

**Port of Houston Authority
Second Amended Insurance Program
and Indemnification Policy
March 2018**



- A. The Port Commission of the Port of Houston Authority of Harris County, Texas (the “Port Authority”) has determined that it is in the best interest of the Port Authority to self-insure some risks of loss or liability, to purchase commercial insurance as to other risks, and to defend the Port Authority’s Port Commissioners and employees against certain liability claims arising from the performance of their duties to or employment by the Port Authority;
- B. Texas Government Code §2259.031 permits a local government to establish a self-insurance fund to protect the governmental unit and its officers and employees from any insurable risk;
- C. Texas Labor Code §504.011 requires that the Port Authority, as a political subdivision of the State of Texas, provide workers’ compensation benefits to its employees and allows the Port Authority to do so through a self-insurance fund in accordance with Texas Labor Code §504.072;
- D. Texas law, including Chapter 102, Texas Civil Practice & Remedies Code, permits the Port Authority to provide for the defense and payment of certain claims against its Port Commissioners and employees;
- E. The Port Commission previously adopted a self-insurance program and an indemnification policy on September 28, 2010, as reflected by Minutes Number 2010-0928-09 and Number 2010-0928-10, with effect from March 1, 2010, entitled, respectively, “Self-Insurance Program Policy” and “Port Commissioner, Officer, and Employee Liability Plan and Indemnification Policy”; and
- F. The Port Commission adopted amendments to the self-insurance program and indemnification policy at its February 24, 2015 meeting, as reflected by Minute Number 2015-0224-40 and this document.

NOW, THEREFORE, the Port Authority adopts the following Second Amended Insurance Program and Indemnification Policy:

**ARTICLE I
DEFINITIONS OF TERMS**

Section 1.01. Definitions

The following terms, as used in the Second Amended Insurance Program and Indemnification Policy (“Program and Policy”), shall have the following meanings:

1. “Administrative Expenses” means the general or overhead expenses associated with administering the Port Authority’s Program and Policy, as determined by the Claims Board, including, but not limited to, the following:
 - (a) Compensation paid to any:
 - (1) Loss control or risk management consultant,
 - (2) Insurance broker,
 - (3) Third Party Claims Administrator (“TPA”),
 - (4) Professional actuary, or
 - (5) Attorney, including a workers’ compensation attorney.
 - (b) Expenses incurred by the Port Authority resulting from a financing undertaken to provide funding for the Port Authority’s self-insurance Funds or to repay any obligation incurred in the course of such a financing; and
 - (c) The cost of all commercial casualty insurance procured by the Port Authority.

2. “Advertising Injury” means an injury to a person that results from the promotional activities of the Port Authority if such injury arises out of libel, slander, defamation, violation of right to privacy, commercial piracy, unfair competition, copyright infringement, or misappropriation of advertising ideas.

3. “Allocated Loss Adjustment Expenses” or “ALAE” means all claims adjustment and defense expenses that are payable by the Port Authority’s self-insurance Funds. Expenses considered ALAE include, but are not limited to, the following:
 - (a) Attorneys’ fees and expenses;
 - (b) Expert witnesses’ fees and expenses;
 - (c) Surveyors’ and appraisers’ fees and expenses;
 - (d) Investigation, subrogation, and collection expenses;
 - (e) Medical cost containment expenses;
 - (f) Legal representation in connection with workers’ compensation claims;
 - (g) Litigation expenses, including appeal bonds, court costs, and mediation fees; and
 - (h) Expenses incurred by a Protected Person at the Port Authority’s request.

4. “Assumed Risks” means those risks for which the Port Authority, as a Texas political subdivision, may be held liable under law and for which the Port Authority has assumed funding responsibility under its self-insurance, as reflected by this document.

5. “Bodily Injury” means physical harm or physical illness sustained by any individual, including death.

