

BICEP MASTER MEMORANDUM OF LIABILITY COVERAGE

RECITALS

Pursuant to Government Code sections 990.8 and 6500, *et seq.* and a May 31, 2016 dated Joint Powers Agreement (“JPA”), Big Independent Cities Excess Pool Joint Powers Authority (“BICEP”) is a Joint Powers Authority established for the primary purpose of providing coverage to its MEMBERS for catastrophic losses specifically through pooling and sharing risk and/or jointly purchasing liability insurance via BICEP, otherwise known as BICEP’s Pooled Liability Program (“PLP”)

The parties’ agreement with respect to the PLP is memorialized through each of the following documents: the Joint Powers Agreement dated May 31, 2006; the Bylaws, the Master Program Document (“MPD”) for the PLP; this Master Memorandum of Liability Coverage (MEMORANDUM); Resolution No. 2017-01 (the “Litigation Management Program guidelines” or “LMP”); and any later approved versions of these documents, as well as, and to the extent established or to be established, any and all other terms and conditions and related documents applicable, in whole or in part, to the parties’ agreement with respect to the PLP (“Governing Documents”). Each of the Governing Documents apply equally in force and effect in setting forth the terms and conditions of and otherwise governing the parties’ agreement with respect to the PLP; however, any conflict between the JPA, the Bylaws and the MPD shall be determined in favor of the **JPA**, the Bylaws, or the MPD in that order. Each of the Governing Documents is incorporated herein by reference.

None of the Governing Documents of the PLP, including this MEMORANDUM, in whole or in part, provide insurance coverage nor constitute insurance coverage. The foregoing is not in any way, shape or form affected or modified by the purchase of liability insurance to provide coverage under the PLP.

The PLP is administered in 12-month periods of time (MEMORANDUM PERIOD). This MEMORANDUM sets forth the terms and conditions for coverage of any claim within a MEMORANDUM PERIOD. All of the terms and conditions of this MEMORANDUM apply and govern each MEMORANDUM PERIOD and coverage of any claim within a MEMORANDUM PERIOD.

These Recitals are integral to this MEMORANDUM. These Recitals are made an essential part thereof.

SECTION I -- COVERAGES

Only if all material requirements for participation in a MEMORANDUM PERIOD have been fulfilled by the MEMBER and only after all material requirements for coverage of an OCCURRENCE or CLAIM falling within a MEMORANDUM PERIOD have been fulfilled by the COVERED PARTY, shall BICEP become liable to pay those sums on behalf of the COVERED PARTY for COVERED ULTIMATE NET LOSS that the COVERED PARTY becomes legally obligated to pay as DAMAGES by reason of an approved settlement agreement or liability imposed by law or assumed under a COVERED INDEMNITY CONTRACT because of BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY, EMPLOYMENT PRACTICES, PUBLIC OFFICIALS ERRORS AND OMISSIONS or SUDDEN AND ACCIDENTAL POLLUTION as those terms are herein defined and

to which this MEMORANDUM applies, caused by an OCCURRENCE during the coverage period, except as otherwise excluded.

This MEMORANDUM does not provide insurance, but instead provides for pooled coverage. This MEMORANDUM is a negotiated agreement amongst the members of BICEP and none of the parties to the MOC are entitled to rely on any contract interpretation principles which require interpretation of ambiguous language against the drafter of such agreement. This MEMORANDUM shall be applied according to the principles of contract law, giving full effect to the intent of the members of BICEP, acting through the BOARD in adopting this MEMORANDUM. As BICEP is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide "Cumis" counsel to a COVERED PARTY in disputed coverage situations under Civil Code §2860. Finally, failure to provide such notice to a COVERED PARTY of any coverage dispute shall not operate to waive any of the provisions of this MEMORANDUM.

SECTION II – DEFINITIONS

Capitalized words and phrases have the special meanings given in this Section.

1. **AGENCY** -- means any council, commission, agency, district, authority, board or similar public entity under the MEMBER's direction or control or on which the MEMBER's governing board sits as the governing body.

This Definition excludes an airport or hospital board or commission, regardless of how such body is denominated.

2. **AIRCRAFT** -- means an operational vehicle designed for the transport of persons or property principally in the air.
3. **AUTOMOBILE** -- means a self-propelled land motor vehicle and/or trailer or semi-trailer, including any attached machinery or equipment, designed for travel on public roads and subject to motor vehicle registration.
4. **BODILY INJURY** -- means physical injury, emotional distress, sickness, or disease sustained by a person, including death resulting from any of these at any time during the MEMORANDUM PERIOD.
5. **CLAIM** -- means a claim presented pursuant to Government Code section 910, *et seq.*, and/or demand, action, suit, or administrative proceeding against a COVERED PARTY to recover DAMAGES caused by an OCCURRENCE.
6. **COVERED INDEMNITY CONTRACT** means that part of any contract or agreement pertaining to the COVERED PARTY'S routine governmental operations under which the COVERED PARTY assumes the tort liability of another party to pay for BODILY INJURY or PROPERTY DAMAGE to a third person or organization. This definition applies only to tort liability arising out of an OCCURRENCE to which this MOC applies. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

