

**INSERT YOUR  
MEMORANDUM OF WORKERS' COMPENSATION  
& EMPLOYER LIABILITY COVERAGE  
DECLARATIONS PAGE HERE**

# WORKERS' COMPENSATION & EMPLOYER'S LIABILITY PROGRAM

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# **WORKERS' COMPENSATION & EMPLOYER'S 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 (**Authority**), a California public entities risk pool operating under Sections 990.4 and 990.8 of the California Government Code and other provisions of law. The purpose of this **Memorandum** is to set forth the terms on which the **Authority's Member Agencies** have agreed to pool certain Workers' Compensation risks among their membership, and have agreed to purchase excess 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 **Authority** in adopting this **Memorandum**. 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.

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

## **INTRODUCTION**

In return for the payment of the premium and subject to all terms and conditions of this **Memorandum**, we (the **Authority**) agree with you (the **Member Agency** named in the **Declarations**) as follows:

## **SECTION I - DEFINITIONS**

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

**Bodily injury** shall have the meaning as provided by the applicable **Workers' Compensation Law**, and include death resulting therefrom, but shall not include **occupational disease**.

**Communicable disease** means a disease caused by an infectious organism, which is transmissible from one source to another, directly or indirectly.

**Coverage Period** means the period of time in which an accident or exposure to disease must occur in order for this **Memorandum** to provide coverage.

**Declarations** means the statements made on page one of this **Memorandum** and presumed to be true and accurate.

**Deposit Premium** means the initial premium which a **Member Agency** must pay for coverage. This premium may be later adjusted as a result of any audit by the **Authority** or its agent.

**Employee** means any person performing work which renders the **Member Agency** legally liable under the Workers' Compensation Act of the State of California, or under the common law of the State of California.

**Member Agency** means the local public agency, designated in the **Declarations**, which is a party signatory to the **Authority**, a participant in its Workers' Compensation Program.

**Memorandum** means this document, the **Memorandum Of Workers' Compensation & Employer's Liability Coverage**.

**Occupational disease** shall have the same meaning as provided by the applicable **Workers' Compensation Law**, and include (1) death resulting therefrom and (2) related cumulative trauma injuries or illnesses.

**Occurrence** means an injury or disease of an **employee** arising out of and in the course of employment, **Bodily Injury**, illness, or disease sustained by one or more **employees** as a result of a single accident, incident or exposure, shall be deemed to arise from a single **occurrence**. The **occurrence** shall be deemed to take place for the earlier of (a) the last day of the last exposure, in the employment of the **Member Agency**, to conditions causing or aggravating the disease, or (b) the date upon which the **employee** first suffered disability and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by employment with the **Member Agency**. All **occupational disease** sustained by one or more **employees** as result of an outbreak of the same **communicable disease** shall be deemed to arise from a single **occurrence**. An outbreak of the same **communicable disease** that spans more than one **coverage period** shall be deemed to take place during the first such **coverage period**.

**Volunteers** means any person while acting within the course and scope of his or her duties of the **Member Agency**, provided that, prior to the **occurrence**, the governing Board of the **Member Agency** has adopted a resolution as provided in

Division 4, Part 1, Chapter 2, Article 2, of the California Labor Code, declaring such volunteer workers to be **employees** of the **Member Agency** for purposes of the Workers' Compensation Act; or provided that such volunteer workers are statutorily deemed by the Workers' Compensation Act to be **employees** for the purposes of workers' compensation.

**Workers' Compensation Law** means the **Workers' Compensation Laws** of the State of California and includes injury by both accidents and diseases. It includes any amendments to those laws which are in effect during the **coverage period**. It does not include the provisions of any law that provides non-occupational disability benefits.

## **SECTION II - GENERAL**

### **A. The Memorandum**

This **Memorandum** includes the **Declarations** and all addenda and schedules attached to it. It is a contract of coverage between you and us. The only agreements relating to this coverage are stated in this **Memorandum**.

