

**Litigation Management Guidelines  
for the  
Monterey Bay Self Insurance Authority**

*WHEREAS, the Monterey Bay Area Self Insurance Authority ("MBASIA"), is a Joint Powers Authority organized and existing in accordance with the laws of the State of California, and*

*WHEREAS, one of the functions of MBASIA is to operate a "pooled liability" and "risk sharing" program, and*

*WHEREAS, it is in the best interest of all members to ensure the professional, competent, consistent, and cost-effective handling and management of litigation that comes within the parameters of these guidelines, and*

*WHEREAS, it is the intent of MBASIA to allow its members' input into the selection of defense counsel from the approved Defense Counsel Panel List ("Panel") to represent them in litigated cases.*

A. Preferred Panel of Defense Counsel

When assistance of defense counsel is deemed appropriate, the assignment, of litigated claims, shall only be to law firms on the Panel. Upon receipt of the member's selection of the law firm, the Assignment shall be made by the Third-Party Claims Adjusting Firm ("TPA"). By accepting an assignment, Panel Counsel agrees to abide by the terms and conditions of the Guidelines set forth herein.

Any member may nominate individual defense counsel or a defense firm to be included on the Panel. Any defense firm or individual counsel not currently on the Panel, whether nominated by a member, recommended by TPA or Program Administrator, or independently interested in working with the Authority, shall submit a Panel Application to the Authority through the TPA. The Defense Counsel Panel Application ("Application") is attached hereto as Attachment A and incorporated herein as though fully set forth, listing applicable information requested. The Application shall also confirm it meets MBASIA's minimum Insurance Requirements, listed as Attachment B and incorporated herein as though fully set forth, listing applicable information regarding Workers' Compensation and Employer's Liability, Errors and Omissions, Commercial General Liability and Property Damage, Business Automobile Liability Insurance, and Cyber Liability. Upon selection, Certificates of Insurance shall be provided by the approved law firm, to MBASIA Administration firm.

MBASIA, through its Claims and Coverage Committee, or other designated body with the appropriate authority, shall have the responsibility of ensuring all firm and attorney qualifications, approving the Panel for MBASIA and its members, and adding or deleting individual counsel or firms

from time to time pursuant to recommendations from the members and/or the TPA.

In the event that certain defense counsel or firms have expertise in only certain areas of defense work, they shall be included on the Panel only for the handling of cases which fall within their noted areas of expertise.

Selected counsel must be qualified to handle the type of litigation required, i.e., police liability, general and/or auto liability, appellate work, etc. filed in state and federal courts throughout California.

A member may not utilize its own full-time or contract attorney, or its staff, to handle the defense of its covered liability cases.

B. Conflicts

Defense counsels selected and the law firm to which they belong must certify that they have no ethical or legal conflicts which would in general disqualify them from representing any of the members. In addition, they shall certify that they will refrain from initiating any legal action against any of the member entities of this organization either by way of complaint or cross-complaint during the time that they are included on the Panel and accepting defense work from this organization.

Further, they must acknowledge that a conflict exists if they have or are representing a party in any litigation against any member of the Authority, even if they have not previously acted as defense counsel for the particular member being sued.

Finally, they shall agree to disclose any special facts which would or could potentially disqualify them from representation of a particular member, at the time of or shortly after the case assignment, or immediately upon discovery of such facts.

C. Correspondence and Pleadings

Copies of all correspondence and pleadings shall be provided to the member and the claims adjuster assigned to the case, who will in turn copy the Claims Adjusting Supervisor, and Litigation Manager, if appropriate. At the outset of litigation, defense counsel shall confirm with the member and claims adjuster, the identity of the appropriate person(s) with whom they should communicate regarding all aspects of litigation, including settlements. Members should update defense counsel when their contact person(s) changes.

In the event that there are excess reporting requirements, defense counsel shall ascertain whether or not the case has been reported by the claims adjuster to the excess coverage provider. If not, defense counsel shall report such case immediately upon assignment.

After a case has been reported to one or more excess coverage providers, defense counsel shall ensure that additional copies of all correspondence and pleadings are forwarded to such excess coverage provider(s).

