

**INSERT YOUR  
MEMORANDUM OF LIABILITY COVERAGE  
DECLARATIONS PAGE HERE**

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# LIABILITY COVERAGE PROVISIONS

This is a **Memorandum** of understanding between all of the **Member Agencies** of the Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA), a California public entities risk pool operating under Sections 990.4 and 990.8 of the Government Code and other provisions of law. The purpose of this **Memorandum** is to set forth the terms on which the ACWA JPIA's **Member Agencies** have agreed to pool certain third-party liability risks among their membership, and have agreed to purchase excess liability insurance (or reinsurance) above the limit of coverage provided by the **Member Agencies'** pooled funds. This **Memorandum** shall be applied according to the principles of contract law, giving full effect to the intent of the **Member Agencies** of the ACWA JPIA in adopting this Memorandum of Liability Coverage. None of the parties to the Memorandum are entitled to rely on any contract interpretation principle which would require the interpretation of ambiguous language against the drafter of an agreement. The **Member Agencies** participating in the pool understand and acknowledge that their risk-pooling arrangement governed by this **Memorandum** is not insurance nor is it subject to regulation under the Insurance Code. As the ACWA JPIA is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have any obligation to provide *Cumis* counsel to a **Covered Party** in a disputed coverage situation, as an insurer might have under Civil Code Section 2860.

Throughout this **Memorandum**, words and phrases that appear in bold have special meaning. They are defined in Section I - Definitions. Words that appear in CAPITAL LETTERS have reference to the like titled section in the **Memorandum**.

Neither the terms nor conditions of this **Memorandum** may be changed, except by addendum issued by us to become part of this **Memorandum**.

In consideration of the premium paid by the **Member Agency**, and subject to all terms and conditions herein, the **Authority** and the **Member Agency** agrees as follows:

## SECTION I - DEFINITIONS

**Aerial application** means the delivery of herbicides and/or pesticides by use of an agricultural **aircraft** including but not limited to airplanes, helicopters, and/or **unmanned aircraft**.

**Aircraft** means a vehicle designed for the transport of persons or property principally in the air.

**Authority** means the Association of California Water Agencies Joint Powers Insurance Authority.

**Automobile** means a land motor vehicle, trailer or semi-trailer.

**Bodily injury** means physical injury, sickness, disease, or emotional distress sustained by a person, including death resulting therefrom, and also includes care and loss of services by any person or persons.

**Claim(s)** means a demand for money.

**Covered Party** means any person or entity set forth in Section IV of this **Memorandum**.

**Cyber Liability** means any liability arising out of or related to the acquisition, storage, security, use, misuse, disclosure, or transmission of electronic data of any kind, including, but not limited to, technology errors and omissions, information security and privacy, privacy notification cost, penalties for regulatory defense or penalties, website media content, disclosure or misuse of confidential information, failure to prevent unauthorized disclosure or misuse of confidential information, improper or inadequate storage or security of personal or confidential information, unauthorized use, unauthorized access to computer systems containing confidential information, or transmission or failure to prevent transmission of a computer virus or other damaging material.

**Dam** means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either: (a) is 25 feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation; or (b) has an impounding capacity of 50 acre-feet or more.

Any such barrier which is not in excess of 6 feet in height, regardless of storage capacity, or which has a storage capacity not in excess of 15 acre-feet, regardless of height, shall not be considered a **dam**.

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to, a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, and no barrier which is not across a stream channel, watercourse, or natural drainage area and which has the principal purpose of impounding water for agricultural use shall be considered a **dam**. In addition, no obstruction in the channel of a stream or watercourse, which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground shall be considered a **dam**.

Regardless of the language of the above definition, however, no structure specifically exempted from the jurisdiction of the State of California Department of Water Resources, Division of Safety of Dams, shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the Federal Government.

**Damages** means monetary compensation legally recoverable from a **Covered Party**, for past injury caused to a claimant by the unlawful acts or omissions of said **Covered Party**, except for the following:

1. Punitive or exemplary damages, statutory multiples of damages, civil fines or penalties, or any other liability over and above actual damages, by whatever name called, irrespective of whether the **Covered Party's** governing board has taken any action or passed any resolution electing to pay such damages;
2. Criminal fines or penalties;
3. Back-pay awards or any other restitutive relief awarded to compensate a claimant for services rendered to, or financial benefit otherwise conferred upon, a **Covered Party**; and any FLSA Wage and Hour or any CA Wage Order or any similar Federal or State law claims or suits against, either the **Member Agency** or **Covered Party**; and
4. Injunctive and/or administrative relief.

**Defense costs** means reasonable fees charged by an attorney appointed by the **Authority** to defend the **claim** or **suit** and all other reasonable fees, costs and

expenses attributable to the investigation, defense or appeal of a **claim** or **suit** that is within the scope of coverage afforded by this **Memorandum**, and that has been, and remains, duly tendered to the **Authority** for defense and indemnity under this **Memorandum**, except salaries of employees of the **Covered Party**, the office expenses of the **Member Agency**, and expenses of any claims servicing organization the **Member Agency** has engaged.