6. “Chief Financial Officer” means the Port Authority Senior Manager responsible for the administration of the Port Authority finance division, or his/her designee

7. “Covered Claim(s)” means a claim, other than for an Excluded Payment, payable by the Port Authority’s self-insurance, to include:

(a) workers' compensation claims pursuant to the Texas Workers' Compensation Act, Texas Labor Code §401.001, et seq., and

(b) liability claims for compensatory damages, to include direct and consequential damages, costs of court, and pre- and post-judgment interest, that may be recovered under law against the Port Authority or a Protected Person arising out of (i) any Error or Omission that causes injury or damage; and (ii) conduct of a Protected Person, while acting within the course, scope and authority of his/her employment, office, or position with the Port Authority, that:

- (1) causes Bodily Injury, Property Damage, or Regulatory Injury that is not intended or expected by the Protected Person; or
- (2) causes Advertising Injury or Personal Injury that (A) is not intended or expected by the Protected Person, and (B) does not arise out of a statement that the Protected Person knows is false; or
- (3) causes Bodily Injury or Property Damage (regardless of whether intended or expected by the Protected Person) that results from (A) the use of reasonable force for the purpose of protecting persons or property, or (B) the discharge of the Protected Person's official duties for the Port Authority.

8. "Claims Board" means the committee of Port Authority executives that administers the Port Authority's Program and Policy.

9. "Director of Human Resources" means the Port Authority Senior Manager responsible for the administration of the Port Authority human resources department, including employment and benefits, or his/her designee.

10. "Director of Risk Management" means the Port Authority Senior Manager responsible for the administration of the Port Authority risk management department, including insurance, or his/her designee.

11. "Error or Omission" means any act or failure to act by a Protected Person while acting within the course, scope and authority of his/her employment, office, or position with the Port Authority, that results in or constitutes an erroneous or improper discharge of such Protected Person's duties to the Port Authority (including the making of an incorrect statement), but that does not constitute legally actionable fraud or an intentional or knowing breach of duty.

12. "Excluded Payment" means all of following:

- (a) the payment of any claim that is not presented to the Claims Board in accordance with this document;
- (b) the payment of all or that portion of any claim that, in lieu of payment from the Port Authority's self-insurance Funds, can be paid from:
 - (1) the proceeds of commercial insurance carried by the Port Authority, including, but not limited to, any liability, property, casualty, or workers' compensation insurance policy;

- (2) the proceeds of any insurance carried under any health, accident, or similar plan of benefits provided by the Port Authority;
 - (3) any fund, reserves, or other source of payment available to the Port Authority that has been designated or otherwise set aside for such use; or
 - (4) the proceeds of any insurance, bond (including payment, performance and maintenance bonds), fund, collateral, letter of credit, indemnity, or other security provided, posted, or maintained by a third party at the request or for the benefit of the Port Authority.
- (c) the payment of any claim arising from an injury that results from the distribution (whether by sale, gift, or otherwise) of an alcoholic beverage, other than a distribution (1) which takes place at an activity or function that is incidental to the Port Authority's business, and (2) for which the Port Authority is liable under applicable provisions of the Texas Alcoholic Beverage Code;
- (d) the payment of any claim arising from an injury that results from declared or undeclared war (including civil war, insurrection, rebellion, or similar hostility) or any act or condition incident to war;
- (e) the payment of any sum or claim:
- (1) in the case of liability claims, that exceeds the applicable limits of liability under the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice & Remedies Code, regardless of whether the Port Authority is the liable defendant;
 - (2) in the case of workers' compensation claims, that exceeds the applicable limitations under the Texas Workers' Compensation Act;
 - (3) other than ALAE, as to which the Port Authority or a Protected Person is protected by immunity from suit or liability;
 - (4) in an amount that exceeds any limits prescribed by this Program and Policy; or
- (f) exemplary, punitive, multiplied or enhanced damages awarded against a Protected Person.
13. "Executive Director" means the Port Authority Executive Director or his/her designee.
14. "Fund(s)" means those self-insurance funds or accounts as authorized from time-to-time by the Port Commission to pay claims and expenses under this Program and Policy.
15. "General Counsel" means the Port Authority Senior Manager responsible for the administration of the Port Authority legal division, or his/her designee.
16. "Indemnification Policy" means the policy stated in Article VI hereof.
17. "Law" includes the federal and Texas constitutions and statutes, any administrative rules or agency regulations having the force and effect of law, and any controlling judicial decisions applicable to the Port Authority.

