



POLICY TITLE	Board Policy on Director, Officer, and Employee Indemnification
No. 201903-xx	
Effective Date	March 21, 2019

1. STATEMENT OF POLICY

Subject to the provisions of this Director, Officer, and Employee Indemnification Policy, the Authority shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of a Wrongful Act in the discharge of his or her duties as a current or former director, officer, or employee of the Authority.

2. DEFINITIONS

- A. Wrongful Act - Any act or omission, error, misstatement or misleading statement, or neglect or breach of duty committed, attempted or allegedly committed or attempted by a person in the discharge of the person's duties as a current or former director, officer, or employee of the Authority.
- B. Indemnified Party - A current or former director, officer, or employee of the Authority. In accordance with this policy, any such person the Authority deems entitled to indemnification.

3. APPLICABLE PROCEDURES UNDER THE POLICY

A. Indemnification

In accordance with this policy, any person the Authority deems entitled to indemnification shall be indemnified against expenses including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Authority, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit, or proceeding by

judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

This indemnification shall not apply to any claim, suit, action or proceeding:

- 1) which is for the return by any such director, officer, or employee of any remuneration paid in fact to him or her without the previous approval of the Authority if it shall be determined by a judgment or other final adjudication that such remuneration is in violation of law or if such remuneration is to be repaid to the Authority under a settlement agreement;
- 2) which is brought about or contributed to by the fraudulent or dishonest acts of such director, officer, or employee if a judgment or other final adjudication adverse to such Indemnified Party establishes that acts of active and deliberate dishonesty were committed or attempted by such director, officer, or employee with actual dishonest purpose and intent and were material to the cause of action so adjudicated;
- 3) which is brought about or contributed to by any criminal activities of the director, officer, or employee;
- 4) which is based upon or attributable to such director, officer, or employee having gained any personal profit or advantage to which he or she was not legally entitled, whether or not (i) a judgment or other final adjudication adverse to such person establishes that such person in fact gained personal profit or other advantage to which he or she was not entitled, or (ii) the director, officer, or employee has entered into a settlement agreement to repay such personal profit or advantage to the Authority;
- 5) for which the Authority is not authorized by law to provide indemnification to the director, officer, or employee; or
- 6) brought by the Authority at the direction of its board of directors against director, officer, or employee.

B. Notification Required

The Authority shall indemnify only a director, officer, or employee from whom the Authority has received notice of a Wrongful Act. The notice must be in writing and shall be mailed as soon as practicable, but in no event later than 30 days after the date of receipt by the Indemnified Party of any claim, demand, notice, summons, or service of process relating to the Wrongful Act. The notice must identify the director, officer, or employee seeking indemnification and must contain information with respect to the time, place, and circumstances of the Wrongful Act which may result in a claim, suit, action, or proceeding, the names and addresses of any injured persons, and names of any available witnesses.

C. Retention of Counsel

Upon the Authority's determination or upon request of the Indemnified Party, the Authority shall have the power to retain counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party and any others the Authority designate in such proceeding

and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Authority and the Indemnified Party shall have mutually agreed to the retention of such counsel, (ii) the actual or potential parties to any such proceeding include both the Authority and the Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Authority, (iii) the use of counsel chosen by the Authority to represent the Indemnified Party would present such counsel with a conflict of interest, or (iv) the Authority shall not have employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such proceeding. It is understood that the Authority shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such Indemnified Parties and that all such fees and expenses shall be reimbursed as they are incurred.

D. Settlement

Any claim, suit, action or proceeding brought against an Indemnified Party for which indemnification is provided pursuant to this policy may only be settled with the approval of the Authority, and the Authority shall indemnify the Indemnified Party for any damages, expenses, court costs, and legal fees actually and reasonably incurred in connection with an approved settlement. The Authority shall not, without the prior written consent of the Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party, indemnity has been sought hereunder by such Indemnified Party, and the Authority has determined that indemnification of such person is required (which determination shall be made before such settlement is effected), unless such settlement includes an unconditional release of such indemnified party from all liability and claims that are the subject matter of such proceeding.

E. Determination of Indemnification

Any indemnification under this policy, unless ordered by a court, shall be made by the Authority only upon a determination that indemnification of the person is required by this policy.

- 1) With respect to a person who is a director or officer at the time of the determination, the determination shall be made:
 - a. By a majority vote of the directors who are not parties to the action, suit, or proceeding, even though less than a quorum;
 - b. By a committee of directors designated by a majority vote of directors, even though less than a quorum; or
 - c. If there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion.

- 2) With respect to a person who is an employee at the time of the determination, the determination shall be made:

- a. By the chair of the board of directors with the advice and recommendation of the counsel;
- b. In the event that either the chair or the counsel has a conflict, the executive director shall take the place of the conflicted party in making such indemnification determination; or
- c. If two of the three of the chair, executive director, and counsel have a conflict, then the members of the board of directors who do not have any conflict shall make any such determination regarding indemnification.

F. Expenses

Expenses incurred by any Indemnified Person pursuant to this policy in defending a civil claim, suit, action, or proceeding may be paid by the Authority in advance of the final disposition of such claim, suit, action, or proceeding as authorized by the board of directors upon receipt of an undertaking by or on behalf of such person to repay, such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Authority pursuant to this policy.

G. Repeal or Modification of Policy

Any repeal or modification of this policy by the board of directors of the Authority shall not conflict with or adversely affect any right or protection of a director, officer, or employee existing at the time of such repeal or modification.

4. HISTORY

Date of Last Action	Action Taken	Authorizing Entity
March 21, 2019	Indemnification Policy Adopted	Board of Directors

5. SIGNATURE, TITLE, AND DATE OF APPROVAL

Approved:



 Board of Directors Chair