

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

(Hereinafter called the Pool)

EMPLOYMENT PRACTICES & PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY COVERAGE AGREEMENT

CLAIMS MADE AND REPORTED

In consideration of the payment of contribution and reliance upon all information furnished by the Member to the Pool, and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the Pool agrees:

To pay on behalf of the Member and/or Covered Person all sums which the Member or Covered Person shall become legally obligated to pay as Damages or Claim Expenses; provided, however, such Damages and Claim Expenses must have resulted from a Covered Event, and which is first made against the Member or Covered Person during the Coverage Period or the Extended Reporting Period, if purchased, and reported to the Pool during the Coverage Period or the Extended Reporting Period, if purchased, or within sixty (60) days after the expiration of the Coverage Period or Extended Reporting Period, if purchased.

Provided always that no portion of any Covered Event as described below took place prior to the Retroactive Date stated in Item 5. of the Declarations, or after termination or expiration of the Agreement:

EMPLOYMENT PRACTICES LIABILITY

Covered Event means any actual or alleged:

1. Wrongful dismissal, discharge or termination (either actual or constructive) of employment, including both breach of an expressed or implied employment contract, other than an employment contract or agreement which stipulates financial consideration if such is due as the result of a

breach of the contract or agreement, and violation of applicable law or public policy;

2. Employment related harassment (including but not limited to sexual harassment);
3. Employment related discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
4. Employment related retaliation, including retaliatory action against an employee because the employee has:
 - A. Declined to perform an illegal or unethical act;
 - B. Filed a complaint with a governmental authority or a "suit" against the Member or any other Covered Person in which damages are claimed;
 - C. Testified against the Member or any other Covered Person at a legal proceeding; or
 - D. Notified a proper authority of any aspect of the Member's business operation which is illegal.
5. Employment related misrepresentation to an Employee or applicant for employment with the Member;
6. Employment related libel, slander, humiliation, defamation and/or invasion of privacy;
7. Wrongful failure to employ or promote;
8. Wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation, including the giving of defamatory statements in connection with an Employee reference;
9. Employment related wrongful discipline;



10. Failure to grant tenure or practice privileges;
11. Failure to provide or enforce adequate or consistent organization policies or procedures relating to employment performance;
12. Violations of the following Federal Laws (and any amendments) including all regulations promulgated thereunder:
 - A. Family and Medical Leave Act of 1993;
 - B. Americans with Disabilities Act of 1992 (ADA);
 - C. Civil Rights Act of 1991;
 - D. Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990; or
 - E. Title VII of the Civil Rights Law of 1964 (as amended) and 42 U.S.C. Section 1983, as well as the Pregnancy Discrimination Act of 1978.
13. Violation of a Covered Person's Civil Rights relating to any of the above;
or
14. Negligent hiring, retention, training or supervision, infliction of emotional distress, or violation of an individual's Civil Rights, when alleged in conjunction with any of the foregoing items 1 through 13.
15. Third Party Discrimination and Third Party Harassment alleged by a Third Party.

PUBLIC OFFICIALS LIABILITY

Covered Event means:

Any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by the Member or Covered Person while acting solely in his or her capacity as such and on behalf of the Member. A Covered Event shall not include a claim against a Member or Covered Person for alleged or actual gross negligence or an alleged or actual intentional tort.

DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS

The Pool shall investigate and defend any claims to which coverage under this Agreement applies pursuant to the following provisions:

1. Claim expenses incurred in investigating and defending such claims shall be included within the per claim Agreement Limit of Liability set forth in the Declarations and shall not be in addition thereto. Such claim expenses shall reduce the available Limit of Liability. THE POOL SHALL NOT BE OBLIGATED TO PAY ANY DAMAGES OR TO DEFEND OR TO CONTINUE TO DEFEND ANY CLAIM OR TO PAY CLAIM EXPENSES AFTER THE LIMIT OF THE POOL'S LIABILITY HAS BEEN TENDERED TO THE MEMBER OR COVERED PERSON OR INTO THE COURT OR EXHAUSTED BY PAYMENT(S) OF DAMAGES AND/OR CLAIM EXPENSES.
2. The Pool shall make selection of the defense counsel.
3. The Member and/or Covered Person shall cooperate with the Pool in defense, investigation and settlement of any claim. The Member and/or Covered Person, will assist the Pool in effecting any rights of indemnity, contribution or apportionment available to the Member and/or Covered Person or the Pool.
4. Upon the Pool's request, the Member and/or Covered Person, without charge to the Pool, shall (i) submit to examination and interview by a representative of the Pool, under oath, if required; (ii) attend hearings, depositions and trials; (iii) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of the suits; (iv) give a written statement or statements to the Pool's representatives and (v) meet with representative(s) for the purpose of determining coverage and investigating and/or defending any claim.
5. The Member and/or Covered Person shall not, with respect to any claim covered under this Agreement, except at Member and/or Covered Person's personal cost, make any payment, admit liability, settle claims, assume any obligation, agree to arbitration or any similar means of resolution to any dispute, waive any rights or incur claim expenses, without prior written Pool approval. Any costs and expenses incurred by the Member and/or Covered