Neither the terms nor conditions of this **Memorandum** may be changed, except by addendum issued by us to become part of this **Memorandum**. You are responsible for telling us at once when the information contained in the **Memorandum** is no longer accurate for your operations.

### **B. Who Is Covered**

You are covered for your liability to your **employees** if you are the **Member Agency** named in the **Declarations**, subject to the provisions of this **Memorandum**.

This **Memorandum** does not cover the liability of any employer other than the **Member Agency** named in the **Declarations**.

### **C. Locations**

This **Memorandum** covers all of your workplaces in the United States of America, its territories or possessions, or while **employees** are working temporarily outside the country.

#### D. **Qualified Self Insurer**

The **Member Agency** represents that it is a duly qualified self-insured under the **Workers' Compensation Law** of the State of California, with a current and valid certificate of self-insurance, and will continue to maintain such qualifications during the term this **Memorandum** is in effect. If the **Member Agency** should fail to qualify or fail to maintain such qualifications, the coverage provided under this **Memorandum** may be terminated the first date of such failure.

### **SECTION III - COVERAGE PROVISIONS**

#### **PART ONE – WORKERS' COMPENSATION COVERAGE**

This workers' compensation coverage applies to **bodily injury** by accident or **bodily injury** by disease, includes resulting death, subject to the following conditions:

1. **Bodily injury** by accident must occur during the **coverage period**. A disease is not **bodily injury** by accident unless it results directly from **bodily injury** by accident.
2. **Bodily injury** by disease must be caused or aggravated by the conditions of your employment. Your **employee's** last day of last exposure to those conditions causing or aggravating such **bodily injury** by disease must occur during the **coverage period**. **Bodily injury** by disease does not include disease that results directly from **bodily injury** by accident.

#### **PART TWO - EMPLOYER'S LIABILITY COVERAGE**

This employer's liability coverage applies to **bodily injury** by accident or **bodily injury** by disease.

1. The **bodily injury** must arise out of and in the course of the covered **employee's** employment by you.
2. The employment must be necessary or incidental to your work in California.
3. **Bodily injury** by accident must occur during the **coverage period**.
4. **Bodily injury** by disease must be caused or aggravated by the conditions of your employment. The **employee's** last day of last

exposure to the conditions causing or aggravating such **bodily injury** by disease must occur during the **coverage period**.

5. If you are sued, the original suit and any related legal actions for damages for **bodily injury** by accident or by disease must be brought in the United States of America, its territories or possessions.

#### **A. We Will Pay**

We will pay promptly when due, the benefits required by the **Workers' Compensation Law**, to those eligible under PART ONE - Workers' Compensation Coverage.

We will also pay all sums you legally must pay as damages because of **bodily injury** to your **employees** eligible for benefits under this coverage, provided that the **bodily injury** is covered by the PART TWO - Employers Liability Coverage.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your **employee**;
2. For care and loss of services;
3. For consequential **bodily injury** to a spouse, child, parent, brother or sister of the injured **employee**;

Provided that these damages are the direct consequence of **bodily injury** that arises out of and in the course of the injured **employee's** employment by you; and

4. Because of **bodily injury** to your **employee** that arises out of and in the course of employment claimed against you in a capacity other than as employer.

#### **B. We Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this coverage. We also have the right to investigate and settle any such claim, proceeding or suit.

We have no duty to defend a claim, proceeding or suit that is not covered by this **Memorandum** except we hereby assume the duty of defending against claims, proceedings or suits brought under Labor Code Section 132(a) and Serious or Willful Misconduct, Labor Code Sections 4553 and 4553.1. However, even if the defense is unsuccessful, we shall not be obligated to pay any related judgment or award entered on such claims, proceedings or suits nor shall we be obligated to pay any settlement that is either proposed or accepted. We have no duty to defend or continue defending after we have paid our limit of liability under this **Memorandum**.