**Employee** means any person whose labor or services is engaged and directed by a **Covered Party**, whether past or present, including a volunteer, official, or applicant for employment. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial, or confidential position. **Employee** shall not include leased employees, independent contractors or subcontractors, agents, or servants of any **Covered Party**, unless the **Covered Party** has the right to and does control and direct the details of their work rather than the result of that work. **Employee** also shall not include spouse, child, unborn fetus, parent, brother, or sister of the **employee**.

The exclusion of independent contractors or subcontractors from the definition of **employee** shall not apply to a **claim** for sexual harassment specifically authorized under California Government Code 12940(j)(4) and (5).

**Employment Practices Liability** means liability of the **Covered Party** for compensatory damages payable to any prospective, present or former **employee** on account of a violation by **Covered Party** of any federal or state **Employment Liability Statute** or conduct held to be in violation California public policy, arising from:

1. Refusal to employ such person; or
2. Termination of such person's employment; or
3. Coercion, discrimination, retaliation, harassment, demotion, reassignment, discipline or other employment-related practice, policy, act or omission, provided such practice policy act omission does not include the willful commission of a crime or intentional infliction of **bodily Injury**.

Liability to the **employee** shall include liability to any spouse for economic damages or emotional distress incident to any of the acts 1 through 3 above. **Employment Practices Liability** excludes anything not enumerated above, specifically excluding liability for breach of any employment contract, including without limitation any liability for wages, salaries, bonuses, stipends, expenses, overtime, retirement, medical or disability benefits, back pay, or any severance or other amount payable on termination.

**Employment Liability Statute** shall include the following:

Title VII of the Civil Rights Act of 1964 and amendments thereto; the Americans with Disabilities Act; the Age Discrimination in Employment Act; the Equal Pay Act; the Pregnancy Discrimination Act of 1978; the Immigration Reform Control Act of 1986; the Family and Medical Leave Act of 1993; the Genetic Information Nondiscrimination Act of 2008; the Health Insurance Portability and Accountability Act of 1996; the California Fair Employment and Housing Act; and any California or Federal statute to the extent it proscribes the same conduct.

**Hired automobile** means an **automobile** used under contract on behalf of, or loaned to, the **Member Agency**, provided such **automobile** is not owned by or registered in the name of the **Member Agency** or an **employee** or authorized volunteer of the **Member Agency**.

**Member Agency** means the local public agency, designated in the DECLARATIONS, which is a party signatory to the Joint Powers Agreement creating the Association of California Water Agencies Joint Powers Insurance Authority and is a participant in its Liability Program.

**Member Agency's product** means any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by the **Member Agency** or by others trading under its name, including, but not limited to, domestic water, agricultural water, recycled water, waste water, or electricity. Member Agency's product also includes containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Memorandum** means this document, the MEMORANDUM OF LIABILITY COVERAGE.

**Nuclear material** means source material, special **nuclear material**, or byproduct material. "Source material," "special **nuclear material**," and "byproduct material" have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

**Occurrence** means:

1. With respect to the **bodily injury, property damage, or sudden and accidental pollution**: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in **bodily injury** or **property damage**

neither expected nor intended from the standpoint of the **Covered Party**. **Property damage** that is the loss of use of tangible property not physically injured shall be deemed to occur at the time of the **occurrence** that caused it.

2. With respect to **personal injury** and **Public Official's errors and omissions** respectively: an offense described in the definition of those terms in this **Memorandum**.
3. With respect to **Employment Practices Liability**: an act, policy, or course of conduct by a **Covered Party** during the coverage period which results in a claim for wrongful employment if the first act, policy or course of conduct occurred during the coverage period.

All allegations by the same **employee** in the same claim shall be considered one **occurrence** for the purpose of the Limit of Coverage, and such **occurrence** shall be deemed to exist on the date of the alleged first act, policy, or conduct, in the event of an allegation of multiple acts, policies, or course of conduct.

**Owned automobile** means an **automobile** owned by or under long term lease to the **Member Agency**.

**Personal Injury** means: (a) false arrest, malicious prosecution, or willful detention; (b) libel, slander or defamation of character; (c) invasion of privacy; (d) wrongful entry or eviction, or other invasion of the right of private occupancy; (e) assault and battery; and (f) discrimination or violation of civil rights prohibited by law or violation of federal civil rights laws, not intentionally committed by or at the direction of a **Covered Party**.