Defense counsel shall promptly respond to all correspondence or phone calls from the member and the TPA to keep advised regarding the progress of each case. Defense counsel shall cooperate with the TPA in all other aspects of the Litigation Management Guidelines, including completing expert witness and plaintiff counsel evaluations and providing copies of motions and resource documents that pertain to the case. Failure to comply with this section may result in the reduction or rejection of legal invoices.

D. Case Analysis and Litigation Budget

Within 60 days of retention in each case, the selected defense counsel shall complete and return an Initial Case Analysis Report (Attachment C) to the Claims Adjusting Supervisor. The Initial Case Analysis Report is attached to this policy and incorporated herein as though fully set forth.

At the same time and in conjunction with the Initial Case Analysis Report, defense counsel shall provide a comprehensive plan and evaluation describing:

1. Legal issues to be resolved and action needed on each;
2. Estimated cost of preparation of motions, discovery, and trial;
3. Settlement status and availability of Alternative Dispute Resolutions (ADRs); and
4. An evaluation of liability and suggested plan of action (settlement, trial, motions, further investigation).

To assist in the projection of anticipated estimated legal costs, a Litigation Budget (Attachment D) shall be completed by defense counsel to be submitted as part of the initial Case Analysis. The Litigation Budget form is attached as a guide. If defense counsel becomes aware that the Initial Case Analysis or Litigation Budget is inaccurate, defense counsel, as soon as reasonably foreseeable, shall submit an updated Initial Case Analysis and/or Litigation Budget along with defense counsel's recommendation for an increase or decrease, where appropriate. The Litigation Manager and Claims Adjusting Supervisor will closely monitor the basis for any Litigation Budget increases. If the Litigation Budget has been exceeded, no further payment of fees may be considered until a revised Litigation Budget has been submitted and approved by the TPA. Significant deviations from the Budget will be taken into account when evaluating defense counsel's performance.

E. Mandatory Status Reports

Status reports are mandatory every sixty (60) days or following any significant or material litigation event or change in circumstances, such as the completion of depositions, motions, expert witness disclosures, the setting of trial dates, orders on motions for summary judgment, and appeals. Defense counsel shall report only on new developments since the previous report. It is not necessary to reiterate the case facts or repeat information previously reported unless necessary in the context of the new information. The reporting diary can be extended if the TPA is notified of defense counsel's intention to put the file on an extended diary.

The Initial Case Analysis, Litigation Budget, and revisions thereto, and Mandatory Status Reports are critical to MBASIA's ability to accurately reserve and assess each case and control costs. Failure to timely submit these reports will be taken into account by MBASIA's Claims and Coverage Committee when evaluating Defense Counsel's performance. Defense Counsel's billing for legal fees and costs may not be approved unless status reports are provided on a timely basis.

The attorney handling the case should prepare the status reports, which shall include the following:

1. The ongoing strategy for defense or resolution of the case, including a factual analysis of issues related to liability and damages;
2. A description of planned discovery with a timetable for completion;
3. A brief synopsis of the discovery completed since the last report;
4. Court dates including, but not necessarily limited to, mandatory settlement conferences, trial setting conferences, arbitration and trial dates, hearings on discovery, etc.;
5. New settlement demands; and
6. An update regarding any material developments, how they impact liability or the Initial Case Analysis.

Furthermore, no later than 60 days prior to a mediation, arbitration or trial, the defense attorney will provide a report, which shall include the following:

1. An assessment of the member city's liability;
2. An assessment of plaintiffs' damages;
3. An assessment of legal defenses (and probability of prevailing);
4. The verdict value assuming liability and basis for the same;
5. An appraisal of settlement value, considering verdict value and chances of prevailing;

6. The status of settlement discussions; and
7. The defense fees and costs to-date, along with an estimation of fees and costs through trial.

It is expected that cases will proceed to trial as expeditiously as possible. Defense counsel shall obtain the TPA's approval prior to continuing the trial date set by the court. No less than a week prior to mediation, arbitration or trial, defense counsel shall confirm the date with all counsel and notify the Litigation Manager and Claims Adjusting Supervisor of the same.