**C. We Will Also Pay**

We will pay the following costs, in addition to other amounts payable under this coverage, as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in amounts up to twice the amount payable under this coverage;
3. Litigation costs taxed against you;
4. Interest on an award or judgment as required by law; and
5. Expenses we incur.

**D. Other Coverage Or Insurance**

If there is any other indemnity, insurance or reinsurance protecting against benefits, damages or expenses covered by this **Memorandum**, the coverage afforded by this **Memorandum** shall apply in excess of such other indemnity, insurance or reinsurance unless such other indemnity, insurance or reinsurance specifically applies to this coverage.

**E. Limit Of Liability**

Our liability to pay for claims is limited.

With regards to PART ONE - Workers' Compensation Coverage: Our limit is shown in the **Declarations**. It is the most we will pay for claims covered by this **Memorandum** because of any one accident or **occurrence**, or series of accidents or **occurrences** arising out of any one event to one or more **employees**.



With regards to PART TWO - Employers Liability Coverage: Our limit is shown in the **Declarations**. It is the most we will pay for all damages covered by this **Memorandum** because of **bodily injury** to one or more **employees** in any one accident or **occurrence**, or series of accidents or **occurrences** arising out of any one event or for disease to any one **employee**.

We will not pay any claims for damages after we have paid the limit of our liability under this **Memorandum** as explained above.

## **F. Exclusions - Payments You Must Make**

### **1. PART ONE - Workers' Compensation Coverage**

You are responsible for any payments in excess of the benefits regularly provided by the **Workers' Compensation Law**, including but not limited to those required because:

- a. Of your serious and willful misconduct;
- b. Of knowingly employing an **employee** in violation of law;
- c. Of knowingly failing to comply with a health or safety law or regulation;
- d. Of discharging, coercing, criticism, evaluation, reassignment, discipline, harassment, discriminating against or termination of any **employee** or any personnel policies, practices, omissions or acts in violation of the law; or
- e. Of fines, penalties, punitive damage or exemplary damages of any kind or imposed for violation of law whether state or federal.

### **2. PART TWO - Employers Liability Coverage**

This Coverage Does Not Apply to:

- a. Liability assumed under a contract;
- b. Punitive or exemplary damages where coverage for such liability is prohibited by law or contrary to public policy;

- c. **Bodily injury** to an **employee** while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
- d. Any obligation imposed by a Workers' Compensation, **Occupational Disease**, Unemployment Compensation or Disability Benefits law, or any similar law;
- e. **Bodily injury** intentionally caused or aggravated by you;
- f. **Bodily injury** occurring outside of the United States of America, or its territories. This exclusion does not apply to **bodily injury** to a citizen or resident of the United States of America who is temporarily outside these countries;
- g. Damages arising out of the discharge of, coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any **employee**, or any personnel practices, policies, acts or omissions; or
- h. Fines or Penalties imposed for violation of law whether state or federal.

### 3. Waiver of Subrogation

This **Memorandum** shall not apply to claims involving a waiver of subrogation approved by a **Member Agency** after the date of injury or illness that resulted in the claim. This exclusion does not apply to a waiver of subrogation in an agreement or contract that was approved by the **Member Agency** prior to the date of injury or illness that resulted in a claim. This exclusion applies to PART ONE and PART TWO as described in SECTION III - COVERAGE PROVISIONS.

### G. Subrogation - Recovery From Others

We may enforce your rights, and the rights of persons entitled to the benefits of this coverage, to recover our payments from anyone liable for injury. You will do everything necessary to protect those rights for us and to help us enforce them.

### H. Statutory Provisions

These statements apply where they are required by law:

1. Your default or bankruptcy or insolvency will not relieve us of our duties under this coverage after an injury occurs.
2. Terms of this coverage that conflict with the **Workers' Compensation Law** are changed by this statement to conform to that Law.

#### **I. Action Against Us**

There will be no right of action against us under this coverage unless:

1. You have complied with all the terms of this **Memorandum**; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This coverage does not give anyone the right to add us as a defendant in an action against you to determine your liability.