**Pollutants** means any solid, semi-solid, noise, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, mists, fumes, acids, alkalis, chemicals, biological and other etiologic agents or materials, genetically engineered materials, teratogenic, carcinogenic and mutagenic materials, waste materials, and any irritant or contaminant. Waste material includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

**Pollutants** does not include domestic water, agricultural water, recycled water, waste water, or water furnished to commercial users, nor include waterborne asbestos.

**Products hazard** includes **bodily injury** or **property damage** arising out of the **Member Agency's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the **Member Agency**



and after physical possession of such **Member Agency's products** has been relinquished to others.

**Property damage** means physical injury to or destruction of tangible property, including the loss of use thereof at any time resulting therefrom; or loss of use of tangible property which has not been physically injured or destroyed.

**Public Official's errors and omissions** means any and all breaches of duty by any **Covered Party** arising from mistake, misstatement, misleading statement, error, neglect, inadvertence, omission or negligent action or inaction, in the discharge of his/her duties for the **Member Agency** including service with any other entity at the direction of any **Member Agency**, except for the following:

1. Willful commission of crime or other dishonest, fraudulent or malicious act;
2. Obtaining financial gain to which the **Covered Party** is not legally entitled;
3. Faulty preparation or approval of maps, plans, reports, surveys, designs, bid documents, or specifications unrelated to the operations of a **Covered Party**; but this exception does not apply to reports provided to any other water purveyor or to services provided by a **Covered Party** for another **Covered Party**; or
4. Adoption or administrative application of any ordinance, resolution or regulation.

**Sexual Abuse or Molestation** means any actual or alleged negligent or intentional act, error or omission, amounting to or resulting in sexual abuse or molestation or threatened sexual abuse or molestation of any minor.

**Subsidence** shall mean earth movement including, but not limited to, landslide, mudflow, earth sinking, earth rising or earth shifting.

**Sudden and accidental pollution** means the sudden and accidental discharge, dispersal, release, or escape of **pollutants**, resulting in **property damage** or **bodily injury** neither expected nor intended from the standpoint of the **covered party**, onto or upon land, into the atmosphere, into or under the ground, or into any watercourse, whether natural or man-made, or body of water or aquifer, but does not include any discharge, dispersal, release, or escape of **pollutants**, whether sudden or accidental or gradual or intentional from any fixed or

stationary contained, vessel, or tank of any description whatever, when located above ground or underground.

**Suit(s)** means a civil proceeding in which **damages** are alleged because of **bodily injury, property damage, personal injury, or Public Official's errors and omissions** to which this **Memorandum** applies. **Suit** includes:

1. An arbitration proceeding in which such **damages** are claimed and to which a **Covered Party** must submit or does submit with the consent of the **Authority**; or
2. Any other alternative dispute resolution proceeding in which such **damages** are claimed and to which a **Covered Party** submits with the consent of the **Authority**.

**Terrorism** means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Ultimate net loss** means the sum actually paid or payable in cash in the settlement or satisfaction of **claims** or **suits**, for which the **Covered Party** is liable either by: (1) adjudication, or (2) compromises with the written consent of the **Authority**, after making proper deduction for all recoveries and salvages collectible, and includes **defense costs**, court costs and interest on any judgment or award, but excludes all unallocated loss adjustment expenses and all salaries of employees and office expenses of the **Covered Party** and **Authority**.

**Unmanned Aircraft** means an **aircraft**, aerial system or device that is not designed, manufactured, or modified after manufactured to be controlled directly by a person from within or on the **aircraft**, aerial system or device.

## SECTION II – COVERAGE

The **Authority** shall pay on behalf of any **Covered Party** the **ultimate net loss** which that **Covered Party** shall become legally obligated to pay to a third party by reason of liability (1) imposed by law, or (2) assumed by contract, for **damages** because of:

1. **Bodily Injury** Liability;
2. **Property Damage** Liability;
3. **Public Official's Errors and Omissions** Liability;
4. **Personal Injury** Liability; or
5. **Employment Practices** Liability

to which this **Memorandum** applies, caused by or arising out of an **occurrence** during the coverage period.

This coverage applies only to **claims** for **damages** arising out of those activities the **Member Agency** was engaged in at the inception date of this **Memorandum**, and not to **claims** arising out of any activity or service which the **Member Agency** added to its operations after the inception date of this **Memorandum**, unless such new activity or service is reported by the **Member Agency** to the **Authority** at least 60 days prior to commencing the new activity or service.

This coverage does not apply to **claims** for **damages** which are either expected or intended by the **Covered Party**.

Any increase in the **Member Agency's** exposure with regard to levee maintenance, hydroelectric generation, fire, police or ambulance services must have prior approval of the Executive Committee in order to have coverage under this **Memorandum**.