18. “Occurrence” means an incident or series of related incidents resulting in compensable injury or damage.
19. “Open Seat” means that seat of the Claims Board held for the applicable Chief Officer or director of the department from which a claim originates.
20. “Personal Injury” means any of the following:
- (a) Assault;
 - (b) Damage to character, reputation, or integrity;
 - (c) Discrimination with injury;
 - (d) False or improper service of process;
 - (e) False imprisonment with injury;
 - (f) Humiliation;
 - (g) Invasion of privacy;
 - (h) Mental harm, anguish, or illness (regardless of whether accompanied by Bodily Injury);
 - (i) Violation of property rights; or
 - (j) Violation of civil rights with injury, including deprivation of a right, privilege, or immunity.
21. “Protected Person” means any Port Commissioner or employee of the Port Authority while acting within the course, scope and authority of his/her employment, office, or position with the Port Authority.
22. “Program” or “Insurance Program” means the Port Authority Second Amended Insurance Program, as reflected by this document.
23. “Property Damage” means damage to or destruction of tangible property or the loss of use of tangible property.
24. “Regulatory Injury” means economic loss sustained by a person because of the performance by the Port Authority of its regulatory or property acquisition functions.
25. “Shock Loss” means a catastrophic loss so large that it has a material effect on the Port Authority’s financials.
26. “Surplus” means the amount of money in the self-insurance Funds that is in excess of the amount that, in the opinion of a professional actuary, is required to maintain the Funds on an actuarially sound basis, to the extent reasonably practicable, for the period of time and risks of loss for which it is then funded.

27. “Termination Date” means the date on which the Port Commission terminates this Program and Policy.

28. “Third Party Claims Administrator” or “TPA” means a third party firm contractually responsible for performing professional claims adjusting and other ancillary risk management services for the Port Authority.

29. “Workers’ Compensation Payment” means any payment of medical expenses, indemnity benefits, Allocated Loss Adjustment Expenses, or other costs for which the Port Authority, as a self-insurer, is responsible due to claims pursuant to the Texas Workers’ Compensation Act.

ARTICLE II GENERAL PROVISIONS

Section 2.01. Name of Program and Policy

The Program and Policy previously adopted on September 28, 2010 are renamed as the “Second Amended Insurance Program and Indemnification Policy.”

Section 2.02. Effective Date of Amendments

The amendments made by this document shall become effective as of April 1, 2018 at 12:01 a.m.

Section 2.03. Amendment or Termination

This Program and Policy do not limit the discretion of the Port Commission, which may amend the terms of or terminate this Program and Policy at any time.

Section 2.04. Status Reports

The Chief Financial Officer shall annually report to the Executive Director on the status of the Program for the previous year, to include the Port Authority’s self-insurance experience, the scope and cost of the Port Authority’s commercial insurance, the status of the self-insurance Funds, and any recommended amendment to the Program and Policy.

Section 2.05. Risk Retention Policy

It is the policy of the Port Authority to self-insure against Assumed Risks (other than Excluded Payments) through self-insurance Funds, to provide for contributions to those Funds in amounts that are based on actuarial analysis of Assumed Risks, to purchase commercial insurance when it is cost-effective to do so, and to defend the Port Authority’s Port Commissioners and employees against claims and suits arising out of their performance of their duties for the Port Authority. The

implementation of this policy may be amended from time to time due to changes in the commercial insurance markets, the Port Authority's loss experience, and budgetary constraints.

Section 2.06. No Waiver of Immunity or Admission of Liability

The Port Authority's Program and Policy is a nonbinding statement of intent, which does not create a property interest in any person, does not constitute a contractual obligation of the Port Authority, and does not waive any of the Port Authority's immunities under law, including the Port Authority's immunity from suit and its immunity from liability. The Port Authority reserves the right to assert every defense to any claim that is available to it under law.

ARTICLE III
ADMINISTRATION OF THE PORT AUTHORITY'S INSURANCE PROGRAM

Section 3.01. Claims Board

- (a) The Claims Board shall oversee the Port Authority's Insurance Program and interpret and apply this document, subject to review and oversight by the Port Commission.
- (b) The Claims Board shall be composed of the following five members: (i) the Executive Director, or his/her designee, as Chairman; (ii) the General Counsel, or his/her designee, as Co-Chairman; (iii) the Chief Financial Officer or his/her designee; (iv) Director of Risk Management, or his/her designee, as Secretary; and (v) the applicable Chief Officer or department director filling the Open Seat.
- (c) In matters involving an employment or employee benefits issue, the Director of Human Resources or his/her designee, may be requested to participate as an additional member of the Claims Board.
- (d) The Claims Board may exercise the powers and shall perform the duties and functions prescribed for it by the Program and by any other written the Port Authority policy.
- (e) The Claims Board may establish rules governing the conduct of its affairs.

