coverage

Permission is hereby granted to procure coverage in excess of the limits stated in the Declarations. Such excess coverage shall not be considered "Other Coverage" for the purpose of the Other Coverage Clause.

Inspection

The **Authority** shall be permitted but not obligated to inspect the **Covered Party's** property and operations at anytime. Neither the **Authority's** 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 or healthful or are in compliance with any law, rule or regulation.

Mandatory Arbitration

In the event that a question or dispute arises between the **Authority** and the **Covered Party** concerning the applicability of coverage under this **Memorandum of Coverage** to any loss, claim or suit, either the **Covered Party** or the **Authority** shall make a written request for arbitration. Where such a request is made, arbitration shall be the final process for the resolution of any such dispute as between the **Covered Party** and the **Authority**, and each agrees that such question or dispute will be decided by a single neutral arbitrator to be selected by mutual agreement or, if they cannot agree, by petition to a court of law for appointment of a neutral arbitrator. The **Covered Party** and the **Authority** also agree to give up any right to a jury or court trial for resolution of such questions or disputes, and the written decision of the arbitrator shall be final and binding

without right to appeal except as provided for in Code of Civil Procedure sections 1286.2 and 1286.6.

No Benefit to Bailee

No person or organization, other than **Covered Party or Additional Covered Party**, having custody of covered property or liability for covered property by stipulation in a bill of lading or other contract will benefit from this coverage

Notice of Loss Occurrence or Action for Injunctive Relief or Non-Monetary Recourse, Relief, or Redress

When a **Loss Occurrence** takes place or an action for **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress** is brought against a **Covered Party** which falls within the guidelines of the **Authority's** Claims Reporting Policy, written notice shall be given by or on behalf of the **Covered Party** to the **Authority** or any of its authorized agents as soon as practicable. As respects such **Loss Occurrence** or action for **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress** the notice shall contain particulars sufficient to identify the **Covered Party**, reasonably obtainable information respecting the time, place, and circumstances of the **Loss Occurrence** or the action for **Injunctive Relief or Non-Monetary Recourse, Relief, or Redress**, where applicable, the names and addresses of the injury, and the names of any witnesses shall be included in such notice. If claim is made or suit is brought against the **Covered Party**, the **Covered Party** shall immediately forward to the **Authority** every demand, notice, summons or other process received by the **Covered Party** or its representative.

Occupancy Clause

With regards to Coverage D – **Builders Risk** the **Covered Party or Additional Covered Party** may occupy, install or store machinery and equipment at the **Covered Project** prior to acceptance by the governing board.

Other Coverage

The coverage afforded by this **Memorandum of Coverage** is excess to any other for which coverage is available to the **Covered Party** under any insurance contract or self-insurance and such coverage as is afforded under this **Memorandum of Coverage** shall not apply until all such contracts of insurance or self-insurance are exhausted.

Protective Safeguard

It is a condition of this Memorandum that the **Covered Party** shall maintain so far as possible within the **Covered Party's** control such protective safeguards as were in effect at the inception of this Memorandum.

If Coverage D – **Builders Risk** is endorsed to the MOC the **Covered Party** warrants that the following protection will be provided at the **Project Site**:

1. The site will be enclosed within a six-foot cyclone fence

2. Site will be fully lighted.
3. Gates will be closed and securely locked during all non-construction hours, including but not limited to nights, weekends and holidays.
4. Security service will make on-site inspections of the project site at intervals during all periods of non-construction.
5. Fire extinguishers must be readily available, and workers instructed on where they are used and how to use them
6. A "fire watch" must be maintained. This requires an inspector to walk the project site forty-five minutes after workers leave the site, looking for evidence of smoke from all buildings under construction. This inspector shall carry a properly charged fire extinguisher while performing the fire watch inspection.
7. A working fire hydrant must be within 1,000 feet of any building(s) under construction.

Reporting

1. If the **Covered Party** acquires an interest in any **Real Property** or **Personal Property** whether owned, leased or under contract the **Covered Party** shall report 100% of the replacement values to the Authority within 120 days of such acquisition.
2. For coverage to be afforded on any **Construction and Installation** project with a total construction value exceeding \$250,000 the project must be reported by the **Covered Party** to the **Authority** at least 30 days prior to the inception of the project and endorsed on to the **Memorandum of Coverage**.
3. The **Covered Party** or **Additional Covered Party** is required to submit the final project completed value to the **Authority** within 30 days of the project completion date. If the final completed value varies by more than 5% from the Limit of Liability, the **Authority** will apply the appropriate additional or return contribution. Additional and return contributions of less than \$250 will be waived.
4. Approval for occupancy must have been received in order to add a newly constructed **Building** or **Structure** to **Real Property**.