7. COVERED PARTY -- means:

- a. The MEMBER, including any and all councils, commissions, agencies, districts, authorities, boards, including the governing board or similar entities, coming under such MEMBER'S direction or control or for which such MEMBER'S board members sit as the governing body. COVERED PARTY includes departments and constituent agencies of the MEMBER except an airport or hospital board or commission, regardless of how such body is denominated;
- b. Persons who are past or present elected or appointed officials, employees, or volunteers of the COVERED PARTY whether or not compensated, while acting for or on behalf of the COVERED PARTY, including while acting on outside boards at the direction of the COVERED PARTY, except any airport or hospital board or commission, regardless of how such body is denominated, or any other joint powers authority, or any separate agency or entity, created by a joint powers agreement, subject to the provisions of subparagraph (e), provided, however, that an airport board or commission may be added to this MOC by endorsement on approval of the Board;
- c. Any officer or director of BICEP, and the staff and employees of BICEP while in the course and scope of their duties for the BICEP, with respect to PUBLIC OFFICIALS ERRORS AND OMISSIONS coverage;
- d. With respect to any AUTOMOBILE owned by a COVERED PARTY or leased or hired for use by or on behalf of a COVERED PARTY, any person while using such AUTOMOBILE and any person or organization legally responsible for the use thereof, provided its actual use is with the permission of the MEMBER. However, the following are not COVERED PARTIES:
 - i. Any person or organization, or any agent or employee thereof, operating an AUTOMOBILE sales agency, repair shop, service station, storage garage, or public parking place with respect to an OCCURRENCE arising out of the operation thereof, including road testing and delivery; or
 - ii. The owner or any lessee, other than the COVERED PARTY, of a leased or hired AUTOMOBILE or any agent or employee of such owner or lessee;
- e. COVERED PARTY does not include any person, organization, trust, or estate or any other entity for any risk, claim, or loss which is incurred or occurs under any other joint powers authority, or any joint powers agreement which creates a separate agency or entity, unless added hereto by endorsement. However, and assuming such endorsement, as to any person who is an official, employee, or volunteer of the MEMBER and is participating in the activities of any other joint powers authority or any separate agency or entity created under any joint powers agreement on behalf of that named entity, the coverage afforded by this MOC will apply in excess of and shall not contribute with any collectible insurance or other coverage provided to or through the other joint powers authority or joint powers agreement covering a loss also covered hereunder (whether on a primary, excess, or contingent basis).

- f. Notwithstanding sections (b) and (d) above, the defense and indemnity coverage afforded by this MOC to a past or present official, employee, or volunteer of a MEMBER (including a member joint powers authority) is not broader than the MEMBER'S duty to defend and indemnify its official, employee, or volunteer pursuant to California Government Code Section §815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof. If the MEMBER which employs the official, employee, or volunteer is not obligated under the California Government Code to provide a defense, or to provide indemnity for a claim, or if said MEMBER refuses to provide such defense and/or indemnity to said official, employee, or volunteer, then this MOC shall not provide any such defense or indemnity coverage to said official, employee, or volunteer. All immunities, defenses, rights and privileges afforded to a MEMBER under Federal Law and California Government Code Section §815, 815.3, 825 to 825.6, 995 to 996.6, inclusive, and any amendments thereof, shall be afforded to BICEP to bar any defense or indemnity coverage under this MOC to that MEMBER'S official, employee, or volunteer.
- g. Any person or entity holding a certificate of coverage duly issued by BICEP, as limited therein ("ADDITIONAL COVERED PARTY"). An ADDITIONAL COVERED PARTY is not covered for claims arising from the ADDITIONAL COVERED PARTY's sole negligence or for claims by another COVERED PARTY.
- h. Any person, entity or organization to whom the COVERED PARTY is obligated by virtue of a COVERED PARTY INDEMNITY CONTRACT to provide coverage solely with respect to BODILY INJURY AND PROPERTY DAMAGE arising out of:
 - i. Premises leased, used or occupied by the COVERED PARTY
 - ii. AUTOMOBILES leased or rented by the COVERED PARTY
 - iii. Equipment owned, leased, rented, maintained or used by the COVERED PARTY
 - iv. Mortgagees of the COVERED PARTY; or
 - v. Property owners and property managers of property owned, leased, rented or occupied by the COVERED PARTY,
 - vi. However, these COVERED PARTY INDEMNITY CONTRACT coverages do not apply to:
 - aa. An OCCURRENCE which takes place prior to or after the COVERED PARTY ceases to occupy the premise stated in the COVERED INDEMNITY CONTRACT,
 - bb. Any structural alternation, new construction or demolition operations performed by or on behalf of the COVERED PARTY
 - cc. Any PUBLIC OFFICIALS ERRORS AND OMISSIONS or EMPLOYMENT PRACTICES.