Section 3.02. Director of Risk Management

The Port Authority's Director of Risk Management is responsible for the implementation of the Port Authority's Insurance Program, including its self-insurance and commercial insurance components, subject to any necessary approvals by the Port Commission, the Claims Board, the Executive Director, or the Chief Financial Officer.

Section 3.03. Director of Risk Management Duties

The Port Authority Director of Risk Management shall:

- (a) Identify and quantify (to the extent practicable) the risks that have the potential to result in liability of the Port Authority or Protected Persons.
- (b) Plan and budget the Port Authority's Insurance Program, including but not limited to, risk assumption, risk reduction, risk retention, and risk transfer, to include the purchase of commercial insurance.
- (c) Implement a risk management information system to manage loss information, including information concerning claims, loss expenses, workers' compensation and general and auto liability losses and expenses, Administrative Expenses, withdrawals from the self-insurance Funds, and commercial insurance premiums.
- (d) Develop and implement loss prevention programs designed to reduce exposure to loss, including development, implementation, and oversight of the Port Authority's safety program, policies and procedures.
- (e) Manage subrogation claims against third parties.
- (f) Periodically assess whether the Port Authority's self-insurance is to the Port Authority's economic advantage, and the relative advantages and disadvantages of self-insurance and commercial insurance.

Section 3.04. Advice of Outside Professionals

The Port Authority Director of Risk Management may:

- (a) Retain the services of a professional actuarial firm and obtain annual actuarial reviews to suggest the funding amounts necessary to pay the estimated ultimate costs of claims payable by the Port Authority's self-insurance and to assist in assessing the sufficiency of the Port Authority's self-insurance Funds; and
- (b) Retain a professional risk management service as a consultant to provide an independent evaluation of the Port Authority's Insurance Program, the Program's anticipated costs and liabilities, the required amount of funding of the self-insurance Funds, and other related risk management issues.

Section 3.05. Establishment of Self-insurance Funds

- (a) The Chief Financial Officer shall establish and maintain accounts for the Funds related to the self-insurance program.
- (b) Inasmuch as actuarial loss reserve estimates should reflect a confidence level of 50% or more, and in order to mitigate the risk of adverse loss reserve developments, a minimum Surplus level of funding shall be maintained in excess of currently expected liabilities. Funding benchmarks will be used to ensure the Funds maintain a minimum desired and justifiable Surplus level. Key ratios to assess the amount of the Surplus will focus on the three risk exposures of losses, reserving, and annual funding:

<u>Benchmark Ratio</u>	<u>Goal</u>	<u>Measures Exposure to</u>
Surplus to Self-Insured Retention (SIR)	4:1	Large losses
Liabilities (loss reserves) to Surplus	<1.5:1	Reserving errors
Annual funding to Surplus	<1:1	Annual funding errors

- (c) Permissible uses of Surplus include: absorbing adverse or catastrophic losses or exposures; managing or stabilizing levels of annual funding; increasing self-insured retentions; or expanding coverage of the Program.

Section 3.06. Commercial Insurance

- (a) The Port Authority's Director of Risk Management shall oversee and coordinate the Port Authority's procurement of commercial insurance, which may include the following:
- (1) All lines of property and casualty insurance, to be obtained on a fiscally sound basis, giving consideration to all relevant risks of loss, the investment opportunities of the self-insurance Funds and any Shock Loss exposures due to the Assumed Risks;
 - (2) Excess coverage over the limits of liability payable by the Port Authority's self-insurance Funds, reinsurance for the Funds, or as first-dollar coverage in lieu of that provided by the Funds (which may result in converting coverage provided by the Funds into excess coverage); and
 - (3) Insurance necessary to meet the requirements of law or contracts entered into by the Port Authority.
- (b) The Director of Risk Management shall coordinate the selection of an insurance broker of record, subject to approval by the Port Commission.
- (c) Agents or brokers providing insurance brokerage and related services shall be paid exclusively on an annual fixed fee basis.
- (d) Commercial insurance shall be obtained from sources determined to serve the best interests of the Port Authority. Whenever possible, cost effective and appropriate coverage shall be obtained from insurance companies licensed to do business in the State of Texas, with an A.M. Best rating of A- or better, and/or otherwise acceptable to the Director of Risk Management.

