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11

**FINANCE AND BUDGET COMMITTEE
JULY 16, 2008**

SUBJECT: PROPERTY DAMAGE/PUBLIC LIABILITY PROGRAM

ACTION: APPROVE MEMORANDUM OF UNDERSTANDING

RECOMMENDATION

Approve a memorandum of understanding (“MOU”), Attachment A, between the County of Los Angeles (“County”), Los Angeles Unified School District (“LAUSD”) and the Los Angeles County Metropolitan Transportation Authority, limiting government code claims and litigation against each other and improving public agency defenses against third-party claims.

ISSUE

Several times a year, we respond to government code claims filed by other public entities. We file claims and cross-complaints against other public entities. Public entities are also named jointly in lawsuits. Administrative expenses, including legal costs, to prosecute claims and defend claims between public agencies impose additional costs on Los Angeles taxpayers. This situation is particularly burdensome when the costs of litigation are high and the value of the bodily injury and property damage claims are low. Further, a lack of cooperation between public agencies can often increase settlement values and the amounts of jury verdicts.

POLICY IMPLICATIONS

Approval of this MOU is expected to reduce the county wide allocated and unallocated loss adjustment expenses (primarily legal costs) of responding to claims and litigation between the parties.

OPTIONS

Continuing the status quo will mean more frequent, adversarial and costly claims and litigation costs between the parties.

FINANCIAL IMPACT

The funding for negotiating the MOU with the County and LAUSD is included in the FY09 budget in projects 300003 and 300004 in cost center 5310, Risk Management. Successful completion of the MOU is expected to result in cost savings in those projects resulting from lower allocated loss adjustment expenses and better coordination of legal defenses among the parties.

BACKGROUND

For the past several years, the Risk Managers and General Counsels at these agencies have discussed the need to coordinate defense on third-party claims and to pursue alternative dispute resolution practices where possible. This MOU would reduce the likelihood and necessity of the public entities filing claims and cross-claims against each other. The parties' risk managers and legal counsel agree that it is in the best interest of the public that we refrain from filing claims until the matters have been discussed and potentially resolved with minimal expense. It is expected that the parties' risk managers or legal counsels will initiate a request to meet and discuss a specific claim. Should a third-party bring a tort cause of action against two or more of us, the MOU provides a process for the defendants to expeditiously meet at a mutually agreed-upon place, date, and time to resolve issues of liability and discuss a common and mutual defense. In addition to the actual bodily injury and property damage costs paid, an opportunity for further cost avoidance exists by reducing the frictional cost of filing or responding to claims.

NEXT STEPS

Upon approval of the MOUs parties' boards, the MOU will be jointly executed.

ATTACHMENT

A. Memorandum of Understanding

Prepared by: Greg Kildare, Executive Officer, Risk Management



Terry Matsumoto
Chief Financial Services Officer and Treasurer



Roger Snoble
Chief Executive Officer

MEMORANDUM OF UNDERSTANDING
BY AND AMONG THE COUNTY OF LOS ANGELES,
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY,
AND OTHER PUBLIC ENTITIES WITHIN LOS ANGELES COUNTY
OPTING FOR INCLUSION

This Memorandum of Understanding (MOU) is effective upon execution of at least two parties. Thereafter, it shall be effective as to any new party upon execution by that party. All entities executing this MOU are collectively referred to herein as the "Parties" and individually as a "Party."

Recitals

- A. In the past, the Parties have had claims or disputes with each other relating to bodily injury, personal injury, and property damage, and have been named as joint defendants in lawsuits brought by others.
- B. In the past, such claims or disputes sometimes led to lawsuits where the Parties filed complaints and/or cross-complaints against each other to protect their respective rights. These lawsuits have almost always been settled with the complaints/cross-complaints being dismissed. Nonetheless, such lawsuits consume an unnecessary amount of time, increase litigation costs and operating expenses, and complicate other existing claims or lawsuits.
- C. The Parties now desire to avoid to the fullest extent possible, the future filing of complaints or cross-complaints against each other in bodily injury, personal injury, and property damage disputes.
- D. The Parties enter into this MOU to set forth the terms of how they will handle such disputes among the Parties in the future.