F. Further Evaluations and Reserves

Upon request by the TPA or any excess coverage provider, and whenever any significant developments occur, and at such other times deemed necessary by defense counsel, defense counsel shall provide supplemental written or oral evaluations of the case. These evaluations shall disclose any weaknesses or strengths of the case that have been discovered, increases, or decreases in anticipated costs, recommended changes in reserves, and if pertinent, settlement recommendations.

G. Settlements

Defense counsel shall not settle any litigation by way of any monetary offering without prior written approval of the member, TPA, Claims and Coverage Committee or Board of Directors. Defense counsel shall notify the Member of any settlement as soon as practicable after agreement with opposing counsel if confirmed, but in any event not to exceed 24 hours post-agreement. In no event should defense counsel discuss case resolution with the media prior to contacting the member and with the Member's consent.

H. Fees, Costs, and Billings

All bills for legal services and related costs shall be submitted through the TPA electronically (no mailed invoices will be accepted). All bills submitted shall describe the services and costs provided during the previous billing period. Bills shall include the following information to which such services or costs pertain: the name of the matter; a brief description of services performed; the date the services were performed; the number of hours, or fraction thereof, spent and by whom; the hourly or project rate for the services; a brief description of any costs incurred; and the signature of the billing attorney.

The following expenses must be approved by the TPA prior to being incurred:

1. Experts (whether investigative/consulting or testimonial)
2. Independent medical examinations (IMEs)
3. Outside investigators
4. More than one attorney at meetings, interviews, depositions, hearings, appearances, or other similar engagements
5. Travel out of town or outside the designated investigation area (e.g., depositions, meetings with expert witnesses)
6. Filing of cross-complaint, counterclaims
7. Research in preparation for the filing of demurrers and motions
8. Voluntary settlement conferences or ADR methods
9. Co-defendant cost sharing agreements
10. Preparation, and filing of demurrers, motions or any writ or appeal
11. Videotaped depositions
12. Expenses expected to exceed \$500.00, including copying expenses
13. Legal research projects expected to exceed four (4) hours

Defense counsel shall not bill for duplicate services performed by more than one person unless specifically authorized by the TPA. There shall be no block billing accepted for payment. All charges for expenses shall be based on actual costs. No blanket charge for office expenses, administrative charges, or the like shall be accepted for payment.

Defense counsel submitting the bill is responsible for the content of the bill and will work directly with the TPA in resolving any problems or answering any questions.

Rates per hour or per project shall not exceed the amount approved by the Claims and Coverage Committee. Rates per hour or per project within the approved rate will not be increased without at least ninety (90) days advanced written notice to the TPA. Upon receipt of proposed increase in rate, the TPA should present to the Claims and Coverage Committee for review and recommendation for approval. The Board shall have the authority to approve any amount of increase or deny any increases.

Invoices for legal fees and costs may be rejected for reasons, including but not limited to, the following:

1. The hourly rate exceeds the rate per hour approved by the Claims and Coverage Committee;
2. Failing to submit a Litigation Budget and/or provide timely updates when a submitted

- Litigation Budget is no longer accurate;
3. Failing to obtain authorization for expenses as required in the Litigation Management Guidelines;
  4. Blocked billing;
  5. Failing to submit billing in a timely manner; and/or
  6. Fees or costs are excessive, unreasonable, or unnecessary, as deemed by the Litigation Manager after consulting with the Claims Adjusting Supervisor.

Payments to Law Firms shall be made by the TPA from the MBASIA Trust Account. Payments will be made by check or preferably by Electronic Funds Payment or Direct Deposit.