Section 3.07. Cost Allocation Program

- (a) The Director of Risk Management shall develop and implement a departmental cost allocation program to aid in budgeting, funding decisions for the self-insurance Funds, the procurement of commercial insurance, and the management of administrative expenses and ancillary risk management services. The cost

allocation program should balance simplicity with equity, be easily understood, and be sensitive to emerging trends.

- (b) The Director of Risk Management shall establish a formula for allocating Program costs among departments. Relevant factors, which may be assigned different weights, may include:
- (1) Loss exposure (*e.g.*, each department's payroll as a percentage of the total Port Authority payroll);
 - (2) Loss experience (*e.g.*, claims history of each department as a percentage of the total Port Authority losses);
 - (3) Actuarial projections of the "estimated ultimate cost of claims" (*e.g.*, losses) for the upcoming fiscal year, as well as revised estimates for the current fiscal year;
 - (4) Current and projected size of each department's workforce;
 - (5) Ancillary risk management services (*e.g.*, third party claims administration); and
 - (6) Formula modifiers, to promote the effective implementation of risk management programs by departments.

ARTICLE IV USE OF SELF-INSURANCE FUNDS

Section 4.01. Authorized Withdrawals from the Self-Insurance Funds

- (a) Amounts may be withdrawn from the Funds only for the following purposes:
- (1) To reimburse the Port Authority for Administrative Expenses;
 - (2) To provide the Port Authority's Third Party Claims Administrator with sufficient funding to pay Covered Claims and related ALAE;
 - (3) To pay judgments for Covered Claims and to compromise or settle Covered Claims in accordance with Section 4.05 of the Program;
 - (4) To pay defense expense, including all elements of ALAE, as to matters defended pursuant to the Port Authority's Indemnification Policy, as provided in Article VII hereof;
 - (5) To pay any Fund Surplus to the Port Authority;
 - (6) To retire (by scheduled payment, prepayment, defeasance, or otherwise) any obligation of the Port Authority incurred in connection with providing funding for the Funds;
 - (7) To reimburse the Port Authority for any payment made under any agreement to provide funding for the Funds that is permitted to be paid to the Port Authority pursuant to such agreement, or, to the extent and under the terms and conditions provided in such agreement, to cure a default in payment by the Port Authority under such agreement;
 - (8) After the Termination Date, to establish a reserve, in an amount approved by the Port Commission, for the payment of unsatisfied claims made or

- asserted prior to the Termination Date, and to pay the balance into the Port Authority's general funds; or
- (9) To pay or reimburse the Port Authority for the payment of non-casualty expense or exposure.
 - (b) No withdrawal from the Funds is permitted except in accordance with this Insurance Program.
 - (c) Amounts may not be withdrawn from the Funds to make any Excluded Payment.

Section 4.02. Control of Withdrawals from Funds

Subject to the restrictions and limitations provided by the Program, the determination of whether amounts in the Funds are to be withdrawn is at the discretion of the Claims Board.

Section 4.03. Method of Withdrawal from Funds

Withdrawals from the Funds may be made, upon the direction of the Claims Board, by check, draft, or electronic transfer.

Section 4.04. Withdrawal of Funds Surplus

A Funds Surplus may be withdrawn from the Funds no more than once a year in accordance with the terms of the Program.

Section 4.05. Limits on Amount of Withdrawals for Covered Claims

Withdrawals from the Funds shall not exceed funds authorized to be paid by the Port Authority's self-insurance by the Port Commission or the available cash balance of the Funds. Otherwise, other than for payment of ALAE, the following limitations apply:

- (a) The aggregate amount of withdrawals from the fund to pay all Covered Claims that arise from any one Occurrence may not exceed the following amounts for the following respective classifications of injury and damages:
 - (1) Advertising Injury claims: Excess Liability/Umbrella policy deductible
 - (2) Bodily Injury claims: \$100,000 per person/\$300,000 per Occurrence
 - (3) Personal Injury claims: Excess Liability/Umbrella policy deductible
 - (4) Property Damage claims: \$100,000 per Occurrence
 - (5) Regulatory Injury claims: \$100,000 per Occurrence
- (b) The aggregate amount of withdrawals from the Funds to pay all Covered Claims (e.g., Bodily Injury and Property Damage) that arise from any one Occurrence may not exceed the Excess Liability policy deductible.
- (c) The limits provided in (a) and (b), above, are in accordance with Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, as of the date of the adoption of this Policy, and may be modified or amended from time to time in accordance with amendments to the Act made by the Texas Legislature.