### **SECTION IV – YOUR DUTIES IF INJURY OCCURS**

#### **A. Reporting Duties**

The **Member Agency** agrees to give us written notice, immediately if an injury to your **employee** occurs involving:

1. Quadriplegia;
2. Paraplegia;
3. A fatality;
4. A major extremity or multiple minor extremity amputation;
5. Partial or total blindness;
6. Any serious head injury including but not limited to brain stem injury, or unconsciousness exceeding 24 hours;
7. Asbestos, mesothelioma, silicosis or any other disease or condition;
8. Second or third degree burns over 25 percent or more of the body;

9. Any accident which causes serious injury to two or more **employees**.

The **Member Agency** agrees to report every occupational injury or illness which results in medical treatment, beyond the definition of First Aid, or any claim by an **employee** for workers' compensation benefits, to the **Authority**, but in no instance to cause the delay of such report of injury, illness or claim more than five (5) days after date of knowledge or as otherwise required by Labor Code Section 6409.1. The **Member Agency** agrees to give every **employee** a claim form pursuant to Labor Code Section 5401 within one (1) working day of receiving notice or knowledge of a claim or potential claim. Your other duties are listed below:

1. Provide for immediate medical and other services required by the **Workers' Compensation Law**.
2. Give us or our representative the names and addresses of the injured persons and witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us, assist us, and give us any information we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after any injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

## **SECTION V – PREMIUM**

### **A. Premium Payments**

You will pay all premiums when due.

### **B. Records**

You will keep records of information needed to compute your **deposit premium**. You will provide us with copies of those records when we ask for them.

### C. **Audit**

You will let us examine and audit all your records that relate to the coverage provided by this **Memorandum**. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records and programs for storing and retrieving data. We may conduct the audits during regular business hours during the **coverage period** and within three years after the **coverage period** ends. Information developed by the audit will be used to determine the final **deposit premium**.

## **SECTION VI – CONDITIONS**

### A. **Inspection**

We have the right, but are not obligated, to inspect your workplaces at any reasonable time. Our inspections help us determine whether to accept the risk of covering your **employees** in their workplaces. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your **employees** or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards.

### B. **Transfer Of Your Rights And Duties**

Your rights or duties under this coverage may not be transferred without our written consent.

### C. **Our Notice To You**

Mailing documents that relate to this coverage to you at the mailing address shown in the **Declarations** or by electronic address on file will be sufficient to prove notice to you of the document.

### D. **Privacy and Confidentiality of Claim Records**

All claim records, including claim files, examiners notes, medical reports, subpoenaed records, correspondence, tapes and films, and whether electronic or hard files, are the property of the **Authority**. Because these records may contain confidential or private medical and/or psychological information related to workers' compensation claims administered by or on behalf of the **Authority**, access to claim files and the information contained therein is restricted to the **Authority** and its agents and assignees, with the exception that the **Member Agency** is entitled to

medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is being claimed and the treatment provided for this condition, or what is necessary for the **Member Agency** to have in order to provide temporary or permanent modification or accommodation of the **employee's** work duties.

## **SECTION VII – DISPUTE RESOLUTION**

### **A. Arbitration**

In the event that the **Authority** denies coverage for defense and/or indemnity on any claim, the **Member Agency** will have the right to appeal to the Workers' Compensation Committee, and if left unresolved to the Executive Committee, the decision to deny coverage. Any dispute concerning the decision of the **Authority** to deny coverage for all or part of a claim shall not be subject to any court action, but shall instead be submitted to binding arbitration. The **Member Agency** must exhaust the right to appeal to the Worker's Compensation Committee and Executive Committee, before requesting arbitration of the dispute.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. The covered parties and the **Authority** shall attempt to stipulate to an arbitrator, and if they are unable to agree upon an arbitrator one will be appointed by the Superior Court. No arbitrator shall be employed or affiliated with the **Authority** or any **Member Agency**. The decision of the arbitrator shall be final and binding, shall not be subject to further appeal.