Person prior to the Member and/or Covered Person giving written notice of the claim to the Pool, shall be borne by the Member and/or Covered Person.

6. The Pool and such servicing contractors to whom the Pool has delegated claims settling authority shall have final authority over the disposition of any claim and shall have full settlement authority with respect thereto. The Member, however, shall have the right to appeal any claim decision to the Pool Board and the decision of the Pool Board shall be final.

EXTENDED REPORTING PERIOD

If the Pool cancels or nonrenews this Agreement, for reason other than nonpayment of contribution, or noncompliance with the terms and conditions of the Agreement, the Member, for an additional contribution charge, shall have the right to extend the period during which claims must be first made and reported to apply to CLAIMS FIRST MADE AGAINST THE MEMBER DURING THE TWENTY FOUR (24) CALENDAR MONTHS immediately following the effective date of such cancellation or nonrenewal and REPORTED IN ACCORDANCE WITH THIS AGREEMENT, provided that:

The Extended Reporting Period applies only to Covered Events that occurred or were committed prior to the effective date of cancellation or nonrenewal of this Agreement and that are otherwise covered by this Agreement; and

The quotation of different contributions, limit(s) of liability and/or renewal terms for the Agreement does not constitute a cancellation or refusal to renew for the purposes of this provision; and

The full contribution for this Agreement and any amounts owed by the Member that are due have been paid by the Member; and

Written notice of intent to exercise this option and the contribution required for the Extended Reporting Period is received by the Pool from the Member within ten (10) calendar days of the effective date of cancellation or nonrenewal. This contribution shall be calculated at the percentage stated in Item 6. of the Declarations of the full annual contribution of the Agreement, and upon the purchase(s) of the Extended Reporting Period, the entire contribution therefore shall be deemed fully earned at its commencement, and in the event the Extended Reporting Period is terminated before its term for any reason, the Pool shall not be liable for the return of any portion of the contribution paid therefore; and



This Agreement may be extended by virtue of the Extended Reporting Period and shall not in any way increase the applicable Limits of Liability set forth in the Declaration and described in the section Limits of Liability; and

The Extended Reporting Period shall only apply to claims first made against the Member and/or Covered Person during such Extended Reporting Period.

LIMITS OF LIABILITY

1. Limit of Liability - Each Claim: The Pool shall be liable to pay Claim Expenses and Damages, up to Each Claim Limit as stated in Item 3. of the Declarations for each claim first made during the Coverage Period or the Extended Reporting Period, if purchased, and reported to the Pool during the Coverage Period or the Extended Reporting Period, if purchased, or within sixty (60) days after the expiration of the Coverage Period or Extended Reporting Period, if purchased.
2. Limit of Liability - Aggregate: Subject to Item 1. hereinabove, Limit of Liability - Each Claim, the total liability of the Pool for Claim Expenses and Damages shall not exceed the Agreement Aggregate Limits as stated in Item 3. of the Declarations as a result of all claims first made during the Coverage Period and the Extended Reporting Period, if purchased, and reported to the Pool during the Coverage Period or the Extended Reporting Period, if purchased, or within sixty (60) days after the expiration of the Coverage Period or the Extended Reporting Period, if purchased.
3. Multiple Covered Persons, Claims and Claimants: The inclusion of more than one Covered Person or the inclusion of Covered Person(s) in addition to the Member in any claim or the making of claims by more than one person or organization shall not operate to increase the limits of liability. Two or more claims arising out of a single Covered Event or a series of related Covered Events shall be treated as a single claim.
4. All such claims, whenever made, shall be considered first made on the date on which the earliest claim arising out of such Covered Event was first made and all such claims are subject to the same limit of liability.