- (d) An aggregate amount exceeding \$100,000 may not be withdrawn from the Funds to pay the liability claims of any one claimant that arise from the same Occurrence unless the Port Commission approves a greater amount for that purpose.
- (e) The aggregate amount of withdrawals from the Funds to pay workers' compensation claims that arise from any one Occurrence may not exceed the Excess Workers Compensation policy deductible.

Section 4.06. Investment of Funds

Money in the Funds shall be invested as directed by the Chief Financial Officer, in investments that are lawful investments of the public funds of the Port Authority.

ARTICLE V
CLAIMS MANAGEMENT

Section 5.01. Management of Claims Generally

The Director of Risk Management shall manage those claims that are covered, or potentially covered, by the Port Authority's self-insurance and commercial insurance, including workers' compensation claims.

Section 5.02. Professional Claims Adjusting Services

- (a) A TPA shall perform professional claims adjusting services on behalf of the Port Authority. Claims will be adjusted as required by applicable state law or rule.
- (b) The TPA shall comply with the claims management policies and procedures established by the Claims Board and Director of Risk Management.
- (c) The Director of Risk Management shall obtain independent claims handling audits of the TPA every 12 to 14 months. The purpose of the audit is to verify contractual compliance, quality of service, utilization of best claims handling practices, to identify any areas of concern, and to recommend specific corrective action. The independent auditor shall provide a written report to the Director of Risk Management.

Section 5.03. Defense of Claims

- (a) The Program is authorized to pay for the defense of Covered and potentially covered liability Claims against the Port Authority and, on their request, to pay for the defense of Protected Persons.
- (b) The General Counsel or his/her designee shall direct the defense of the Port Authority against claims with the assistance of the Director of Risk Management.

- (c) The General Counsel and Director of Risk Management shall select, monitor, and retain outside attorneys, experts, and investigators necessary for the defense of any claim.
- (d) The General Counsel and Director of Risk Management shall establish a procedure for evaluating the performance of all attorneys, experts, and investigators. Inadequate or unsatisfactory performance shall be grounds for dismissal.

Section 5.04. Settlement of Claims and Suits

- (a) The Claims Board, at its discretion, may settle claims subject to the limitations prescribed by this section. When advance approval of the Claims Board is not required, the Director of Risk Management shall provide Claims Board members with summary information regarding all settlements of \$50,000 or less.
- (b) The TPA, with the written concurrence of the Director of Risk Management may settle, without the advance approval of the Claims Board, the liability claims of any one claimant that arise from the same Occurrence for an aggregate amount not exceeding \$25,000.
- (c) The Director of Risk Management, with the written concurrence of the General Counsel, may settle, without the advance approval of the Claims Board, the liability claims of any one claimant that arise from the same Occurrence for an aggregate amount not exceeding \$50,000.
- (d) The Claims Board may settle the liability claims of any one claimant that arise from the same Occurrence for an aggregate amount of \$50,001 to \$100,000.
- (e) The Port Commission must approve settlement of the liability claims of any one claimant that arise from the same Occurrence for an aggregate amount exceeding \$100,000.
- (f) The Claims Board may, as a condition of payment, require Protected Persons to assign their rights to recover from others in order to pursue subrogation rights.

Section 5.05. Payment of Non-Covered Claims

Any claim that the Port Authority is legally obligated to pay that is not a Covered Claim or, if a Covered Claim, that is in excess of the amount permitted under the Program to be withdrawn from the Funds, may be paid by the Port Authority from other sources of payment permitted by law.

Section 5.06. Exemplary Damages

The Port Authority's self-insurance does not pay for exemplary, punitive, multiplied, or enhanced damages.