I. Expert Retention Requests

Regarding the approval of experts or medical examiners, defense counsel shall submit a current resume or CV and rate-sheet, and brief explanation of the expert's intended work and/or testimony. The Expert Retention Request should be submitted in stages according to the anticipated need of defense counsel. MBASIA will not pay for expert fees that have not been authorized in advance. Once approved, defense counsel shall issue the expert a confirming retention request letter which substantially provides the following:

*It was a pleasure discussing the issues involved in the above entitled case. We are pleased to inform you that MBASIA has agreed on behalf of [Member name], to retain your services as an expert in this matter. In accordance with our discussion, MBASIA requires the confirmation of a budget for expert consultations. At this time, you have been pre-approved for [number of hours] / [approved \$ amount] to perform an initial investigation and assessment. We anticipate that your initial investigation and assessment will include, but is not limited to, [insert the nature and scope of assigned initial investigation assessment] and a preliminary oral assessment of your findings.*

*MBASIA will only provide payment for pre-approved services. Thus, after you commence your review, if you determine that [Number of Hours Approved] is an insufficient amount of time to conduct a necessary investigation and assessment, you must contact me before you commence any work beyond the approved [insert number] hours. Again, without further pre-approval, MBASIA will not pay for any services you perform beyond the instant pre-approval for [# of pre-approved hours] hours / [approved \$ amount].*

Using the format above, a Retention Request Confirmation letter shall be sent to an expert each time the Request is modified and approved.

J. Confidential Information

Counsel must take steps to protect MBASIA's claim information from unauthorized access, acquisition, disclosure, loss, destruction, or damage, including ensuring that hard copy and electronic materials are transmitted and stored in an appropriate fashion including the use of encryption or other similar technologies when appropriate. Counsel must limit access to Member information to only those individuals who have a business need to access Member information. Counsel must inform the Member promptly if there is any unauthorized access, acquisition, disclosure, loss, destruction, or damage of Member information.

K. Business Associate Agreement (BAA)

The Defense Firm shall complete the BAA, included here as Attachment E.

L. Record Retention

Except as otherwise provided by federal and state law, defense counsel shall maintain assigned litigated case records for not less than seven (7) years after the litigation is concluded, two (2) years for non-litigated cases and ten (10) years for claims involving Medicare set asides or for which provisions for future Medical has been agreed upon related to Medicare.

M. Audit of Defense Firms

The TPA shall periodically review the Initial Case Analysis, the Mandatory Status Reports, the Litigation Budget, and any legal billings and, if necessary, make recommendations to the Claims and Coverage Committee concerning the possible removal of a particular defense attorney or defense firm from the Panel. A Member may appeal an adverse decision to the Claims and Coverage Committee which shall make the final determination on the recommendation of the TPA and the Claims Adjusting Supervisor.

From time to time, the TPA may elect to conduct audits of the litigated files being monitored by MBASIA including billings for legal services being performed by the assigned defense firm or individual defense attorney. The TPA may recommend to the Claims and Coverage Committee to order an independent legal bill audit at the TPA's discretion if the billings do not comply with these Litigation Management guidelines or are excessive or unwarranted. Payment of any invoices shall not constitute a waiver of the MBASIA's right to seek reimbursement of any inappropriate or excessive billings disclosed

by an independent audit or otherwise. If an independent legal bill audit is ordered, the Claims and Coverage Committee, with input from the TPA shall determine who shall pay for the legal bill audit.

Date of Approval: \_\_\_\_\_

DRAFT

## ATTACHMENT A

### DEFENSE PANEL APPLICATION

#### Monterey Bay Area Self Insurance Authority

#### I. INTRODUCTION

This Application has been created to facilitate consideration of a law firm for inclusion on the Defense Counsel (Panel) for the Monterey Bay Area Self Insurance Authority (MBASIA). Inclusion of a law firm on the Panel is at the discretion of the Member and Claims and Coverage Committee after consultation with the TPA, and subject to approval by the Board of Directors. If an emergency appointment of a new law firm is needed, it can be recommended by the member and/or the TPA to the Program Administrators and the Chair of the Claims and Coverage Committee. This action shall be ratified by the Claims and Coverage Committee and the Board of Directors, upon formal submission of application by the law firm.