- i. The coverage set forth in subsection (h) immediately above will be limited to any limits of coverage within the terms of the COVERED INDEMNITY CONTRACT or the LIMITS OF COVERAGE within this MEMORANDUM, whichever is less, and will apply in excess to any underlying insurance or the COVERED PARTY'S SELF-INSURED RETENTION. BICEP will not be obligated for LIMITS OF LIABILITY greater than that provided by this MEMORANDUM.
- 8. COVERED ULTIMATE NET LOSS -- means an amount by which ULTIMATE NET LOSS exceeds the SELF-INSURED RETENTION, but not exceeding the LIMIT OF LIABILITY, and to which this MEMORANDUM covers.
- 9. CYBER LIABILITY means any liability arising out of or related to the acquisition, storage, security, use, misuse, disclosure, or transmission of electronic data of any kind including, but not limited to, technology errors and omissions, information security and privacy, privacy notification costs, penalties for regulatory defense or penalties, website media content, disclosure or misuse of confidential information, failure to prevent unauthorized disclosure or misuse of confidential information, improper or inadequate storage or security of personal or confidential information, unauthorized access to computer systems containing confidential information, or transmission or failure to prevent transmission of a computer virus or other damaging material. The coverage provided herein for CYBER LIABILITY shall be excess to, and shall not contribute with, any other insurance or pooled coverage which is available to the COVERED PARTY.
- 10. DAM -- means any artificial barrier, together with appurtenant works, which:
 - a. Is 25 feet or more in height from the natural bed of the stream or watercourse; or
 - b. Has an impounding capacity of 50 acre-feet or more.

No structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be a DAM, unless such structure is under the jurisdiction of any agency of the federal government.

- 11. DAMAGES -- means money damages, and includes attorney fees, costs and interest awarded against the COVERED PARTY.

This Definition excludes any demand, action, suit or petition for restitution, disgorgement and any non-monetary remedy or relief, including equitable relief, injunctive relief, administrative relief, administrative mandamus, or declaratory relief and any attorney fees, costs and interest based thereon.

This Definition also excludes attorney fees, costs and interest based on a contractual provision not falling within the definition of II.7. COVERED INDEMNITY CONTRACT.

- 12. DEFENSE COSTS -- means all fees and expenses incurred by any COVERED PARTY caused by and relating to the defense or litigation of a claim including attorney's fees, litigation costs, court costs, and interest on judgments accruing after entry of judgment. DEFENSE COSTS shall also include reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the COVERED PARTY, which are assumed by the COVERED PARTY in a

COVERED INDEMNITY CONTRACT where such attorney fees or costs are attributable to a claim for DAMAGES covered by this MOC. DEFENSE COSTS shall not include the office expenses of BICEP or the COVERED PARTY, the salaries of employees, contract or elected city attorneys for the COVERED PARTY, or officials of BICEP or any COVERED PARTY, or attorney fees or costs awarded to a prevailing plaintiff against the COVERED PARTY, but shall include fees and expenses relating to coverage issues or disputes which arise after a written denial of coverage, between any participant and BICEP, if the participant prevails in such dispute.

However, attorney fees shall not exceed the rates specified in the Litigation Management Program guidelines unless the BICEP Board of Directors authorizes a higher rate.

Except as otherwise specifically provided, this Definition excludes the attorney fees, costs and interest that a COVERED PARTY incurs in coverage or other disputes with BICEP.

13. EMPLOYEE -- means a past or present elected or appointed official, employee or volunteer of the MEMBER or its AGENCY acting within the scope of his or her employment with, or duties for, the MEMBER or AGENCY.
14. EMPLOYMENT PRACTICES -- means a COVERED PARTY's employment practices, policies, acts or omissions that lead to an EMPLOYEE's CLAIM for harassment, wrongful termination, wrongful employment, failure to hire or promote, retaliation, unlawful discrimination or violation of civil rights.
15. INVERSE CONDEMNATION -- means a CLAIM by any person or entity under the California or United States Constitutions alleging that the MEMBER or its Agency has taken or damaged real, personal, tangible or intangible property for public use through any means without payment of just compensation.
16. LAND USE CLAIM -- means any CLAIM, other than for INVERSE CONDEMNATION, arising out of the enactment of any zoning ordinance, specific plan, general plan, or similar regulation or use or improvement of real property, and the granting, denying or the conditional granting of a ministerial, mandatory or discretionary entitlement in the use of real property such as but not limited to, a conditional use permit or variance.
17. LIMIT OF COVERAGE -- means BICEP's LIMIT OF COVERAGE per OCCURRENCE for the MEMBER in the amount specified in the Declarations, and includes DEFENSE COSTS. One LIMIT OF COVERAGE for all coverages applies collectively to the MEMBER, its AGENCIES, its EMPLOYEES and any COVERED PARTY.
18. MASTER PROGRAM DOCUMENT -- means BICEP's MASTER PROGRAM DOCUMENT (MPD) for the POOLED LIABILITY PROGRAM (PLP).
19. MEMBER -- means the public entity approved and admitted into BICEP and named in Item 1 of the Declarations.
20. MEMORANDUM -- means this BICEP Master Memorandum of Liability Coverage and any endorsements attached to it.