ARTICLE VI
INDEMNIFICATION POLICY

Section 6.01. Statement of Indemnification Policy

(a) Scope of Indemnification

This Indemnification Policy applies to matters as to which coverage is not provided by the Port Authority's Insurance Program for settlements or judgments.

(b) Defense

In matters in which coverage is not provided by the Port Authority's Insurance Program for settlements or judgments, it is the policy of the Port Authority, as a part of the self-insurance component of its Insurance Program, to defend Protected Persons against whom a claim is made or suit or proceeding is brought, or who are subject to an investigation or subpoena, arising from conduct within the scope of their duties as a Port Commissioner or Port Authority employee.

(c) Payment of Settlements or Judgments

Inasmuch as this Indemnification Policy is not intended to foreclose any future Port Commission's judgment as to the public interest, all payments under this Indemnification Policy for settlements or judgments are subject to Port Commission approval.

(d) Provisions of the Port Authority's Bylaws

In the case of Port Commissioners, the Port Authority's Bylaws control indemnification of Port Commissioners to the extent of any conflict between the Bylaws and this Indemnification Policy.

Section 6.02. Payment of Defense Expense

- (a) The determination whether a Port Commissioner or Port Authority employee should be defended under this Indemnification Policy shall be made by the General Counsel in consultation with the Executive Director and Director of Risk Management. Such determinations shall be subject to review by the Port Commission.
- (b) Defense expense subject to payment by the Port Authority under this Indemnification Policy includes all elements of ALAE and shall be paid from the self-insurance Funds.
- (c) Absent a conflict of interest, a Port Commissioner or Port Authority employee named as a defendant along with the Port Authority shall be defended by the Port

Authority's counsel. In the event of a conflict of interest, the General Counsel shall select or approve defense counsel.

Section 6.03. Requirements for Payment of Defense Expense

To qualify for protection under this Indemnification Policy, Protected Persons must:

- (a) Notify the General Counsel promptly and in writing after receipt of any written or oral notice of a demand, claim, suit, summons, citation, proceeding, investigation, subpoena or other matter as to which a defense is sought;
- (b) Cooperate fully with the Port Authority in connection with the investigation and defense of the matter as to which defense or indemnification is sought, including attending any hearing or trial and assisting in discovery, securing and giving evidence, and obtaining the attendance of witnesses;
- (c) Not give any oral or written statement or enter into any stipulation or agreement concerning a claim or suit, except when questioned by a law enforcement officer or upon advice of the General Counsel or his/her designee;
- (d) Upon the request of the General Counsel, assist in making settlement, and in enforcing any right of contribution or indemnity against an individual or organization who might be liable; and
- (e) Not, except at the Protected Person's own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to any claim or suit or other matter without the prior consent of the General Counsel.

Section 6.04. Matters Not Subject to Indemnification

This Indemnification Policy does not apply and indemnification shall not be provided for the following:

- (a) Any payment that would be illegal or that is prohibited by law;
- (b) Claims made or suits brought by the Port Authority;
- (c) Matters resulting from (i) an intentional or knowing violation of a penal law (including an administrative agency rule having the force and effect of law) committed by, or with the knowledge and consent of, the Protected Person; (ii) an act of fraud committed by, or at the direction of the Protected Person; (iii) official misconduct, a willful or wrongful act or omission, or an act or omission constituting gross negligence committed by, or at the direction of, the Protected Person; (iv) an act of conspiracy or collusion by the Protected Person against the Port Authority; (v) knowing or intentional violation by the Protected Person of any written employment rules, policies or procedures of the Port Authority; or (vi) an intentional or knowing violation of the lawful orders, instructions or directives of Port Authority management;
- (d) Claims or suits resulting from the Protected Person using or operating a Port Authority vehicle or other Port Authority property or equipment without authority to do so;

- (e) Claims or suit alleging liability assumed by the Protected Person under a contract, unless the Protected Person was authorized by the Port Authority to enter into the contract; and
- (f) Claims for exemplary, punitive, multiplied or enhanced damages.

ARTICLE VII
ADOPTION

This Policy was adopted by the Port Commission on March 27, 2018, as evidenced by Minute No. 2018-0327-13.

Policy Owner: Director, Risk Management

Policy Version: 3.0

Effective Date: April 1, 2018

Initial Review Date: February 1, 2019 and every 1 year thereafter