The Authority is a statewide joint powers authority (JPA), and a risk sharing pool created to provide broad coverage for general liability at reasonable rates for its Members. MBASIA provides a full Litigation Management program to help reduce the cost of defending against covered claims. A Panel has been created to identify and limit the number of defense firm partners that are best qualified to handle the defense of public entity claims and committed to working in concert with the Authority's TPA and within the Authority's litigation management guidelines.

#### II. APPLICATION REQUIREMENTS

##### A. Biographical Information

1. Firm Résumé which includes:
  - a. Firm name and year formed
  - b. Identification of the Firm's primary contact
  - c. Office locations within California
  - d. Total number of attorneys in the Firm
  - e. Total number of paralegals and/or support staff
2. A narrative of the Firm's experience in public sector employment liability litigation.
3. A list including the professional biographies of Firm attorneys who would be assigned to work on Authority matters.
4. A list of clients for whom similar services have been performed by the proposed attorneys. The following must be included for each client:
  - a. Name, address, and phone number of contact person

- b. Overview of services performed
  - c. Number of years providing services
5. A list of three public entity references from the Law Firm's list of clients
  6. Provide the Firm's public entity trial experience and results
- B. Law Firm Philosophy - A description of the Law Firm's philosophy in litigation, including a description of the Law Firm's strategy and approach to defending a claim it is assigned.
  - C. Law Firm Technology - A description of the Law Firm's technological capabilities, including but not limited to, ability to send online documents, time tracking software, access to online research, including identification of electronic research providers.
  - D. Information Protection -A description of the Law Firm's controls to preserve confidentiality and integrity of information belonging to the Authority and its members.
  - E. Conflicts of Interest - A description of the nature and extent of the Law Firm's representation of plaintiffs in personal injury matter.
  - F. Malpractice Litigation Claims - Applications shall identify any and all malpractice suits or suit arising out of the Law Firm's or its attorneys practice of law, including resolution of the same.
  - G. Fees and Costs - Applications shall include the Firm's hourly fees for Associates, Partners/Shareholders, and Of Counsel for work to be completed and a list of the expenses the Firm will seek reimbursement from the Authority.

Questions concerning this Application as well as the completed Application should be directed to:

Neil Callahan  
Litigation Manager, MBASIA  
PO Box 278  
Rancho Cordova, California 95741  
(916) 891-2457  
neil.callahan@georgehills.com

## Attachment B

### Insurance Requirements for Professional Services

#### MONTEREY BAY AREA SELF INSURANCE AUTHORITY

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.  
*(Not required if consultant provides written verification it has no employees)*
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, MBASIA requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MBASIA.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### **Additional Insured Status**

MBASIA, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

#### **Primary Coverage**

For any claims related to this contract, the **Contractor’s insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects MBASIA, its officers, officials, employees, and

volunteers. Any insurance or self-insurance maintained by MBASIA, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to MBASIA.

**Waiver of Subrogation**

Contractor hereby grants to MBASIA a waiver of any right to subrogation which any insurer of said Contractor may acquire against MBASIA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not MBASIA has received a waiver of subrogation endorsement from the insurer.

**Self-Insured Retentions**

Self-insured retentions must be declared to and approved by MBASIA. MBASIA may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or MBASIA.

**Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to MBASIA.

**Claims Made Policies (note – should be applicable only to professional liability, see below)**

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.

**Verification of Coverage**

Contractor shall furnish MBASIA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by MBASIA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them.

**Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that MBASIA is an additional insured on insurance required from subcontractors.

**Special Risks or Circumstances**

MBASIA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Attachment C**  
**CASE ANALYSIS**  
**MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

DATE PREPARED/Updated:

CLAIM & LAWSUIT INFORMATION	
Member City	
SIR	
Case Caption	
Court / County	
Case Number	
Date of Loss	
Rejection	
MSC	
Mediation	
Trial	

1. Insurance:
  - a. Name of Insurer:
  - b. Type of Policy:
  - c. Other insurance policy or policies:  
  
Limits:
  
2. Indemnification or contribution available? Yes  No   
If yes, against whom?

3. Is any additional information or documentation needed to preserve evidence or establish defenses? Yes  No

If so, please explain:

4. Status of Pleadings:

- a. Date of service of complaint:
- b. List of Recommendations:
- c. Demurrer:
- d. Motion to strike:
- e. Summary Judgment:

5. Does the complaint conform to the claim? Yes  No

If not, how does it differ?

