

COVER PAGE

**MEMORANDUM STATING THE TERMS AND CONDITIONS OF
THE WORKERS' COMPENSATION RISK SHARING PROGRAM
ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY**

This Memorandum is not an insurance policy; it is a description of the **Program** through which certain specified and limited self-insured workers' compensation and employers liability risks are administered by the **Authority** and shared by its **Participating Entities**.

1. **PARTICIPATING ENTITY:**

MAILING ADDRESS:

2. **PROTECTION PERIOD:** From July 1, 2002 12:01 a.m. Pacific Standard Time until terminated.

NOTE: The prior Memorandum Stating the Terms and Conditions of the Workers Compensation Risk Sharing Program Administered by the California Fair Services Authority effective July 1, 2001 is hereby terminated effective July 1, 2002 12:01 a.m. Pacific Standard Time.

3. **PROTECTION AFFORDED BY THE PROGRAM:**

- a. **Workers' Compensation:** Section III of this Memorandum applies to the **Participating Entity's** obligations under the California workers' compensation law.
- b. **Employers Liability:** Section IV of the Memorandum applies to work in California.
- c. **Other States:** Section V of this Memorandum applies to workers' compensation protection outside of California.

4. **MAXIMUM AMOUNTS OF PROTECTION:**

The **Program's** Maximum Amounts of Protection for each accident or each employee for disease are:

- a. Workers' Compensation \$500,000
- b. Employers Liability \$500,000

AUTHORIZED SIGNATURE: _____

MEMORANDUM OF COVERAGE

MEMORANDUM STATING THE TERMS AND CONDITIONS OF THE WORKERS' COMPENSATION RISK SHARING PROGRAM ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY

SECTION I-INTRODUCTION AND CONDITIONS

This Memorandum sets forth the terms, conditions and limits of the workers' compensation obligations and employers liability protection which the **Participating Entities** of the **Authority** have agreed to pool within the terms of their Workers' Compensation Risk Sharing Program, authorized by the **JEPA** creating the **Authority** under the provisions of Section 6500 et seq. of the California Government Code.

This Memorandum includes the Cover Page and all addendums or schedules attached to it. Throughout this Memorandum, including the Cover Page, words and phrases that appear in bold print are defined in Section II.

As provided in Sections 990.4 and 990.8 of the Government Code, pooling of claims or losses under this **Program** shall not be considered insurance nor subject to regulation under the California Insurance Code. Any actual or alleged ambiguity herein will not be construed against the **Authority** or the **Program** and, because the **Program** is not insurance, legal principles associated with the interpretation of insurance terminology will not be given effect over legal principles used to interpret contracts in general.

The sole duty of the **Authority** is to administer the **Program** as adopted by the California Fair Services Authority Board of Directors. The **Authority** can defend and pay only claims which the **Participating Entities** have agreed to pool under the terms of this Memorandum and the **JEPA**. There is no transfer of risk from the **Participating Entities** to the **Authority** nor assumption of risk by the **Authority**.

The provisions of the **Program** and this Memorandum are subject to and subordinated to the **JEPA** or any action taken by the **Authority's** Board of Directors in connection with the **Program**. The **Authority's** Board of Directors reserves the right to modify the **Program** including, but not limited to, modifying this Memorandum. The **Authority's** Executive Director is hereby authorized to approve non-substantive modifications to the **Program**, including, but not limited to, non-substantive modifications to this Memorandum. The **Authority** shall give **Participating Entities** written notice of any modification.

Participating Entities shall, at all times, comply with the terms, conditions and obligations which are contained in the **JEPA**, the bylaws, resolutions and operating memoranda of the **Authority**, and any emergency order of the Executive Director of the **Authority** or his/her designee.

The protection afforded by the **Program** is conditioned upon the **Participating Entity's** compliance with operating memoranda issued by the Board of Directors of the **Authority** and any emergency order of the Executive Director of the **Authority** or her/his designee.

SECTION II-DEFINITIONS

When used in this Memorandum, including the Cover Page:

Authority means the California Fair Services Authority.