21. **MEMORANDUM PERIOD** -- means the period stated in the Declarations. This period is the same as the Coverage Period as that term is used in the MPD.
22. **NUCLEAR MATERIAL** -- means Source Material, Special Nuclear Material, or Byproduct Material. Source Material, Special Nuclear Material and Byproduct Material have the meanings given to them by the Atomic Energy Act of 1954 and any law amendatory thereto.
23. **OCCURRENCE** -- means:
- a. With respect to **BODILY INJURY** or **PROPERTY DAMAGE**, an accident or event, including continuous or repeated exposure to substantially the same conditions or course of conduct, that results in **BODILY INJURY** or **PROPERTY DAMAGE** neither expected nor intended from the standpoint of the **COVERED PARTY** during the **MEMORANDUM PERIOD** ;
 - b. With respect to **PERSONAL INJURY** (other than **BODILY INJURY**), **EMPLOYMENT PRACTICES** and **PUBLIC OFFICIALS ERRORS AND OMISSIONS**, an offense described in the Definitions of those terms that results in **DAMAGES** during the **MEMORANDUM PERIOD**.
24. **PERSONAL INJURY** -- means **DAMAGES** caused by or arising out of one or more of the following:
- a. False arrest, detention or imprisonment, malicious prosecution or abuse of process;
 - b. Wrongful entry or eviction;
 - c. Publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or infringement of copyright, title or slogan, or oral or written publication of material that violates a person's right of privacy;
 - d. Discrimination, other than **EMPLOYMENT PRACTICES**, based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, handicap, disability, age or employment or violation of civil rights;
 - e. Assault and battery.
25. **POLLUTANTS** -- means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, silt, airborne particles or fibers, mold, fungus, waste, or electromagnetic field. Waste includes materials to be discarded or be recycled, reconditioned or reclaimed.

This Definition excludes potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.

26. **PROPERTY DAMAGE** -- means:
- a. Physical injury to tangible property, including all resulting loss of use of that property; or

b. Loss of use of tangible property that is not physically injured.

27. **PUBLIC OFFICIALS ERRORS AND OMISSIONS** -- means any misleading statement, or any act or omission of a **COVERED PARTY**, whether by misfeasance, malfeasance or nonfeasance, that results in a **CLAIM** against the **COVERED PARTY**.

This Definition excludes **BODILY INJURY**, **PROPERTY DAMAGE**, **PERSONAL INJURY**, and **EMPLOYMENT PRACTICES**.

28. **SELF-INSURED RETENTION** -- means the amount stated in Item 5 of the Declarations that the **MEMBER** must pay for each **OCCURRENCE** in 100% actual dollars in the form of payment for judgments, settlements and **DEFENSE COSTS**. A single **SELF-INSURED RETENTION** applies collectively to the **MEMBER**, its **AGENCIES**, its **EMPLOYEES**, and any **COVERED PARTY** for each **OCCURRENCE**.
29. **SUDDEN AND ACCIDENTAL POLLUTION** means the sudden and accidental discharge, dispersal, release, or escape of **POLLUTANTS**, resulting in **PROPERTY DAMAGE** or **BODILY INJURY** neither expected nor intended from the standpoint of the **COVERED PARTY**, onto or upon the land, into the atmosphere, into or under the ground, or into any watercourse, whether natural or man-made, or body of water or aquifer, but does not include any discharge, dispersal, release, or escape of **POLLUTANTS**, whether sudden or accidental or gradual or intentional from any fixed or stationary container, vessel, or tank of any description whatever, whether located above ground or underground. The coverage provided herein for **SUDDEN AND ACCIDENTAL POLLUTION** shall be excess to, and shall not contribute with, any other insurance or pooled coverage which is available to the **COVERED PARTY**. If the other insurance or pooled coverage available to the **COVERED PARTY** exceeds the **COVERED PARTY's RETAINED LIMIT** and the loss is in excess of the amount of other collectible insurance or pooled coverage, the coverage provided herein will apply over the other collectible insurance or pooled coverage up to the limits set forth below.

The coverage provided for **SUDDEN AND ACCIDENTAL POLLUTION** is limited to \$100,000 over the **RETAINED LIMIT**, per **OCCURRENCE** per **COVERED PARTY**.

30. **UNMANNED AERIAL VEHICLE** means an aircraft, aerial system or device that is not designed, manufactured, or modified after manufacture to be controlled directly by a person from within or on the aircraft aerial system or device.
31. **ULTIMATE NET LOSS** -- means the sums for which the **MEMBER** is liable as **DAMAGES** either by adjudication or by compromise after making proper deduction for all recoveries and salvages and includes **DEFENSE COSTS**.
32. **WATERCRAFT** -- means an operational vehicle in excess of 27 feet designed for the transport of persons or property principally on the water.

SECTION III -- AN EVENT OF DEFAULT

1. Any failure of the **MEMBER** to perform any of the material requirements for participation in a **MEMORANDUM PERIOD**, including those set forth in the **MPD** and **LMP**, shall constitute an

event of default, the occurrence of which shall absolutely excuse BICEP from performance of its coverage obligations under this MEMORANDUM for that MEMORANDUM PERIOD.