COVERED PERSONS

This Agreement provides coverage to the Member identified in Item 1. of the Declarations. The Pool also agrees to provide coverage to the following persons under this Agreement to the extent set forth below:

1. All persons who were, now are, or shall be lawfully elected or appointed officials or employees while acting solely in his or her capacity as such or on behalf of the Member;
2. Commissions, boards, or other units, and members and employees thereof, operated by and under the jurisdiction of such Member;
3. Volunteers acting solely in his or her capacity as such or on behalf of, at the request of and under the direction of the Member;
4. Officials and Employees of the Member appointed at the request of the Member to serve with an outside governmental entity.

DEFINITIONS

1. Claim means:
 - A. A written demand for monetary or non-monetary relief;
 - B. A civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - a. Receipt or service of a complaint or similar pleading;
 - b. Return of an indictment (in the case of a criminal proceeding);
or
 - c. Receipt of a notice of charges;
 - C. An administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") or equivalent state, local, or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the Member.



- D. When you first become aware of any acts or circumstances which may reasonably be expected to give rise to a claim.

The Definition of Claim shall not include an internal or external labor or grievance proceeding which is pursuant to a collective bargaining agreement.

2. Claim Expenses means:

- A. Reasonable amounts paid by the Pool in the defense of a Member or Covered Person for that portion of any claim for which coverage is afforded under the Agreement, including lawyer(s) fees, cost of investigation, court costs, costs of attachment and similar bonds and cost(s) of appeals, provided always that claim expenses do not include:

- (i) salary, wages, overhead or benefit expenses associated with employees or officials of the Member or
 - (ii) salary, wages, administration overhead or benefit expenses, or charges of any kind or character whatsoever attributable to any third party claims administrator or in-house counsel of the Pool; or

- B. Fees charged by any lawyer designated by the Pool; all other fees and expenses resulting from the investigation, adjustment, defense and appeal of a claim and incurred by the Pool; and premiums on appeal bonds and premiums on bonds to release attachment in any claim(s) for an amount not in excess of the applicable Limit of Liability of this Agreement. However, the Pool shall have no obligation to apply for or furnish any such bonds, provided always that claim expenses shall not include salary charges of regular employees or officials of the Pool.

- 3. Coverage Period means the period from the inception date of this Agreement to the Agreement expiration date as stated in Item 2. of the Declarations, or its earlier cancellation or termination date, if any.

- 4. Damages means settlements and judgments.



Damages shall not include:

- A. Any amount for which the Covered Persons are not financially liable or for which there is no legal recourse to the Covered Persons;
- B. Amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
- C. Disability, social security, workers' compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing employment related benefit payments;
- D. The cost of creating or reinstating employment;
- E. Any amounts owed to any Employee as wages or compensation previously incurred or vested without regard to any claim;
- F. Civil or criminal fines or penalties;
- G. Taxes, whether owed to or by any Covered Persons;
- H. Amounts, including claim expenses arising out of, based upon or attributable to actual or alleged liability or costs incurred by any Covered Person to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person, or any actual or alleged liability or costs incurred in connection with any educational, sensitivity or other program, policy or seminar relating to an Employment Practices Claim;
- I. Matters that may be uninsurable under the law pursuant to which this Agreement shall be construed.
- J. Third Party means any person(s) other than an employee with whom a Member or a Covered Person interacts.
- K. Third Party Discrimination means any discrimination by a Member or a Covered Person in his or her capacity as such against a Third Party based on such Third Party's race, color, creed, religion, age, gender, national origin sexual orientation or preference, disability, pregnancy or other protected status that is protected pursuant to any applicable federal, state or local statute or ordinance.



- L. Third Party Harassment means any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment that is by a Member or a Covered Person to a Third Party.

EXCLUSIONS

This Agreement does not apply to any claim:

1. Based upon, arising out of or attributable to the gaining by any Member and/or Covered Persons of any profit or advantage to which such Member and/or Covered Persons were not legally entitled; provided, this Exclusion shall not apply unless a judgment or other final adjudication adverse to such Member and/or Covered Persons establishes that the Member and/or Covered Persons gained such profit or advantage;
2. Based upon, arising out of, or directly or indirectly resulting from or in consequence of, or in any way involving any criminal or fraudulent act; provided, this Exclusion shall not apply unless a judgment or other final adjudication adverse to any Member and/or Covered Persons in the claim shall establish that such Member and/or Covered Persons committed such criminal or fraudulent act:

Exclusions 1. and 2. shall not apply to the strictly vicarious liability of any Member and/or Covered Persons for the conduct of another Member and/or Covered Persons.