JEPA means the current Joint Exercise of Powers Agreement governing the California Fair Services Authority.

Member Entity means a Member Entity as defined in the **JEPA**.

Participating Entity(ies) means the entity designated in paragraph 1 of the Cover Page and as defined in the **JEPA**.

Program means the **Authority's** Workers' Compensation Risk Sharing Program through which certain specified and limited workers' compensation and employers liability risks are shared by its **Participating Entities** and administered by the **Authority**.

Protection Period means the period of time shown in paragraph 2 of the Cover Page.

Workers' Compensation Law means the workers' compensation laws of the State of California which include:

1. Bodily injury by both accident and disease; and
2. Any amendments to such laws which are in effect during the **Protection Period**.

Workers' Compensation Law does not include provisions of any law that provides non-occupational disability benefits.

SECTION III-WORKERS' COMPENSATION PROTECTION

A. HOW THE PROGRAM APPLIES TO WORKERS' COMPENSATION

As respects to the workers' compensation protection, the **Program** applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. Bodily injury by accident must arise out of and in the course of the injured employee's employment by the **Participating Entity**, and must occur during the **Protection Period**;
2. Bodily injury by disease must be caused or aggravated by the employee's conditions of employment by the **Participating Entity**. The **Participating Entity's** employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the **Protection Period**.

B. PAYMENTS BY THE PARTICIPATING ENTITY

The **Program** does not apply to, and the **Participating Entity** is solely responsible for, any payments in excess of the benefits regularly provided by the **Workers' Compensation Law**, including but not limited to those required because:

1. of the **Participating Entity's** serious and willful misconduct;
2. the **Participating Entity** knowingly employs an employee in violation of law;
3. the **Participating Entity** fails to comply with a health or safety law or regulation;
4. the **Participating Entity** discharges, coerces, harasses or discriminates against any employee in violation of the law;
5. of injury to an employee under the minimum age specified in the **Workers' Compensation Law** and illegally employed at the time of the injury; or
6. of the **Participating Entity's** unreasonable delay or refusal to pay compensation.

C. PAYMENTS AND DEFENSE BY THE PROGRAM

Subject to all of the provisions of this Memorandum, the **Authority** shall cause the **Program** to:

1. Pay promptly when due the benefits required of the **Participating Entity** by the **Workers' Compensation Law**.
2. Defend at the expense of the **Program** any claim, proceeding or suit against the **Participating Entity** for benefits payable by the **Program**. The **Authority** has the right to investigate and settle these claims, proceedings or suits, but the **Authority** has no duty to defend a claim, proceeding or suit that is not covered by the **Program**.
3. Pay the following costs, in addition to other amounts payable under this **Program**, as part of any claim, proceeding or suit the **Authority** defends:
 - a. reasonable expenses incurred at the **Authority's** request, but not loss of

earnings;

- b. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the amount payable under this **Program**.
- c. litigation costs taxed against the **Participating Entity**.
- d. interest on an award or judgment as required by law; and
- e. expenses the **Authority** incurs on behalf of the **Program**.

D. RECOVERY FROM OTHERS

On behalf of the **Program**, the **Authority** may enforce the **Participating Entity's** rights, and the rights of person entitled to the benefits of this **Program**, to recover the **Program's** payments from any other person or entity liable for the injury. The **Participating Entity** will do everything necessary to protect these recovery rights of the **Program** and to help the **Authority** enforce them.

SECTION IV-EMPLOYERS LIABILITY PROTECTION

A. HOW THE PROGRAM APPLIES TO EMPLOYERS LIABILITY PROTECTION

As respects employers liability protection, the **Program** applies to bodily injury by accident or bodily injury by disease, including resulting death, subject to the following conditions:

1. Bodily injury does not include emotional distress, anxiety, discomfort, inconvenience, depression, dissatisfaction or shock to the nervous system, unless caused by either manifest physical injury or disease with a physical dysfunction or condition resulting in treatment by a licensed physician and surgeon.
2. The bodily injury must arise out of and in the course of the injured employee's employment by the **Participating Entity**.
3. The employment must be necessary or incidental to the **Participating Entity's** work in the State of California.
4. Bodily injury by accident must occur during the **Protection Period**.
5. Bodily injury by disease must be caused or aggravated by the conditions of the **Participating Entity's** employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the **Protection Period**.