### SECTION III – LIMIT OF LIABILITY

Regardless of the number of (1) **Covered Parties** under this **Memorandum**, (2) persons or organizations who sustain injury or damage, or (3) **claims** made or **suits** brought, the **Authority's** liability for the **ultimate net loss** shall be the lesser of:

1. \$5,000,000 Any one **occurrence**, arising out of **bodily injury, property damage, Public Official's errors and omissions, personal injury or Employment Practices** Liability, or any combination thereof; or
2. The total limit for all **Covered Parties** provided by any purchased excess insurance or reinsurance, subject to the **Authority's** ability to recover from those excess insurers or reinsurers.

## SECTION IV –WHO IS COVERED

Each of the following is a **Covered Party** to the extent set forth below:

1. The **Member Agency** and any subsidiary or special district or agency totally governed by the **Member Agency**;
2. Any director of the **Member Agency** while acting within the course and scope of his/her duties;
3. Any **employee** or authorized volunteer of the **Member Agency** while acting within the course and scope of his/her duties; and
4. Any party designated in the foregoing paragraphs 1 through 3 while acting within the course and scope of his/her duties with respect to the use of an **automobile** not owned by the **Member Agency** and then only excess over any other insurance specifically insuring said **automobile**. Any person while using any **owned** or **hired automobile** and any person legally responsible for the use thereof, provided the actual use of the **automobile** is with the permission of the **Member Agency**.

## SECTION V - DEFENSE OF THE MEMBER AGENCY

On causes of action covered by this **Memorandum** and only those causes, the **Authority** shall have the right and duty to defend any **suit** against any **Covered Party**, even if all allegations are groundless, false or fraudulent. The **Authority** may make such investigations, negotiations or settlement of any **claim** or **suit** as it deems expedient. The **Authority** shall not be obligated to pay any **claim** or judgment or to defend any **suit** after any of the **Authority's** limits of liability have been exhausted.

The **Authority** shall have no duty to defend any **suit** against a **Covered Party**, nor to pay any costs or expenses incurred by any **Covered Party**, at any time before the **suit** is tendered to the **Authority**, nor shall the **Authority** have any duty to pay any costs or expenses incurred by any **Covered Party** at any time after the **Covered Party** withdraws its tender of the **suit** to the **Authority** for any reason.

This coverage applies only to claims for **damages** caused by an **occurrence**, for damage or injury that occurs during the coverage period of this **Memorandum**, and then only if, prior to the first day of the coverage period of this **Memorandum**, no person or party authorized by any **Covered Party** to give or

receive notice of an **occurrence** or claim knew that the injury or damage had occurred, in whole or in part. If such an authorized person or party knew, prior to the first day of the coverage period of this **Memorandum**, that the injury or damage had occurred, then any continuation, change or resumption of such injury or damage during or after the coverage period of this **Memorandum** will be deemed to have been known prior to the coverage period. Injury or damage will be deemed to have been known to have occurred at the earliest time when any person or party authorized by any **Covered Party** to give or receive notice of an **occurrence** or **claim**: (1) reports all, or any part, of the injury or damage to the **Authority** or to any other risk pool, any insurer, or any other indemnitor; or (2) receives a written or verbal demand or **claim** for **damages** because of the injury or damage; or (3) becomes aware by any other means that injury or damage has occurred or has begun to occur.

With respect to any covered claim or suit against the **Covered Party**, the **Authority** shall select and assign counsel to defend the **Covered Party(s)** against the claim or suit. The **Authority** will consider the wishes of a **Covered Party** with respect to the assignment of counsel; however, the **Authority** retains the sole right to make the assignment of counsel. If the **Covered Party** refuses to be defended by the counsel assigned by the **Authority** then this **Memorandum** shall not provide any defense or indemnity to such **Covered Party** for such claim or suit, and the **Authority** shall not be required to contribute to any defense costs, settlement or judgment arising from such claim or suit.

Any claim for damages by one **Member Agency** against any other **Member Agency**, if otherwise covered by this **Memorandum**, shall be submitted to binding arbitration pursuant to Section VII. – Conditions, F. RESOLUTION OF DISPUTES, (6) Arbitration Procedures for Resolving Disputes.

## SECTION VI – EXCLUSIONS

This **Memorandum** does not apply to any defense or indemnification for the following items, whether the act or **occurrence** is alone, or is concurrent with other, covered matters:

- A. Liability arising out of the ownership, maintenance, loading, unloading, use or operation of any airfield, or similar aviation facility; or

Liability arising out of the ownership of **aircraft**, or the maintenance or use of owned **aircraft**.

This exclusion does not apply to claims arising out of the ownership, operation, use, maintenance or entrustment to others of any **unmanned**

**aircraft** owned or operated by or rented to or loaned by or on behalf of any **Member Agency** if operated in accordance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to Federal Aviation Administration (FAA) Rules and Regulations for **unmanned aircraft** detailed in part 107 of Title XIV of the Code of Federal Regulations.

- B. Any obligation for which any **Covered Party**, or any carrier as insurer therefore, may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law; or

Liability of any **employee** or authorized volunteer with respect to **bodily injury** of another **employee** or authorized volunteer.