3. For actual or alleged bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; damage to or destruction of any tangible property, including the loss of use thereof, whether or not such property is physically injured; provided, this Exclusion shall not apply to allegations of mental anguish or emotional distress made solely in connection with an Employment Practices Claim;
4. Alleging, arising out of, based upon or attributable to, in whole or in part, any liability under or pursuant to any contract or agreement, whether oral, written, express or implied, including the liability of others assumed by a Member and/or Covered Persons, unless such Member and/or Covered Persons would have been liable in absence of such contract or agreement; provided, this Exclusion shall not apply to claim expenses in connection with an

Employment Practices Claim;

5. For violation of any of the responsibilities, obligations or duties imposed by: The Fair Labor Standards Act (except the Equal Pay Act) or any state or local statutory or common law; regulation or ordinance that governs payment or administration of wages, hours worked, or employee entitlements; the Employment Retirement Income Security Act of 1974; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; The Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; any rules or regulations or any of the foregoing promulgated thereunder and amendments thereto; or any similar provisions of any federal, state or local statutory or common law that govern the same subject matter governed by the laws referenced in this section even if particular laws have some additional or different provisions; provided, this Exclusion shall not apply to a claim for employment related retaliation;
6. Alleging, arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, this Exclusion shall not apply to a claim for employment related retaliation;
7. Alleging, arising out of, based upon or attributable to inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use provided this Exclusion shall not apply to claim expenses related to the defense or investigation of such a claim;
8. Alleging, arising out of, based upon or attributable to, in whole or in part, the performance or rendering of or failure to perform professional services to anyone other than the Member by any lawyer, architect, engineer, accountant or member of the medical profession;
9. For any actual or alleged libel, slander or defamation in any form; provided this Exclusion shall not apply to allegations of libel, slander, or defamation in any form made solely in connection with an Employment Practices Claim.



10. Alleging, arising out of, based upon or attributable to the issuance of bonds or the improper collection of taxes;
11. Alleging, arising out of, based upon or attributable to trespass, nuisance, wrongful entry, eviction or violation of rights of occupancy **provided this Exclusion shall not apply to claim expenses related to the defense or investigation of such a claim;**
12. Alleging, arising out of, based upon or attributable to strikes, riots or civil commotion;
13. For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants. Pollution includes (but is not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, whether live or inanimate, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;
14. Arising out of the destruction, theft, conversion, or disappearance of money, securities or the loss of use thereof;
15. Brought by or on behalf of a Covered Person(s) against another Covered Person(s), however, with respect to any allegations of an Employment Practices Claim, this Exclusion shall only apply to cross-claims or counter-claims brought by a Covered Person(s) against other Covered Person(s).
16. (Deleted)
17. (Deleted)

CONDITIONS

1. Action Against the Pool

No action shall lie against the Pool unless, as a condition precedent thereto, the Member and/or Covered Persons shall fully have complied with all terms of this Agreement, nor until the amount of the Member and/or

Covered Person's obligation to pay shall have been fully and finally determined either by judgment against the Member and/or Covered Persons after actual trial or by written agreement of the Member and/or Covered Persons, the claimant and the Pool.

Any person or entity or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Agreement to the extent of the coverage afforded by this Agreement.

Nothing contained in this Agreement shall give any person or entity any right to join the Pool as a co-defendant in any claim against the Member to determine the Member's liability. Bankruptcy or insolvency of the Member shall not relieve the Pool of any of its obligations hereunder.

2. Allocation

If both damages covered under this Agreement and damages not covered under this Agreement are jointly incurred either because a claim includes both covered and non-covered matters or covered and non-covered causes of action or because a claim is made against both a Covered Person and any other parties not covered by this Agreement, then the Member and the Pool shall use their best efforts to fairly and reasonably allocate payment and claims expenses under this Agreement between covered damages and non-covered damages based on the relative legal exposures of the parties with respect to covered and non-covered matters or covered and non-covered causes of action.

If the Pool and the Member agree on an allocation of claim expenses, based on covered and non-covered matters or persons, the Pool shall advance claim expenses allocated to a covered claim. If there is no agreement on an allocation of claim expenses, the Pool shall advance claim expenses that the Pool believes to be covered under this Agreement until a different allocation is negotiated, arbitrated or judicially determined.

Any negotiated, arbitrated or judicially determined allocation of claim expenses on account of a claim shall be applied retroactively to all claim expenses on account of such claim, notwithstanding any prior advancement to the contrary. Any advancement or allocation of claim expenses on account of a claim shall not apply to create any presumption with respect to



the allocation of other damages on account of such claim.

3. Assignment of Interest

Assignment of interest under this Agreement shall not bind the Pool without its prior written consent.

4. Authorization and Notices

The Covered Persons agree that the Member acts on their behalf with respect to giving and receiving all notices and return of contribution from the Pool.