6. Outcome of any pre-litigation events to-date, including claims, investigations, meetings, hearings, etc.):

7. Currently planned or scheduled litigation events (including meetings, motions, hearings, depositions, etc.):

8. Status of Settlement Negotiations:

Amount	
Date:	
Type:	

Response:

Plaintiff:

City:

Other Parties:

9. Overall theme to be presented by defense counsel:

10. Discovery and other deadlines currently known:

11. Anticipated trial date if not resolved:

- a. Probability of going to trial:

12. Trial counsel / firm for plaintiff:

- a. Name:
- b. Firm Size:
- c. Background:

- d. Specialization:
- e. Trial experience:
- f. Available resources:
- g. General appraisal of capability:

13. STATEMENT OF FACTS  
(A succinct recitation of key facts and points of dispute)

14. LIABILITY  
(Include an overview of the allegations, causes of action, and burden of proof. Early evaluations of liability exposure are desired which reflect the likely outcome and are based on available information with respect to all parties. Also provide recommendations related to the mitigation of liability exposure.)

15. INJURIES / DAMAGES  
(An overview of injuries and damages, including the identification of key damage facts and points of dispute.)

A. Special Damages:

	Past Claimed	Future-Claimed	Comments & Eval.
<b>Medical Expenses</b>			
<b>Lost Wages</b>			
<b>Other</b>			

B. General Damages:  
(Include pain and suffering, scarring/disfigurement, loss of business opportunity/interruption, loss of consortium, property damages, etc.)

C. Punitive Damages:  
(Identify the party or parties against whom punitives are sought, along with supporting allegations.)

16. GENERAL ISSUES  
(Identify issues impacting the resolution or handling of this case.)

17. EVIDENTIARY ISSUES  
(Provide an overview, assessment, and recommendation regarding any unique issues expected to impact this case's resolution or handling.)

18. CASE EVALUATION & SETTLEMENT VALUE  
(State case values based on information **to-date**; ranges may be used.)

a. What is the pure exposure value\* (based on current information)? \$ \_\_\_\_\_ (overall)

\$ \_\_\_\_\_ (client)

**\*Pure Exposure Value:** *Most probable full jury value of alleged injury (accepting all that is alleged as true) without consideration of coverage, liability, comparative negligence, credibility of parties, contribution and/or other affirmative defenses/factors. This value is based on a reasonable jury's reward.*

- b. What is the Settlement Value (based on current information)? \$ \_\_\_\_\_ (overall)  
\$ \_\_\_\_\_ (client)

19. RECOMMENDED NEXT STEPS

(List the Recommended Action Items and rationale for each. These will form the basis of the next status report with the Claims Adjuster and/or Litigation Manager).

In executing and returning this analysis, you are warranting that you have read and will comply with the policies and procedures regarding defense litigation, and that there are no known legal or ethical conflicts in your representation of defendant in this case.

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

**Attachment D**

**BUDGET ANALYSIS**

**MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

**NOTE:** This budget analysis will be used a basis for legal reserves and settlement discussion throughout the duration of the case.

**DATE PREPARED/Updated:**

<b>CLAIM &amp; LAWSUIT INFORMATION</b>	
<b>Member City</b>	
<b>SIR</b>	
<b>Case Caption</b>	
<b>Court / County</b>	
<b>Case Number</b>	
<b>Date of Loss</b>	
<b>Rejection</b>	
<b>MSC</b>	
<b>Mediation</b>	
<b>Trial</b>	

1. Please list all Firm members who will be assigned to this case, including hourly rates.
  
2. Please provide the estimated fees for the following categories, updated as necessary and in correspondence with the timing of budget completion. The Firm does not need to provide the hours and rates of each assigned Firm member, though this information may be requested if deemed appropriate.
  - a. Initial Case Review: \$
  - b. Meetings with Member and/or TPA: \$
  - c. Discovery (including experts): \$
  - d. Responsive Pleadings: \$
  - e. Communication with Plaintiff Counsel: \$
  - f. Mediations and Mandatory Settlement Conferences: \$
  - g. ADR: \$
  - h. Pretrial Preparation: \$
  - i. Trial: \$

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT E**

**BUSINESS ASSOCIATE AGREEMENT**  
**BETWEEN [ENTITY] AND [ENTITY]**

**MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

This Business Associate Agreement (“BAA”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the [ENTITY], hereinafter referred to as “CLIENT,” and [ENTITY], hereinafter referred to as “NAME.”