- C. Liability for **property damage** to:

1. Property owned by the **Covered Party**;
2. **Aircraft** in the care, custody or control of the **Covered Party**.

- D. Liability arising out of:

1. The **Covered Party's** delivery or non-delivery of **Member Agency's product**, based on any decision made by the **Covered Party's** with respect to either obtaining a supply of water or electricity for, or allocating the available supply of water or electricity, among the **Covered Party's** water or electricity users; or
2. The **Covered Party's** claim to, right to or ownership of any supply of **Member Agency's product**.

- E. Liability for:

1. **Bodily injury, property damage, personal injury or Public Official's errors and omissions** which would not have occurred or taken place in whole or in part except for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time; or
2. Any loss, cost or expense arising out of any:
  - a. Request, demand, or order that a **Covered Party**, or any others, test for, monitor, clean up, remove, contain, treat,

detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or

- b. **Claim or suit** by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning, removing, containing, treating, detoxifying or neutralizing, in any way responding to, or assessing the effects of **pollutants**.
- c. **Aerial application** of weed abatement or spraying or pest abatement or spraying.

However, this exclusion shall not apply to **bodily injury, property damage, personal injury, or Public Official's errors and omissions** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** that:

- a. Was sudden and accidental, and neither expected nor intended by a **Covered Party**; or
- b. Resulted from the use, handling, storage, discharge, dispersal, release or escape of chlorine or any other chemical used in the water treatment process or waste water treatment process; or
- c. Arose out of explosion, lightning, windstorm, vandalism or malicious mischief, collapse, riot and civil commotion, flood, earthquake or the collision, upset or overturn of an **automobile** or equipment; or
- d. Arose out of the heat, smoke or fumes from a hostile fire; a hostile fire is defined herein as a fire that becomes uncontrollable or breaks out from where it was intended to be; or
- e. Arose out of weed abatement or spraying, unless by and/or through **aerial application**; or
- f. Arose out of pest abatement or spraying, unless by and/or through **aerial application**; or
- g. Arose from propane or natural gas; or
- h. Arose from the **products hazard**.

- F. Liability arising out of:
1. Estimates of probable costs, or cost estimates being exceeded, or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids; or
  2. Failure to perform or breach of a contractual obligation; or
  3. Settlement Agreements. Claims alleging breach of a settlement agreement involving a **Covered Party** in an underlying matter that was afforded coverage under this **Memorandum** will be covered for no more than \$25,000.00 reimbursement by the **Authority** to the **Covered Party** for indemnity and defense as a combined total.
- G. Liability at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
- To any obligation of the **Covered Party** to indemnify any party because of damage arising any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
- To any obligation to defend any **suit** or **claim** against the **Covered Party** seeking **damages**, if such **suit** or **claim** results from or is contributed to, by any or any combination of the following: manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust.
- H. Liability for past, present, or future **claims** arising in whole or in part, either directly or indirectly, out of selenium, or any compound containing selenium.
- I. Liability for punitive or exemplary damages, statutory multiples of damages, civil fines or penalties, or any other liability over and above actual **damages**, by whatever name called, irrespective of whether the **Covered Party's** governing board has taken any action or passed any resolution electing to pay such damages.
- J. Liability arising out of the hazardous properties of **nuclear material**.
- K. Liability arising out of the partial or complete structural failure of any **dam**.



- L. Liability arising out of or in connection with land use regulation, or land use planning, the principles of eminent domain, condemnation proceedings, or inverse condemnation by whatever name called, to the extent that such liability is alleged to, or does, result from deliberate, decision-making conduct by the governing body of the **Covered Party**, and whether or not liability accrues directly against any **Covered Party** by virtue of any agreement entered into by or on behalf of any **Covered Party**.
- M. Liability imposed by any “No-Fault,” “Uninsured Motorist” or “Underinsured Motorist” law, or any similar law.
- N. Liability arising out of any claim for **Cyber Liability** or by any name by which it is called.
- O. Liability arising out of injunctive and/or administrative relief.
- P. Liability arising out of the actual or threatened abuse or **molestation** of any minor, including but not limited to physical abuse, corporal punishment, **sexual abuse**, or sexual **molestation** by any **Covered Party**, or anyone acting on behalf of the **Covered Party**.
- Q. Liability arising out of the adoption or administrative application of any ordinance, resolution or regulation.

This exclusion shall not apply to the physical enforcement of an ordinance, resolution or regulation, such as liability arising from the act of delivering a fine, citation, warning, notice or inspection.

- R. Liability arising out of or by reason of:
  - 1. The purchase, sale, offer of sale, or solicitation of any security, debt, bank deposit, or financial interest or instrument;
  - 2. Any representations made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument;
  - 3. Any depreciation or decline in price or value of any security, debt, bank deposit, or financial interest or instrument; or
  - 4. Employee Retirement Income Security Act of 1974 or any law amendatory thereof, or any similar law, or arising out of fiduciary activities with respect to employee benefit plans.