5. Cancellation

This Agreement may be cancelled by the Member by mailing to the Pool sixty (60) calendar days written notice stating when thereafter the cancellation shall be effective. This Agreement may be cancelled by the Pool by mailing to the Member at the address last known to the Pool, or its authorized agent, written notice stating when, not less than sixty (60) calendar days thereafter such cancellation shall be effective. The mailing of the notice, as aforesaid, shall be sufficient notice, and the effective date of cancellation stated therein shall become the expiration date of the Coverage Period. Delivery of such written notice either by the Member or the Pool, shall be equivalent to mailing.

This Agreement may be cancelled by the Pool for non-payment of contribution by mailing to the Member, at the last mailing address known by the Pool, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

Contribution adjustment may be made either at the time the cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution is not a condition precedent to cancellation.

The Pool shall continue servicing any of the Member's pending claim(s), unless the Member specifically assumes the liability and makes provisions to indemnify the Pool from loss by taking over the servicing



of any such claim(s). The Member shall reimburse the Pool for all claim(s) expenses incurred after the cancellation.

6. Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Pool shall not affect a waiver or change in any part of this Agreement nor estop the Pool from asserting any right under the terms of the Agreement. The terms of this Agreement shall not be waived, nor changed, except by written endorsement issued to form a part of this Agreement, and this Agreement embodies all agreements existing between the Member and the Pool or any of its agents relating to this coverage.

7. False or Fraudulent Claims

If the Member and/or Covered Persons shall commit fraud in proffering any claim, this coverage shall become void to such Member and/or Covered Persons from the date such fraudulent claim is proffered.

8. Governing Law Clause

This Agreement shall, to the extent permitted by applicable law, be construed in accordance with the laws of the State of Michigan.

9. Notice of Claim or Circumstance

1. If, during the Coverage Period or the Extended Reporting Period (if applicable), any claim is first made against the Member and/or Covered Persons, then the Member and/or Covered Persons shall immediately forward to the Pool every demand, notice, summons or other process received by the Member and/or Covered Persons, or by their representatives, but in no event shall such notice be given later than sixty (60) days after either the expiration date or any earlier cancellation date of the Coverage Agreement.
2. If, during the Coverage Period or the Extended Reporting Period (if applicable), any Member and/or Covered Persons first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a claim against any Member and/or Covered Persons and,



as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of the Coverage Agreement, gives to the Pool written notice of such facts or circumstances along with the full particulars described below, then any claim subsequently made against the Member and/or Covered Persons arising out of such facts or circumstances will be deemed first made during the Coverage Period. The written notice shall include, at a minimum:

- a. The names or identity of the potential claimants and a detailed description of the specific alleged Covered Event; and
- b. The circumstances by which the Member and/or Covered Persons first became aware of the specific alleged Covered Event.

All notices to be given to the Pool as required by this Agreement shall be directed to the Michigan County Road Commission Self-Insurance Pool, 417 Seymour Avenue, Suite #2, Lansing, Michigan 48933.

10. **Other Coverage**

This coverage shall be in excess of any other coverage available to the Member and/or Covered Persons whether the other coverage is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless the other coverage is written only as specific excess coverage over the Limits of Liability provided by this Agreement.

11. **Subrogation**

In the event of any payment under this Agreement, the Pool shall be subrogated to the extent of such payment to all of the Members and/or Covered Person's right of recovery therefore against any person or entity. The Member and/or Covered Persons shall execute and deliver instruments and papers and take all necessary steps to secure such right. The Member and/or Covered Persons shall do nothing to prejudice such rights.

Any amount so recovered, whether effected by the Pool or by the Member and/or Covered Person shall be applied net of the expense of such recovery as follows:

- (a) First, to the satisfaction of the Member and/or Covered Person's payments for damages and claim expenses which are in excess of the amount of the Limit of Liability under this Agreement and which is in excess of any amount paid by any Pool under any other Agreement;

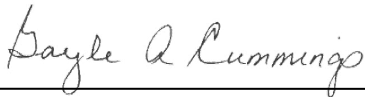


(b) Second, to the Pool as reimbursement of amounts paid under this Agreement; and (c) Third, to any insurer under any other Agreement as reimbursement of amounts paid under any such Agreement.

12. Territory

The coverage afforded by this Agreement applies to Claims Made and Member Events taking place within the United States, its territories and possessions and Puerto Rico.

This Agreement shall not be valid unless signed by authorized representatives of the Pool.



Gayle A. Cummings, Administrator



Timothy J. Haagsma, Chairman