**I. RECITALS**

WHEREAS, on or about the date referenced above, NAME entered into a written contract with CLIENT to perform obligations and services related to the handling and administration of general liability claims filed against or with CLIENT.

WHEREAS, the obligations of the Contract require that CLIENT provide to NAME data, documents, and information which may contain protected health information (“PHI”) and/or electronic PHI (“ePHI”) within the definition of the Health Information Portability and Accountability Act (“HIPAA”) related to the general liability claims, for the purpose of administering those claims.

NOW, THEREFORE, in consideration of the mutual promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

**II. DEFINITIONS**

Catch-all definition:

The following terms used in this AGREEMENT shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean NAME.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean CLIENT.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Pursuant to this agreement NAME agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the GH as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the NAME as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) Business associate may only use or disclose protected health information for the purposes described in the Contract between NAME and CLIENT, specifically for the purpose of adjusting and administering the general liability claims filed against CLIENT.
- (b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity [if the Agreement permits the business associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add ", except for the specific uses and disclosures set forth below."]

(e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal and contractual responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business associate may provide data containing PHI and or ePHI to third party entities for storage, security, and/or aggregation services relating to the claims administration services provided by GH.

**V. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

(a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

**VI. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

**VII. TERM AND TERMINATION**

(a) Term. The Term of this Agreement shall be effective as of DATE and shall terminate on DATE or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal and contractual responsibilities;

Return to covered entity, or destroy, the protected health information that the business associate maintains in any form;

Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and

Return to covered entity, or destroy, the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal and contractual responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
ENTITY.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
CLIENT

**Attachment F**

**List of Current Law Firms Approved on Defense Panel**

**MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

<p><b><u>Ford, Walker, Haggerty &amp; Behar, LLP</u></b> <b>Art Casey</b> <b>Anthony Livesay</b></p> <p>16450 Los Gatos Blvd., Suite 110 Los Gatos, CA 95032 Phone: 408-660-3102</p>
<p><b><u>Kaufan Dolowich &amp; Voluck, LLP</u></b> <i>(San Francisco, Oakland, Sonoma, Los Angeles)</i></p> <p><b>Aimee Hamoy</b> <b>Arthur Gaus</b> <b>Roger Serrano</b></p> <p>180 Grand Avenue, Suite 995 Oakland, CA 94612 Phone: 510-630-7640</p>
<p><b><u>Skane Mills</u></b> <i>(San Francisco, Las Vegas, San Diego, Los Angeles)</i></p> <p><b>Elizabeth Skane</b> <i>(San Diego/Las Vegas)</i> <b>Felicia Starr</b> <i>(LA)</i> *Law enforcement, personal injury, dangerous conditions, and EPL</p> <p>33 New Montgomery Street, Suite 1250 San Francisco, CA 94105 Phone: 415-431-4150</p>
<p><b><u>Burke, Williams &amp; Sorensen, LLP</u></b> <i>(Oakland)</i></p> <p><b>Greg Thomas</b> *Law enforcement, personal injury, dangerous conditions and EPL</p> <p>1901 Harrison Street, Suite 900 Oakland, CA 94612-3501 (510) 903-8862</p>

**Bertrand, Fox, Elliot Osman & Wenzel**

*(San Francisco and Oakland)*

**Mike Wenzel**

**Rich Osman**

\*Law enforcement, dangerous conditions, and land use

2749 Hyde Street  
San Francisco, CA 94109  
(415) 353-0999

DRAFT