Signatures

The **Authority** will treat mechanically reproduced facsimile signatures the same as handwritten signatures.

Special Permission

Except as otherwise provided, permission is hereby granted for any **Real Property** at a supervised site to be and remain vacant or unoccupied without limit of time.

Subrogation

In the event of any payment under this Memorandum, the **Authority** shall be subrogated to all the rights of recovery against any person or organization and the **Covered Party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Covered Party** shall do nothing after loss to prejudice such rights.

Suspension - Applicable if **Equipment Breakdown** Limit of Liability, is indicated on the **Memorandum of Coverage Declarations**.

When any **Covered Equipment** is found to be in, or exposed to a dangerous condition any representative of the **Authority** may immediately suspend the coverage against loss from an **Accident** to that equipment. This can be done by mailing or delivering a written notice of suspension to the **Covered Party's** address as shown in the **Memorandum of Coverage**, or at the address where the equipment is located. Once suspended in this way, the coverage can be reinstated only by written notice from the **Authority**. If so suspended, the **Covered Party** will get a pro rata refund of contribution. But the suspension will be effective even if a refund has not yet been made or offered.

Valuation

The following valuations of property are established for the application of all provisions of this Memorandum:

1. Books of account, drawings and other records, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage **Media** for electronic data processing not to exceed the cost of blank books, blank cards, unexposed or blank film, tape, wire or other materials or recording media plus the cost of research and other expense necessarily incurred by the **Covered Party** to reproduce, replace or restore such records and papers.

2. **Data Processing Equipment:**

Payment by the **Authority** for damaged **Data Processing Equipment** shall be the smallest of:

- a. the cost at the time of the loss to repair the damaged property with property of like kind and quality
- b. the cost at the time of the loss to replace the damaged property on the same site with other property of like kind and quality and used for the same purpose or
- c. the amount the **Covered Party** actually spends that is necessary to repair or replace the damaged property.

However, The **Authority** shall not be liable for:

- a. property that is obsolete or useless to the **Covered Party** or

- b. any extra cost if the **Covered Party** decides to repair or replace the damaged property with property of a better kind or quality or of a larger capacity.
- 3. Paintings, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware, musical instruments and bric-a-brac, and other articles of art, rarity, or antiquity, at actual cash value.
- 4. Property of others at the amount for which the **Covered Party** is liable but in no event to exceed actual cash value.
- 5. Tenant Improvements and Betterments:
 - a. if repaired or replaced within a reasonable time after loss, at the expense of the **Covered Party**, the replacement cost of the damaged or destroyed property
 - b. if not repaired or replaced within a reasonable time after loss, that proportion of the original cost of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the period(s) from the date(s) such improvements or betterments were made to the expiration date of the lease or
 - c. if repaired or replaced at the expense of others for the use of **Covered Party**, there shall be no liability hereunder.
- 6. **Automobiles and Mobile Equipment** at actual cash value.
- 7. Composite and Synthetic Surfaces:
 - a. The **Authority** will pay the amount to repair or replace only that portion of the surface that is damaged; or
 - b. If the **Covered Party** elects not to repair or replace that part of the damaged surface the **Authority** will pay actual cash value of the surface, less depreciation
- 8. All other property at replacement cost.

With respect to any damaged or destroyed property to be valued at replacement cost, the **Covered Party** must notify the Authority in writing to repair or replace it within 180 days of the **Loss Occurrence** or the **Authority** will pay actual cash value.

Notwithstanding the above, a limit of \$1,000 shall apply for any one **Loss Occurrence** of loss of:

- a. precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles or

- b. manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them
Builder Risk Coverage D extension limit of liability is \$250,000

The **Authority** may, at its option, pay the actual cash value of the property or repair or replace it.

Any property that the **Authority** pays for or replaces becomes the **Authority's** property.

In addition the following conditions apply to Coverage D – **Builders Risk**

- a. We will pay you the full cost of repairing, replacing or rebuilding the covered property, whichever is less, with materials of comparable type and quality, up to the applicable Limit of Liability. The actual cost can include labor, reasonable profit and overhead, provided that these costs are included in the applicable Limit of Liability indicated in the Builders Risk Endorsement. In the event of a **Loss Occurrence** the value of the property will be determined as of the time of the loss.
- b. Property of Others at the lesser of Actual Cash Value or the cost to repair or replace the lost or damaged property with substantially identical property
- c. Trees, Shrubs, Plantings and Landscaping at the cost to replace with property of like kind and quality plus labor if loss occurs after installation
- d. Property In Transit at Invoice cost plus shipping charges
- e. **Delay In Completion** at Actual loss sustained during the **Period of Indemnity**