2. Any failure of the MEMBER and/or a COVERED PARTY to perform any of the material requirements for coverage of an OCCURRENCE or CLAIM, including those set forth in the MPD and LMP, shall constitute an event of default, the occurrence of which shall absolutely excuse BICEP from performance of its coverage obligation with respect to that OCCURRENCE or CLAIM under this MEMORANDUM.
3. No notice of an event of default is required. BICEP, at its own election, may provide a notice of an event of default.
4. Any waiver by BICEP of an event of default shall be at the sole discretion and by unanimous consent of the BICEP Board of Directors. In considering whether to waive an event of default, the BICEP Board of Directors may take into account whether the MEMBER furnished a written program for corrective action that is unanimously approved by the BICEP Board of Directors and whether the MEMBER provided evidence of actual cure of the event of default.

SECTION IV -- DEFENSE AND SETTLEMENT

1. BICEP shall have the right but not the duty to participate at its own expense in the defense of any CLAIM against a COVERED PARTY that BICEP determines will likely result in a COVERED ULTIMATE NET LOSS.
2. BICEP retains the right to associate attorneys of BICEP's choice with the MEMBER's attorneys in the defense of any case that the BICEP Board of Directors determines has DAMAGES exposure that will likely exceed the MEMBER's SELF-INSURED RETENTION. This right of association extends to petitions for relief from the claim filing requirements.
3. Only until and after the amount of the SELF-INSURED RETENTION has been paid 100% in actual dollars for payment of judgments, settlements and/or DEFENSE COSTS, shall BICEP reimburse the COVERED PARTY for any further DEFENSE COSTS within the LIMIT OF LIABILITY even if the allegations against the COVERED PARTY are groundless, false or fraudulent.
4. Notwithstanding the above, BICEP shall not have the obligation to defend or reimburse the DEFENSE COSTS of an EMPLOYEE if the MEMBER determines under California Government Code section 995.2(a) that the EMPLOYEE is not entitled to a defense. BICEP shall, however, reimburse DEFENSE COSTS if a court determines that the MEMBER has an obligation to pay them.
5. A COVERED PARTY shall not settle a CLAIM for an amount in excess of the MEMBER's SELF-INSURED RETENTION without the consent of BICEP's Board of Directors.
6. Once a MEMBER gives notice of an OCCURRENCE or CLAIM, BICEP shall have the right to negotiate a settlement directly with the claimant or plaintiff, subject to the MEMBER's approval of the settlement. BICEP shall not settle an OCCURRENCE or CLAIM without the MEMBER's consent. However, if BICEP approves or recommends a monetary settlement that is acceptable to the claimant or plaintiff, but the MEMBER does not consent to acceptance of that monetary

settlement offer, BICEP's liability shall be limited to the amount that BICEP would have paid in such settlement.

7. BICEP shall not be obligated to pay any CLAIM or reimburse DEFENSE COSTS above the LIMIT OF COVERAGE over the SELF-INSURED RETENTION.

SECTION V – MEMBER'S SELF-INSURED RETENTION AND BICEP'S LIMIT OF LIABILITY

1. BICEP's liability to a COVERED PARTY as the result of any one OCCURRENCE is only the COVERED ULTIMATE NET LOSS.
2. For the purpose of determining the SELF-INSURED RETENTION and LIMIT OF LIABILITY, all DAMAGES arising out of continuous or repeated exposure to substantially the same general conditions or course of conduct shall be considered as arising out of one OCCURRENCE during the first applicable coverage period.
3. The SELF-INSURED RETENTION is not a monetary obligation that a COVERED PARTY owes to BICEP. Rather, the SELF-INSURED RETENTION is a non-monetary, material requirement a COVERED PARTY must perform, among other material requirements as set forth in the LMP and MPD, in order to be entitled to coverage on an OCCURRENCE or CLAIM.

SECTION VI -- COVERAGE PERIOD AND TERRITORY

The coverages stated in Section I of this MEMORADUM apply to DAMAGES caused by an OCCURRENCE anywhere in the world during the MEMORANDUM PERIOD.

SECTION VII -- EXCLUSIONS

This MEMORANDUM does not apply to any CLAIM for or arising out of:

1. Except as provided under SUDDEN AND ACCIDENTAL POLLUTION, any claim arising out of the contamination of the environment by POLLUTANTS introduced at any time, into, under or upon land, the atmosphere, or any watercourse or body of water or aquifer. This exclusion applies whether or not the contamination is introduced into the environment intentionally or accidentally or gradually or suddenly and whether or not the COVERED PARTY or any other person or organization is responsible for the contamination. However, as to any such claim for DAMAGES for PERSONAL INJURY or to real property no longer owned, maintained, or used by the COVERED PARTY, the BICEP will provide a defense up to the amount of \$100,000 over the RETAINED LIMIT per OCCURRENCE for any such pollution related claim.

“Contamination” includes any unclean, unsafe, or unhealthful condition, either actual or potential, which arises out of the presence in the environment of any POLLUTANT whether permanent or transient. “Environment” includes land, bodies of water, underground water or water table or aquifer, the atmosphere, and any other natural feature of the earth, whether or not altered, developed or cultivated.