## SECTION VII - CONDITIONS

### A. PREMIUM/DEPOSIT PREMIUM

All premium payments required by this **Memorandum** shall be computed in accordance with the Joint Powers Agreement and the cost allocation plan adopted by the **Authority's** Board of Directors. The Deposit Premium is an estimate to be credited against the amount of Retrospective Premium determined under the cost allocation plan.

### B. INSPECTION AND AUDIT

The **Authority** shall be permitted, but not obligated, to inspect the **Member Agency's** property or operations at any time. The **Authority** shall have the right to examine and/or audit any data provided by the **Member Agency** which affects or may affect the **Member Agency's** financial obligations under this **Memorandum**.

### C. SEVERABILITY OF INTEREST

The term **Member Agency** is used severally and not collectively.

### D. **MEMBER AGENCY'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM, OR SUIT**

1. The **Covered Party's** duties in the event of an occurrence, **claim**, or **suit** reasonably likely to involve the **Authority** are as follows. These provisions are conditions precedent to coverage afforded under this **Memorandum**.  
Written notice containing particulars sufficient to identify the **Covered Party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of the available witnesses, shall be given by or for the **Covered Party** to the **Authority** or any of its authorized agents.
  - a. The **Covered Party** shall immediately notify the **Authority** upon receipt of notice of a claim involving:
    - i. One or more fatalities;
    - ii. Loss of limb or amputation;
    - iii. Loss of use of any sensory organ;

- iv. Spinal cord injuries (quadriplegia or paraplegia);
  - v. Third degree burns involving 10% or more of the body;
  - vi. Serious facial disfigurement;
  - vii. Paralysis;
  - viii. Closed head injuries;
  - ix. Serious loss of use of any body functions;
  - x. Long-term hospitalization;
  - xi. Class action suits; or
  - xii. Sexual abuse or molestation.
2. If **claim** is made or **suit** is brought against the **Covered Party**, and the **Covered Party** seeks defense or indemnity against the **claim** or **suit** from the **Authority**, the **Covered Party** shall immediately forward to the **Authority** every demand, notice, summons or process received.
3. The **Covered Party** shall cooperate with the **Authority** and with defense counsel appointed by the **Authority** and, upon the **Authority's** request, assist in making settlements, in the conduct of **suits** and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Party** because of injury or **damage** with respect to which coverage is afforded under this **Memorandum**; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at the **Covered Party's** own cost, voluntarily make any payment, assume any obligation, or incur any defense attorney's fees or costs or any other expense other than for first aid or damage mitigation.
4. With respect to "Small **Claims**" as defined below, the **Member Agency** may elect to make investigations and settlements. At the request of the **Member Agency**, however, the **Authority** shall

investigate, handle, deny, accept or otherwise settle any such **claim** or **claims** on behalf of the **Member Agency**.

“Small **Claims**” within the meaning of this condition:

- a. Must be for **property damage** only, with no apparent potential for related **bodily injury** allegations;
- b. Must not have estimated **damages** for all **claims** arising out of the **occurrence** exceeding the **Member Agency's** applicable Retrospective Allocation Point; and
- c. Must be settled within sixty (60) days of the date of filing or be turned over to the **Authority's** claims handling agency no later than the 62nd day.

If a **Member Agency** incurs a loss which meets the above constraints, it may use the following procedures:

- a. Negotiate settlement of the **claim** up to the specified limits;
  - b. Issue a check to claimant or otherwise compensate claimant for the agreed upon **damages**; and
  - c. Report the settlement to the **Authority** with a copy of the **claim** report, along with a copy of any release taken, and receive reimbursement for the amount of the settlement.
5. The **Authority** shall not be liable for **occurrences, suits** or **claims** with regard to which the **Member Agency** fails to comply with this subsection D.

#### E. ACTION AGAINST THE **AUTHORITY**

No action shall lie against the **Authority** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this **Memorandum**, nor until the amount of the **Covered Party's** obligation to pay shall have been finally determined either by judgment against the **Covered Party** after actual trial or by written agreement of the **Covered Party**, the claimant and the **Authority**.

No person or organization shall have any right under this **Memorandum** to join the **Authority** as a party to any action against any **Covered Party** to determine the **Covered Party's** liability, nor shall the **Authority** be

impleaded by the **Covered Party** or the **Covered Party's** legal representative. Bankruptcy or insolvency of the **Covered Party** or of the **Covered Party's** estate shall not relieve the **Authority** of any of its obligations hereunder.

F. RESOLUTION OF DISPUTES

1. General

The following procedures shall be followed in resolving any dispute, **claim**, or controversy arising out of or connected with the agreements set forth in this **Memorandum**. Such disputes shall be resolved by either administrative proceedings or binding arbitration as provided for herein. The parties in these proceedings shall be the **Authority** and the **Member Agency** and are hereinafter referred to as "party" or "parties".

