

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“Memorandum” or “Agreement”) is made and entered to be effective commencing November 8, 2005, by and between the County of San Mateo (“County”), and the Administrative Office of the Courts (“AOC”).

RECITALS

WHEREAS, the Superior Court of California, County of San Mateo (“Court”) previously received workers' compensation services and its Court employees previously received benefits through a workers' compensation program provided by the County;

WHEREAS, effective June 30, 2003, the Court terminated its participation in the County's workers' compensation program and began to participate in an AOC sponsored program for Court employee claims for injuries occurring on or after July 1, 2003;

WHEREAS, there are certain Court employee claims for workers' compensation benefits where the employee's injury occurred while the Court was participating in the County workers' compensation program, but for which liability has continued past the date when the Court stopped participating in the County program and began participating in the AOC-sponsored program (hereinafter these claims are referred to as “tail claims”);

WHEREAS, the AOC contends that the County has continuing liability for these Court employee tail claims, including all administrative costs associated with these tail claims, which liability the County denies, and the County contends that the Court has continuing liability for these tail claims, including all administrative costs associated with these tail claims, which liability the AOC on behalf of the Court denies;

WHEREAS, the County and the AOC on the Court's behalf are in discussions to resolve this dispute as to who has liability for these Court employee tail claims but, to date, no resolution has been reached; and

WHEREAS, the County and the AOC on the Court's behalf desire to transfer certain of these Court employee tail claims from the County workers' compensation program to the AOC sponsored program and have agreed to do so without waiving any rights or releasing any claims that the Court or County may have against the other concerning these tail claims;

AGREEMENT

NOW THEREFORE, the County and AOC agree as follows:

(1) After a reasonable transition period (not to exceed 60 days), the County shall transfer or cause to be transferred to the AOC-sponsored program all open workers' compensation tail claims for Court employees with an injury date of January 1, 2001 or later ("Transferred Claims");

(2) The AOC, through its trial court workers' compensation program, shall administer and pay all the required benefits that become due and payable after the transfer of these Transferred Claims;

(3) The County shall continue to administer and pay all the required benefits for all non-transferred claims, being those Court employee workers' compensation tail claims with a date of injury before January 1, 2001;

(4) The County represents that as to the Transferred Claims, it carried excess insurance for workers' compensation claims for the period January 1, 2001 through June 30, 2003. The Court, through its regular payments to the County for workers' compensation coverage and services, has contributed its proportionate share for such coverage. The retention on the County's excess policy is \$1 million. The County has contacted its excess insurance carrier, Continental Casualty Company, and has effected an amendment naming the Court and the AOC as insured parties for the period from January 1, 2001 through June 30, 2003. The County agrees it will cooperate with the Court, the AOC, or its third-party administrator in timely notifying the carrier and filing any claims under its excess policy, should it be requested to do so. Prior to or at the execution of this Agreement, the County has provided the AOC with a copy of all the excess insurance policies identified in this paragraph;

(5) The AOC and the County, and their respective workers' compensation third-party administrators, shall cooperate with one another to effect a smooth transfer of the Transferred Claims;

(6) The AOC and the County shall use their best efforts to reach a final resolution of all workers' compensation issues in a timely manner;

(7) By entering into this transfer agreement, neither the AOC on behalf of the Court and itself nor the County waives its right to assert any claim or to raise any defense against the other as to liability for Court employee tail claims. The parties hereto expressly agree that the act of entering into this agreement or transferring or accepting transfer of the Transferred Claims is not an admission of liability or of financial responsibility for these Transferred Claims by either party; specifically, the County does not waive any claim for any payment previously made on any of the Transferred Claims for which it has not been reimbursed by the Court, and the AOC on behalf of the Court and itself reserves its right to seek repayment from the County of any amounts it pays on

these Transferred Claims. The AOC and the County expressly acknowledge that this is only an agreement to cause these Transferred Claims to be moved from the County workers' compensation program to the AOC sponsored workers' compensation program and is not an agreement for payment or for reimbursement as to any amounts previously paid or to be paid by the County or the AOC on these Court employee tail claims.

(8) **DISPUTE RESOLUTION:** Whenever the County or the AOC disagrees as to any matter governed by this Memorandum, this dispute resolution process herein shall govern. Until the dispute is resolved, each party shall continue to honor its obligations as set forth herein.

(a) Request for Meeting. If after ten (10) business days, the County and AOC cannot resolve any dispute, either party may give the other party a written request for a meeting between the AOC Human Resources Director or his/her designee and the County Administrative Officer for the purpose of resolving such disagreement. If such meeting is requested, the meeting shall be held within ten (10) business days of the receipt of such request. If the meeting fails to occur or fails to resolve the disagreement, nothing in this Memorandum shall preclude the parties from exercising their legal remedies.

(b) Jurisdiction and Venue. If a dispute between the parties regarding the interpretation or performance of this Memorandum is not resolved as provided above, either party may bring legal action to interpret or enforce this Memorandum only in the Superior Court, County of San Mateo.

(9) This Memorandum contains the entire and complete understanding of the parties hereto and supersedes any and all other previous agreements, oral or written.

(10) No addition to or alteration of the terms of this Memorandum shall be valid unless made in the form of a written amendment to this Memorandum, which is formally approved and executed by the governing bodies of each of the parties to this Memorandum.

(11) Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or holiday, such payment shall be made or act performed on the next succeeding business day.

(12) Each party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Memorandum.

(13) Time is of the essence in each and all of the provisions of this Memorandum.

(14) Any notices required or permitted hereunder shall be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service;

addressed as follows or to such other place as each party hereto may designate by subsequent written notice to all other parties:

If to County:

Risk Manager

455 County Center, EPS 163

Redwood City, Ca 94063-1663

Attn: Risk Manager

If to the AOC:

Director, Human Relations

Administrative Office of the Courts

455 Golden Gate Avenue

San Francisco, CA 94102-3660

(15) Any waiver by either party hereto of a breach of any of the terms of this Memorandum shall not be construed as a waiver of any succeeding breach of the same or other term of this Memorandum.

(16) This Memorandum shall be binding upon the successors of the AOC and the County.

(17) Each party hereto, by its due execution of this Memorandum, represents to the other party that it has reviewed each term of this Memorandum with their counsel, or has had the opportunity for such review with their counsel. No party shall deny the validity of this Memorandum on the ground that such party did not have the advice of counsel. Each party hereto has had the opportunity to participate in drafting and preparation of this Memorandum. The provisions and terms of this Memorandum shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against any party.

(18) This Memorandum may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

(19) In the event any provision of this Memorandum is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

(20) This Memorandum shall be construed under the laws of the State of California, without regard to its conflict of law provisions.

(21) The County and AOC each certifies that the individual(s) signing below on behalf of the party, has authority to execute this Memorandum on behalf of the party, and may legally bind the party to the terms and conditions of this Memorandum, and any attachments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the day and year first above written.

ADMINISTRATIVE OFFICE OF THE COURTS

By: _____

Print name: _____

Print title: _____

Date: _____

COUNTY OF SAN MATEO:

By: _____

Steve Rossi, San Mateo County Risk Manager

Date: _____