This exclusion does not apply to firefighting activities, including training burns, or intentional demolition or burns for the purpose of limiting a fire, or to the discharge of

POLLUTANTS for the purpose of controlling a fire or to police use of mace, oleoresin capsicum (O.C. or pepper gas), or tear gas, or to weed abatement, or to tree spraying, or to claims arising from sudden and accidental sewer backups, with such coverage provided and limited to an amount up to \$100,000 over the RETAINED LIMIT per OCCURRENCE

This exclusion does not apply to claims arising from the sudden and accidental discharge, dispersal, release, or escape of chlorine and other chemicals (gas, liquid, or solid) which are being used or being prepared for use in fresh or waste water treatment or in water used in swimming pools, wading pools, or decorative fountains, with such coverage provided and limited to an amount up to \$100,000 over the RETAINED LIMIT per OCCURRENCE. As used herein, “sudden” means abrupt or immediate, and occurring within a period not exceeding twenty-four (24) hours; “accidental” means causing harm neither expected nor intended by a COVERED PARTY.

This exclusion does not apply to claims arising from materials being collected as part of any drop off or curbside recycling program implemented and operated by the COVERED PARTY, if the materials have not been stored by the COVERED PARTY or parties for a continuous period exceeding sixty (60) days. Notwithstanding what is stated in the applicable Declarations, the LIMIT OF COVERAGE for any claims described in this exception will be subject to a limit of \$100,000.

This exclusion does not apply to claims arising from mold and/or fungus, with coverage for such claims limited to an amount up to \$100,000 over the RETAINED LIMIT per OCCURRENCE.

This exclusion does not apply to PROPERTY DAMAGE or BODILY INJURY caused by a COVERED PARTY’s response to “contamination” caused by a third-party unrelated to a COVERED PARTY. “Response” includes cleanup, removal, containment, treatment, detoxification and neutralization of POLLUTANTS.

2. Governmental orders, directions or requests that the COVERED PARTY test for, monitor, clean up, remove, remedy, contain, treat, detoxify or neutralize POLLUTANTS
3. A governmental unit or other third party’s loss or expenses, including attorney fees, or efforts to monitor, clean up, remove, remedy, contain, trace, detoxify or neutralize POLLUTANTS.
4. Hazardous properties of NUCLEAR MATERIAL.
5. DAMAGES (unless arising out of liability for EMPLOYMENT PRACTICES) to:
 - a. An EMPLOYEE within the course and scope of his or her employment caused by the MEMBER, its AGENCY or its EMPLOYEE.
 - b. An EMPLOYEE’s spouse, child, parent, brother or sister resulting from the acts or omissions of the EMPLOYEE within the course and scope of his or her employment by the MEMBER or its AGENCY.

This exclusion does not apply, however, to the MEMBER or its AGENCY's liability under a COVERED INDEMNITY CONTRACT.

6. The liability of any MEMBER to its AGENCY, or the AGENCY to the MEMBER.
7. Liability of a COVERED PARTY to its own past or present employer.
8. Liability of a COVERED PARTY under Definition 7e to another COVERED PARTY.
9. Workers' compensation or disability benefits law or any similar law.
10. Use or operation by or on behalf of the MEMBER as respects:
 - a. Any hospital.
 - b. Any health care provider because of his or her professional arts, errors or omissions.

This exclusion does not apply to:

- i. Paramedics, emergency medical technicians, medical examiners, technicians, phlebotomists or nurses, but only when in employ of the MEMBER or its AGENCY; and
 - ii. Occupational physical examinations, tuberculosis testing and immunization conducted at the direction of the MEMBER or its AGENCY.
- c. Any clinic or infirmary that has:
 - i. Overnight facilities; or
 - ii. That performs invasive surgery of any kind, or
- d. Any pharmacy operated by or for the MEMBER or its AGENCY.
11. Rupture, bursting, overflow, seepage, or release or failure to release water from any DAM.
12. Punitive or exemplary damages, or damage multiples such as double or treble damages awarded pursuant to statute or law.
13. The COVERED PARTY's actual fraud, corruption, or actual malice.
14. The COVERED PARTY's "willful act", as used in Insurance Code Section 533.
15. PROPERTY DAMAGE to:
 - a. Property owned by the COVERED PARTY;
 - b. Property rented to or leased to the COVERED PARTY where the COVERED PARTY has assumed liability for damage to or destruction of such property, unless the COVERED PARTY would have been liable in the absence of such assumption of liability; or

c. AIRCRAFT or WATERCRAFT in the COVERED PARTY's care, custody or control.

16. Operation of any transit district, transit system, or public transportation system owned or operated by the COVERED PARTY, except any transit system operating over non-fixed route systems such as "dial-a-ride," senior citizen or day care transportation, or handicapped transportation.
17. Ownership, maintenance, loading or unloading, use or operation of any AIRCRAFT, airfields, runways, hangars, buildings or other properties in connection with aviation activities. However, in connection with airfields, runways, hangars, buildings or other properties in connection with aviation activities, this exclusion shall not apply to those areas open to the public for the purpose of entering, leaving, or using the airport facilities, including parking lots and garages. "Loading" and "unloading" of AIRCRAFT as set forth above shall not apply to paramedics, nurses or emergency medical technicians.

This exclusion does not apply to claims arising out of the operation, ownership, maintenance or use or entrustment to others of any UNMANNED AERIAL VEHICLE owned or operated by or rented to or loaned by or on behalf of any named COVERED PARTY if operated in accordance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to Federal Aviation Administration (FAA) rules and regulations for UNMANNED AERIAL VEHICLE detailed in part 107 of Title 14 of the Code of Federal Regulations and if also approved for use by the chief executive officer (or designee) of the named COVERED PARTY before use.