6. If the **Participating Entity** is sued, the suit and any related legal actions for damages for bodily injury by accident or by disease must be brought under the laws of the State of California.

B. PAYMENTS AND DEFENSE BY THE PROGRAM

Subject to all of the provisions of this Memorandum, the **Authority** shall cause the **Program** to:

1. Pay all sums the **Participating Entity** legally must pay as damages because of bodily injury to its employees eligible for benefits under this **Program**, provided the bodily injury is covered by this employers liability protection.

The damages the **Authority** will pay, where recovery is permitted by law, include damages:

- a. for which the **Participating Entity** legally is liable to a third party by reason of a claim or suit against the **Participating Entity** by that third party to recover the damages claimed against such third party as a result of injury to the **Participating Entity's** employee;
 - b. for care and loss of services; and
 - c. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by the **Participating Entity**; and
 - d. because of bodily injury to the **Participating Entity's** employee that arises out of and in the course of employment claimed against the **Participating Entity** in a capacity other than as employer.
2. Defend, at the **Program's** expense, any claim, proceeding or suit against the **Participating Entity** for damages payable by this protection. The **Authority** has the right to investigate and settle these claims, proceedings and suits.

The **Authority** has no duty to defend a claim, proceeding or suit that is not covered by this **Program**.

3. Pay the following costs, in addition to the other amounts payable under this employers liability protection, as part of any claim, proceeding or suit the **Authority** defends:
 - a. reasonable expenses incurred at the **Authority's** request, but not loss of

earnings;

- b. premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the **Maximum Amount of Protection** under this **Program**;
- c. litigation costs taxed against the **Participating Entity**;
- d. interest on a judgment as required by law; and
- e. expenses the **Authority** incurs on behalf of the **Program**.

C. LIMITATIONS

This employers liability protection does not apply to:

- 1. liability assumed under a contract other than a warranty that the **Participating Entity's** work will be done in a work like manner;
- 2. punitive or exemplary damages;
- 3. bodily injury to an employee while employed in violation of law with the actual knowledge of any of the **Participating Entity** or any executive officer;
- 4. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation or disability benefits law, or any similar law;
- 5. bodily injury intentionally caused or aggravated by the **Participating Entity**;
- 6. bodily injury or damages of any kind arising out of termination or discharge of any employee;
- 7. bodily injury or damages of any kind arising out of the coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, sexual or other harassment or humiliation of, or discrimination against any employee, or arising out of any personnel practices, policies, acts or omissions;
- 8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act, the Outer Continental Shelf Lands Act, the Defense Base Act, or any other federal workers' compensation law, federal occupational disease law, or any amendments to these laws;
- 9. bodily injury to any person in work subject to the Federal Employers Liability Act or any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment;

10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law;
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act and under any other federal law awarding damages for violation of those laws; or
13. bodily injury occurring outside of the United States of America, its territories or possessions, and Canada. This limitation does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries.

D. RECOVERY FROM OTHERS

On behalf of the **Program**, the **Authority** may enforce the **Participating Entity's** rights, and the rights of persons entitled to the benefits of this **Program**, and to recover the **Program's** payments from any other person or entity liable for the injury. The **Participating Entity** will do everything necessary to protect these recovery rights of the **Program** and to help the **Authority** enforce them.

E. ACTIONS AGAINST THE AUTHORITY OR PROGRAM

There will be no right of action against the **Authority** or **Program** under this employers liability protection unless:

1. The **Participating Entity** has complied with all the terms of this Memorandum; and
2. The amount the **Participating Entity** owes has been determined with the **Authority's** consent or by actual trial and final judgment.