2. Initiation of Proceedings

Either party shall give written notice to the other party of its intent to initiate proceedings to resolve any dispute covered by this SECTION VII – Conditions, E. Such notice shall contain a statement setting forth the nature of the dispute, the amount involved, and the remedy sought.

3. Administrative Procedures for Resolving Disputes

- a. All disputes subject to these proceedings shall first be submitted to the following designated committee, depending upon the amount in dispute, to determine whether the dispute can be resolved by administrative proceedings without having to be submitted to binding arbitration.

<u>Level and Committee</u>	<u>Amount in Dispute</u>
1. Liability Program Committee	Not in excess of \$50,000, per <b>occurrence</b>
2. The <b>Authority's</b> Executive Committee	Over \$50,000, but not in excess of \$200,000, per <b>occurrence</b>
3. Ad Hoc Board Committee	Over \$200,000 and up to the attachment point of re-insurance or excess coverage, per <b>occurrence</b>

- b. A separate Ad Hoc Board Committee shall be formed for each dispute as follows:
  - i. Upon initiation of the dispute, the entire Board roster shall be randomly prioritized.
  - ii. The first seven Board members on the prioritized list agreeing to serve on the Ad Hoc Committee, or to have their alternates serve, shall comprise the pool. At least five members of the pool shall be required to convene the Committee.
  - iii. No Board member representing a **Member Agency** that is a party to the arbitration, nor his/her alternate, shall serve on the Ad Hoc Committee.

4. Administrative Hearings

Administrative hearings before committees shall be conducted in an informal manner with the Chair of the Committee presiding at the Liability Program Committee and the Executive Committee and the Chief Executive Officer of the **Authority** presiding, without a vote, at the Ad Hoc Committee. They shall be conducted in accordance with procedures determined by the Committee except as follows:

a. List of Witnesses and Documents

If either party wishes a list of the other party's witnesses and documents, it may demand it in accordance with the procedures set forth in California Code of Civil Procedure, Section 1282.2. However, the failure to list a witness or a document shall not bar the testimony of the unlisted witness or the introduction of an undesignated document, provided that good cause for the omission is shown as determined by the Committee.

b. Presentation of Evidence

Each party shall present its evidence in an informal manner. The Chair of the Committee shall rule on the admission and exclusion of evidence, but the Chair need not follow the rules of evidence and rules of judicial procedures.

c. Cross-Examination

Each party shall be permitted to cross-examine witnesses.

d. Testimony Under Oath

The testimony of witnesses shall be given under oath, with oaths to be administered by a Notary Public.

e. Representation by Counsel

Parties have the right to be represented by counsel.

f. Stenographic Record

Either party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

g. Place of Hearing

Unless otherwise agreed to by the parties, administrative hearings shall be held at the general office of the **Authority**.

h. Time of Decisions

Decisions shall be made promptly by the Committee in writing and, unless otherwise agreed by the parties or specified by law, no later than ten (10) days from the date of the close of the hearing.

i. Costs and Expenses

Each party shall bear its own expenses.

5. Time and Method of Appealing Administrative Decisions

Either party may appeal the decision of the Committee to which the dispute was first referred pursuant to paragraph (3) above. Notice

of such appeal shall be submitted in writing within ten (10) days of receipt of the Committee's decision. If the initial decision was by the Liability Program Committee or by the Executive Committee, the parties shall confer within ten (10) days of receipt of the Notice of Appeal to determine if they are both willing to submit the appeal to one of the committees set forth in paragraph (3) above having greater jurisdiction than the Committee that made the initial decision. If they agree to submit it to such a committee for final binding determination, the parties shall indicate this in writing and the matter shall be submitted to that committee and heard in accordance with the procedures set forth in paragraph (4) above. If either party is not willing to have the appeal heard by another committee, or the initial decision was by the Ad Hoc Board Committee, the appeal shall be submitted to binding arbitration in accordance with the procedures set forth in paragraph (6) below.

6. Arbitration Procedures for Resolving Disputes

a. Selection of Arbitrators

If an appeal of an administrative decision is submitted to arbitration, each party shall, within ten (10) days, select one arbitrator and submit his or her name in writing to the other party. Within ten (10) days after their selection, these two arbitrators shall select a third independent arbitrator. If the two parties cannot agree on the selection of the third arbitrator within ten (10) days, either party may petition the Placer County Superior Court for the appointment of the third arbitrator pursuant to the provisions of Section 1281.6 of the California Code of Civil Procedure. The third arbitrator shall preside as the Chair of the arbitration panel. Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the parties and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings.

b. Discovery

The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph (6).



c. Testimony Under Oath

The testimony of witnesses shall be given under oath, with oaths to be administered by a Notary Public.