This exclusion applies only to the coverages for BODILY INJURY and PROPERTY DAMAGE.

18. Failure to supply or provide an adequate supply of gas, water or electricity when such failure is a result of the inadequacy of the COVERED PARTY's facilities to supply or produce sufficient gas, water or electricity to meet customary demand.
19. Eminent domain, condemnation proceedings, regulatory takings or INVERSE CONDEMNATION, by whatever name called. This exclusion applies to any loss, cost, expense, and/or liability, including, but not limited to, BODILY INJURY PROPERTY DAMAGE PERSONAL INJURY EMPLOYMENT PRACTICES or PUBLIC OFFICIALS ERRORS OR OMISSIONS or that, in whole or in part, directly or indirectly, howsoever remote, is caused by, is in connection with, is related to, is contributed to by, and/or arises out of the principles of eminent domain, condemnation proceedings or INVERSE CONDEMNATION, by whatever name called, whether grounded in federal or state law, regardless of whether such claims are made directly against the COVERED PARTY or by virtue of any agreement entered into by or on behalf of the COVERED PARTY.

This exclusion shall not apply to any physical injury to tangible third-party property, including loss of use of that property due to inverse condemnation where any suits or claims for inverse condemnation are a result of negligence on the part of a COVERED PARTY;

20. Benefits payable by a COVERED PARTY under any employee benefit plan (whether the plan is voluntarily established or mandated by statute).

This exclusion does not apply, however to liability of a COVERED PARTY for failure to secure such benefits from a third party provider.

21. Refund of taxes, fees or assessments.
22. Remuneration or financial gain to which the COVERED PARTY was not legally entitled.
23. Willful violation of a penal code or ordinance committed by or with the knowledge or consent of the COVERED PARTY.
24. Estimates of probable costs or cost estimates being exceeded or faulty preparation of bid specifications or plans, including architectural plans.
25. Failure to perform, or breach of, a contractual obligation, except for liability:
 - a. That would be imposed in the absence of the contractual obligation;
 - b. Assumed under any COVERED INDEMNITY CONTRACT.
26. The Employee Retirement Income Security Act of 1974 (ERISA) and any law amendatory thereto, or any state statute or common law rule which imposes fiduciary duties and responsibilities with respect to employee benefit programs.
27. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
28. War, whether or not declared, civil war, or revolution or any act or condition incident to the foregoing, except for a MEMBER's response to such acts or conditions.
29. The purchase, sale, issuance and holding of securities, including but not limited to bonds.
30. A lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations.

This exclusion does not apply to the coverages for BODILY INJURY and PROPERTY DAMAGE.
31. The cost of modifying any building or property in order to make said building or property more accessible or accommodating to any disabled person in compliance with the Americans with Disabilities Act (Public Law 101-336) or similar state law.
32. Claims arising out of CYBER LIABILITY.

SECTION VIII – OTHER TERMS AND CONDITIONS

The following are additional material terms and conditions of this MEMORANDUM:

1. No voluntary payments:

The COVERED PARTY shall not, except at its own cost, voluntarily (that is, without BICEP's approval) make any payment, assume any obligation or incur any expense, including DEFENSE COSTS, after it has exhausted its SELF-INSURED RETENTION.

2. Bankruptcy:

In the event of bankruptcy of a MEMBER, the MEMBER must assume this MEMORANDUM and all other Governing Documents for each MEMORANDUM PERIOD in accordance with the assumption requirements for Title 11 of the United States Code; otherwise, to the extent they are not assumed, they shall be deemed rejected. It is the parties' express intention that this MEMORANDUM and all other Governing Documents be construed and shall be construed as executory contracts under Title 11 of the United States Code.

3. Other coverage:

If collectible insurance or any other coverage with any insurer, joint powers insurance authority, or other source respectively is available to the COVERED PARTY covering a loss also covered hereunder (whether on primary, excess or contingent basis), the coverage provided by this MEMORANDUM shall be in excess of, and shall not contribute with, such other insurance or coverage, provided that this clause does not apply with respect to insurance purchased or coverage obtained specifically to be in excess of this MOC. If the other collectible insurance or other coverage exceeds the COVERED PARTY'S SELF-INSURED RETENTION amount and the loss is in excess of the amount of other collectible insurance or other coverage, the coverage provided by this MEMORANDUM will apply over the other collectible insurance or other coverage up to the limits of the BICEP's liability.

4. Duration of an occurrence:

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

5. Endorsements to the MEMORANDUM:

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or change in any part of this MEMORANDUM or stop BICEP from asserting any right under the terms of this MEMORANDUM, nor shall the terms of this MEMORANDUM be waived or changed, except by endorsement issued to form a part of this MEMORANDUM.

6. No third party beneficiaries:

Nothing in this MEMORANDUM is intended to make any person or entity, other than a COVERED PARTY, a third party beneficiary of the coverage that this MEMORANDUM provides.