Agreement

1. No Party will file either a complaint or cross-complaint against another Party in any dispute related to bodily injury, personal injury, or property damage, when the reasonable value of the amount in dispute does not exceed \$50,000.
2. With regard to claims and disputes between Parties, related to bodily injury, personal injury, or property damage, where the reasonable value of the amount in dispute exceeds \$50,000, the Party claiming injury will notify the other Party of the claim and the affected Parties will meet and engage in good faith negotiations in an attempt to reach a reasonable settlement of the dispute. No Party to any such dispute will file a complaint or cross-complaint against another Party until the Parties have met in good faith and have attempted to reach a settlement, but have been unsuccessful.
3. For any claim or dispute related to bodily injury, personal injury, or property damage, when the reasonable value of the amount in dispute does not exceed \$50,000, as described in Paragraph 1, above, if the Parties cannot reach an agreement on a good faith settlement after discussion between the Parties, the Parties will mediate the dispute, and, if mediation is unsuccessful, will appoint a person acceptable to both Parties to arbitrate the dispute to a final resolution. Each Party will share equally the arbitration expenses, be bound by the arbitration award, and will not seek further review. The Parties to a dispute described in Paragraph 2, above, may also mediate and/or arbitrate that dispute if both Parties agree to do so, but nothing herein obligates the Parties to mediate and/or arbitrate such disputes.
4. Nothing in this MOU shall affect any Party's obligation to comply with the claims filing provisions of the California Tort Claims Act (Government Code § 900 *et seq.*), or any other substantive or procedural provision of law related to bodily injury, personal injury, or property damage disputes, except that from the time a Party gives notice to another Party of the existence of a dispute described in Paragraph 2, above, and until such time as either Party notifies the other Party that the dispute resolution process described in Paragraph 2 has been completed, the time set forth by law for the filing of a claim, or for the initiation of litigation shall be tolled.

Agreement (continued)

5. While the provisions of paragraphs 1 through 4, above, are intended as applying primarily to disputes among two or more Parties, the Parties agree to use similar alternate disputes resolution procedures to limit the issues in cases involving bodily injury, personal injury, or property damage where two or more Parties are named as defendants in a lawsuit brought by a person who is not a Party. To the extent feasible given the particular facts of any such lawsuit, the Parties who are named as defendants will use the dispute resolution methods described in paragraphs 2 and 3 to attempt to establish, as early as possible in the litigation, how any liability found against the defendant Parties shall be apportioned between said Parties. If the Parties are able to reach an agreement of the allocation of liability, if feasible under the circumstances, the Parties will execute a joint defense agreement, retain a single counsel to defend them, jointly fund the defense of the case based upon the liability allocation agreed to, and satisfy any final judgment against said Parties in proportion to the agreed upon liability allocation.
6. Any Party may withdraw from this MOU and terminate its rights and obligations under this MOU on ninety (90) days prior written notice to all other Parties. If any such notice is ever given, this MOU will remain in place among all Parties not given such notice.
7. Any notice, authorization, or request, which any Party is required or may desire to give to any other Party, shall be in writing and shall be personally delivered or sent by United States mail, return receipt requested, with postage prepaid and addressed to the person designated as the Risk Manager of the receiving entity. Any Party, upon executing this MOU, will exchange with all other Parties the names and addresses of each Party's designated Risk Manager.
8. No Party shall assign or transfer any of that Party's rights or obligations under this MOU to any other person or entity. Any attempt to assign or transfer rights or obligations in violation of this Paragraph by any Party shall constitute grounds for the immediate termination of this MOU by any other Party; in that Party's sole discretion.
9. The validity, interpretation, construction, and performance of this MOU shall be governed by the laws of the State of California.
10. This MOU contains the entire understanding and agreement among the Parties respecting the subject matter hereof and all prior agreements and understandings of the Parties, whether oral or written, are superseded in their entirety.
11. This MOU may not be supplemented, modified, or amended, except by an instrument in writing signed by each Party's duly authorized representative.

12. No failure by any Party to insist upon the strict performance of any term hereof or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any such term. Any waiver by a Party or any default or breach hereunder shall not constitute a waive of any subsequent default or breach of the same or a different kind.

IN WITNESS WHEREOF, the Parties hereto have duly executed this MOU as of the dates set forth next to each Party's execution.

Party: _____

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

By: _____

Name: _____

Title: _____

Date: _____

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IN WITNESS WHEREOF (continued)

Party: _____

By: _____

Name: _____

Title: _____

Date: _____