d. Stenographic Record

Either party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

e. Place of Hearing

Unless otherwise agreed to by the parties, arbitration hearings shall be held at the general office of the **Authority**.

f. Closing the Hearing

Each arbitration hearing shall be completed within one (1) day; provided, however the arbitrators may, for good cause shown, schedule such additional hearings as are necessary to ensure that all evidence material to the controversy is presented.

g. Time of Decisions

Decisions shall be made promptly by the arbitrators in writing and, unless otherwise agreed by the parties or specified by law, no later than ten (10) days from the date of the close of the hearing.

h. Costs and Expenses

Each party shall pay its own expenses, including the expense of the arbitrator appointed by it and the expense of any witnesses which it calls. Except as otherwise provided herein, the expenses of any witness or the cost of any proof produced at the direct request of the arbitrators, and all other expenses of the arbitration, including the travel and the other

expenses of the third arbitrator chosen by the first two arbitrators shall be borne equally by the parties.

i. Interpretation and Application of Rules

With respect to any procedure not herein expressly provided for, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration (Section 1280 et seq.). The arbitrator(s) shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All decisions of the arbitration panel shall be decided by a majority vote.

7. Funding of Defense and Payment of **Claims** Pending Resolution of Dispute

During the course of the administrative and arbitration proceedings provided for herein, the **Authority** may fund any defense to the **claim** against the **Member Agency** and any settlement of that **claim** approved by the **Member Agency**, subject to the right of the **Authority** to recover from the **Member Agency** any amounts paid out by the **Authority** for such defense or settlement which are finally determined not to be owed by the **Authority** under this **Memorandum**, with interest thereon at the legal rate of interest on judgments.

8. Effect of Arbitration Decisions

All decisions on appeals, whether by an administrative committee pursuant to paragraph (5) above or by an arbitration panel, shall be final and binding upon the parties.

9. Not Applicable to Excess Carriers

These arbitration provisions are intended to bind only the **Authority** and its **Member Agencies**. They are not intended to be binding upon any of the **Authority's** re-insurers or excess carriers.

G. OTHER COVERAGES

The coverage afforded in this **Memorandum** shall be excess of, and shall not contribute with, any valid and collectible insurance or self-insurance or other coverage, other than any excess, or umbrella insurance, or reinsurance procured by the **Authority** or the **Member Agency**.

Any and all payments made by others on behalf of the **Member Agency** towards defense costs, settlement, or satisfaction of a claim or suit to which this **Memorandum** applies, including but not limited to payments made by any valid and collectible insurance or self-insurance or other coverage but not including payments made by any excess insurance, umbrella insurance or reinsurance, procured by the **Authority** or the **Member Agency**, shall serve to satisfy the **Authority's** liability for **ultimate net loss** and shall be treated as though paid by the **Authority** hereunder. Such payments shall not be considered "recoveries and salvages collectible" under the definition of **ultimate net loss** set forth under Section I. – Definitions of this **Memorandum**.

#### H. SUBROGATION

In the event of any payment under this **Memorandum**, the **Authority** shall be subrogated to all the **Covered Party's** rights of recovery therefore against any person or organization, and the **Covered Party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Covered Party** shall do nothing after an **occurrence** to prejudice such rights and shall do everything necessary to secure such rights.

#### I. WITHDRAWAL/CANCELLATION

The **Member Agency** may withdraw from the **Authority** and cancel this coverage only:

1. At the end of one of the **Authority's** Liability Program Coverage Years;
2. After three or more years following its first day of coverage by the **Authority's** Liability Program; and
3. After twelve months' advance written notice of such intent to withdraw is given by the **Member Agency** and received by the **Authority**.

The **Authority** may cancel the **Member Agency's** participation in the **Authority's** Liability Program upon a two-thirds vote at any duly constituted Board of Directors' meeting of the **Authority**. However, any canceled **Member Agency** shall be permitted a reasonable time to obtain other basic liability coverage before such cancellation becomes effective.

## COVERAGE SCHEDULE

FOR COVERAGE PERIOD 10/1/2018 - 10/1/2019

COVERAGE LIMIT	CARRIER
\$5,000,000*	JPIA Pooled Layer
\$5,000,001 to \$11M	Evanston Insurance Company
\$11,000,001 to \$20M*	Lloyd's of London/Brit-Scion Great American
\$20,000,001 to \$30M	Great American Insurance Company of New York
\$30,000,001 to \$50M	Great American Insurance Company of New York Endurance Risk Solutions Assurance Company Lloyd's of London/Hiscox
\$50,000,001 to \$60M	General Security Indemnity Company of Arizona – Scor RE

**\*SUBLIMITS:**

**Terrorism** \$5,000,000

**Subsidence** \$20,000,000

All coverage renews at 12:01 a.m. Standard Time at Roseville, California.