This MEMORANDUM confers no coverage or benefits on any person or entity other than a COVERED PARTY; no person or entity other than a COVERED PARTY shall have the right to

bring a legal action against BICEP, without its consent, to determine BICEP's obligations to a COVERED PARTY under this MEMORANDUM.

7. Subrogation:

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

- a. The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by BICEP, then BICEP shall bear the expenses thereof.
- b. The highest layer of coverage shall be reimbursed first and, if there be sufficient recoveries, then the next highest layer, until all recoveries are used up.

8. Assignment of interest:

Assignment of interest under this MEMORANDUM shall not bind BICEP unless approved by the BICEP Board of Directors.

9. Drop down exclusion:

BICEP's LIMIT OF LIABILITY shall not be increased for any reason, including, but not limited to, the refusal or inability of the COVERED PARTY to pay 100% in actual dollars the SELF-INSURED RETENTION or by the refusal or inability of any underlying insurer or joint powers authority to pay, whether by reason of insolvency, bankruptcy, or otherwise. In no event shall BICEP's obligation to provide coverage on an OCCURRENCE or CLAIM under this MEMORANDUM arise until all material requirements for coverage of the OCCURRENCE or CLAIM have been fulfilled as set forth in Sections IV and V, including those set forth in the MPD and LMP.

10. Separate limits:

If two or more MEMBERS are jointly or jointly and severally liable for the same CLAIM or OCCURRENCE, a separate SELF-INSURED RETENTION and LIMIT OF LIABILITY applies collectively to each MEMBER and its AGENCIES, its EMPLOYEES and any COVERED PARTY under Definition 7.e.

11. Severability:

This MEMORANDUM uses the term COVERED PARTY severally and not collectively, so that it applies separately to each COVERED PARTY as if it were the only COVERED PARTY. However, this provision shall not increase a MEMBER's SELF-INSURED RETENTION or BICEP's LIMIT OF LIABILITY.

12. Interpretation:

- a. This MEMORANDUM does not provide insurance so that the rule that all ambiguities must be construed against an insurer does not apply. This MEMORANDUM shall be construed according to the principles of contract law, giving full effect to the intent of the MEMBERS and BICEP's Board of Directors in adopting it.
- b. This MEMORANDUM shall be interpreted without regard to the drafter. Its terms and intent, with respect to the rights and obligations of any COVERED PARTY or BICEP, shall be interpreted and construed on the express assumption that the MEMBERS and BICEP participated equally in its drafting.

13. Law governing the MEMORANDUM:

This MEMORANDUM shall be governed and construed in accordance with the laws of the State of California.

14. Dispute Resolution and Jurisdiction for Disputes. Prior to the commencement of any judicial, administrative or other action or proceedings against, involving or relating to BICEP, including with respect to any rights, interests, duties or obligations, whether legal or equitable, arising from or related to this MEMORANDUM, the MPD or LMP, the MEMBER and BICEP are required to participate in good faith in non-binding mediation to resolve the dispute. The parties subject to the dispute shall (a) equally share the costs and costs of mediation and (b) select a mutually agreeable mediator knowledgeable about pooling agreements to mediate the dispute. After the mediation, and only after the mediation, the sole and exclusive jurisdiction for any dispute arising in, arising from or relating to this MEMORANDUM (or any other GOVERNING DOCUMENTS) shall be the Superior Court of the State of California.

15. Cancellation:

This MEMORANDUM may, with respect to any MEMBER, be cancelled by BICEP on ninety (90) days' notice either for the then-current MEMORANDUM PERIOD or, in the event of expulsion, permanently upon the occurrence of the events and under terms set forth in the LIABILITY PROGRAM.

16. Named Member:

The MEMBER first named in Item 1 of the Declarations is authorized to act on behalf of itself, its AGENCIES, its EMPLOYEES, and any COVERED PARTY under Definitions 6.e and 6.f with respect to giving and receiving Notice of Cancellation and for receiving any return premium that may become payable under this MEMORANDUM. That MEMBER is also responsible for the payment of all premiums.

17. Additional Covered Party:

If any primary insurance is held by the person(s), entity(ies), or organization(s) named by a duly issued certificate as an ADDITIONAL COVERED PARTY, the coverage provided by this MEMORANDUM is primary to that other insurance, but will apply in excess of the applicable COVERED PARTY's SELF-INSURED RETENTION specified in the Declarations. BICEP shall

not seek contribution from the other insurance held by such ADDITIONAL COVERED PARTY for amounts payable under this MEMORANDUM.

This condition applies only with respect to liability for BODILY INJURY and PROPERTY DAMAGE arising solely out of the negligent acts of the applicable COVERED PARTY, and not with respect to any other liability.

This condition does not apply to a person(s), entity(ies) or organization(s) unless the applicable COVERED PARTY had a specific written contract with that person(s), entity(ies) or organization(s) that meets all of the following criteria:

- a. The contract was duly approved by the MEMBER, and
- b. The contract requires that the person(s), entity(ies) or organization(s) be named as an ADDITIONAL COVERED PARTY under this Memorandum, and
- c. The COVERED PARTY received the request for designation as an ADDITIONAL COVERED PARTY before the date that the applicable COVERED PARTY begin operations or performance under the contract, and
- d. The contract requires that the coverage provided by this MEMORANDUM be primary.