This Memorandum does not give anyone the right to add the **Authority** or **Program** as a defendant in an action against the **Participating Entity** to determine the **Participating Entity's** liability.

SECTION V-PROTECTION OUTSIDE OF CALIFORNIA

Protection under this Section V is identical to Section III - WORKERS' COMPENSATION PROTECTION of this Memorandum. It applies to the **Participating Entity's** employees who are hired in California and are eligible for benefits under this **Program** while they are working anywhere outside California.

SECTION VI—PROGRAM LIMITED TO FAIR OPERATIONS

Protection afforded by this **Program** (1) applies only to fair operations of the **Participating Entity** listed on page 1 of this Memorandum, and (2) does not apply to any claim, injury, liability, damages or costs arising out of non-fair operations of any **Participating Entity** or **Member Entity**.

The phrase “fair operations” as used in Section VI means the ongoing activities of the **Participating Entity** necessary to support (1) those events, including the annual fair, produced by the **Participating Entity** and (2) the interim or year-around activities that rent, lease, or otherwise utilize the facilities of the **Participating Entity**.

This Section VI does not apply to a **Participating Entity** that is organized in accordance with California Government Code Section 6500 et al.

SECTION VII—THE PROGRAM’S MAXIMUM AMOUNTS OF PROTECTION

For workers’ compensation the **Program’s** responsibility to defend and to pay benefits and costs is limited to the amount shown in paragraph 4.a. of the Cover Page. For employers liability the **Program’s** responsibility to defend and pay damages and costs is limited to the amount show in paragraph 4.b of the Cover Page.

The maximum amounts of protection on the Cover Page apply to defense obligations and costs, benefits or damages paid by the **Program** on behalf of the **Participating Entity** with respect to:

1. One or more employees because of bodily injury or death in any one accident; or
2. Any one employee for bodily injury or death by disease.

The **Authority** will not defend or pay any claims for benefits or damages after the **Program** has paid the maximum amounts of protection as explained above.

SECTION VIII—PARTICIPATING ENTITY’S DUTIES IF INJURY OCCURS

The **Participating Entity** must notify the **Authority** at once if injury occurs that may be covered by the **Program**. The **Participating Entity’s** other duties are listed below:

1. Provide for immediate medical and other services required by the workers’ compensation law.
2. Promptly provide injured employees with any form required by the workers’ compensation law.

3. Promptly provide the **Authority's** workers' compensation claims administrator with the names and address of the injured person(s) and of any witnesses, and any other information the **Authority** or its workers' compensation claims administrator may need.
4. Promptly provide the **Authority's** workers' compensation claims administrator with copies of all notices, demands and legal papers related to the injury, claim, proceeding or suit.
5. Cooperate with the **Authority** and its workers' compensation claims administrator and assist them, as they may request, in the investigation, settlement or defense of any claim, proceeding or suit.
6. Do nothing after an injury occurs that would interfere with the right to recover from others.
7. Do not voluntarily assume liability or obligations, incur expenses, or make payments or settlements.

SECTION IX–MISCELLANEOUS

A. INSPECTION

The **Authority** has the right, but is not obliged, to inspect the **Participating Entity's** workplace at any time. The **Authority's** inspections may relate to the health, safety or other conditions of the workplace. The **Authority** may give the **Participating Entity** reports on the conditions found and may also recommend changes. While these recommendations may help reduce losses, the **Authority** does not undertake to perform the duty of any person to provide for the health or safety of the **Participating Entity's** employees or the public. The **Authority** does not warrant that the **Participating Entity's** workplace are safe or healthful or that they comply with laws, regulations, codes or standards.

B. OTHER PROTECTION OR COVERAGES

If there is any other indemnity, insurance or reinsurance protection against benefits, damages, costs or expenses covered by this **Program**, the protection afforded by this **Program** shall apply excess of any such other indemnity, insurance or reinsurance unless such other indemnity, insurance or reinsurance specifically applies excess of this **Program**.