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MEMORANDUM OF LIABILITY COVERAGE

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MEMORANDUM OF LIABILITY COVERAGE

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ASSOCIATION OF CALIFORNIA WATER AGENCIES
JOINT POWERS INSURANCE AUTHORITY (ACWA JPIA)

MEMORANDUM OF LIABILITY COVERAGE

FORM NO. MOLC-100126

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

Administrative Relief means a non-judicial remedy provided by an agency, board, commission or any other like organization.

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. An Employment Practice claim is deemed to exist upon first notice from the Civil Rights Department and/or Equal Opportunity Commission.

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 or 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 **suit** and all other reasonable fees, costs and expenses attributable to the investigation, defense or appeal of a **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 Part**y 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 lost wages and interest thereon, prejudgment interest, salaries, bonuses, stipends, expenses, overtime, retirement, medical or disability benefits, back pay, or any severance or other amount payable as a result of and arising from any of the enumerated offenses, 1 through 3 above.

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**.

   All allegations by the same injured party 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.

   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.

Subsidiary shall mean a public entity that is wholly or partially owned and controlled by a **Member Agency**. The **Member Agency** typically has the same Board of Directors as the subsidiary and those Board members are the same as the **Member Agency** not independently elected. The **Member Agency** makes all decisions over the subsidiary's operations and decision-making processes. The subsidiary operates as a separate legal entity but is subject to the control and influence of the **Member Agency**.

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.

Weapon means an instrument that in the manner it is used, or intended to be used, can produce death or serious bodily injury, and includes but is not limited to: any pistol, rifle, gun, or other device capable of expelling or propelling one or more projectiles by the action of an explosive, combustible propellant, or compressed air; baton, bow or crossbow, arrow, knife, mace, stun gun, sword, or chemical spray.

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** caused by an **occurrence**, for damage or injury. The occurrence causing the injury or damage, regardless of the discovery of the injury or damage must take place 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.

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.

Coverage for claims arising out of any activity or service in any way related to a consolidation, merger, or acquisition of operations requires concurrence of the **Authority**. The **Member Agency** must report any new service or activity to the **Authority** at least 60 days prior to the effective date of the new activity or service. The **Member Agency's** notice to the **Authority** must include comprehensive information including any changes to payroll and/or total insured values. Without the approval from the **Authority**, any and all losses will not be covered.

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**.

Coverage for Class III events/activities requires the concurrence of the **Authority**. Without the approval from the **Authority**, any and all losses stemming from the event will not be covered.

Coverage for the following types of events/activities will not be granted by the **Authority** unless approved by the Executive Committee:

- Swimming Pools
- Water Parks
- Water Playgrounds – not including splash pads
- Water Slides

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** for any one **occurrence** shall be the greater of:

1. $5,000,000 Aggregate. 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 there of,

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.

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. The procedures and requirements for selecting approved legal counsel under this Section are further described in the Authority’s Litigation Management Guidelines, which is incorporated by reference into this Memorandum.

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.

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;

2. Any claim based upon taxes, fees, service charges, rates or assessments charged by the **Covered Party** for delivery of the **Member Agency's product**; or

3. 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 **damage**s 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. Any loss, cost, or expense arising out of any Perfluoroalkyl and Polyfluoroalkyl (PFOS/PFAS) in all variations including but not limited to all definitions in the reinsurance and/or excess policies.

G. Liability for bodily or personal injury arising out of the intentional use of a weapon that creates a high probability of great bodily harm.

H. 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.

I. 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.

J. **Property damage** to impaired property or property that has not been physically injured arising out of:

1. A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or

2. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

K. 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.

L. 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.

M. Liability arising out of the hazardous properties of **nuclear material**.

N. Liability arising out of the partial or complete structural failure of any **dam**.

O. 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**.

This exclusion does not apply to inverse condemnation liability arising from accidentally caused physical injury to or destruction of tangible property, including all resulting loss of use of such property, for which the **Covered Party** may be legally responsible.

P. Liability imposed by any “No-Fault,” “Uninsured Motorist” or “Underinsured Motorist” law, or any similar law.

Q. Liability arising out of any claim for **Cyber Liability** or by any name by which it is called.

R. Liability arising out of injunctive and/or **Administrative Relief**.

S. 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**.

T. 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.

U. 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.

V. Failure to have a written contract or failure to include risk transfer in a written contract will result in a sublimit equal to the policy limits of the other party to the contract.

SECTION VII - CONDITIONS

A. MEMBER CONTRIBUTION

All Member Contributions 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 Member Contribution is an estimate to be credited against the amount of Retrospective Member Contribution 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 "In-house **Claims** Resolution" 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**.

   “In-house **Claims** Resolution” 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 six (6) months of the date of receipt of the claim.

   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

Review by Executive Committee and Arbitration

This shall be the sole and exclusive method of review of the **Memorandum** of Coverage and any decisions based thereon.

Any **claim**, dispute or controversy arising out of or relating to this Coverage Agreement shall first be submitted to ACWA JPIA to be reviewed by the Executive Committee of ACWA JPIA. The Executive Committee shall consider all written submissions by either party, and, if requested by either party, provide both parties equal opportunity for oral argument. Unless otherwise agreed by the parties and ACWA JPIA, the Executive Committee shall determine if ACWA JPIA’s position should be upheld or if the **Member Agency** should be granted coverage according to its position, and the Executive Committee shall issue its decision in writing within thirty (30) days of submission of such claim, dispute or controversy to the Executive Committee. Such written opinion shall briefly state the reasons for its decision and the basis for such decision, including but not limited to the documents, witness statements, and oral presentations made to the Executive Committee.

If a **Member Agency** disagrees with the written decision of the Executive Committee, then the **Member Agency** may submit, in writing, such **claim**, dispute or controversy to arbitration to be held in Placer County, California or such other location as the parties may agree upon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The review by the arbitrators shall be limited to a determination of the sufficiency of the basis of the decision of the

Executive Committee and may not include any documents, testimony, legal theories, oral evidence, or other materials that was not previously presented to the Executive Committee when rendering its written opinion.

There shall be three arbitrators, the **Member Agency** and ACWA JPIA each selecting one arbitrator; the third arbitrator shall be selected by the two previously appointed arbitrators. The party demanding arbitration shall name its arbitrator in the demand for arbitration. The responding party shall name its arbitrator within fifteen (15) days after receipt of demand for arbitration. The third arbitrator shall be named within fifteen (15) days after the appointment of the second arbitrator. A Commissioner or Judge in the Placer County Superior Court shall be empowered to appoint any arbitrator not named in accordance with the procedure herein. The decision of the arbitrators shall be final and binding upon the parties.

Any award rendered by the arbitrators shall be final and judgment thereon may be entered by any court having jurisdiction thereof. The panel of arbitrators shall have the discretion to apportion the costs and expenses of the arbitration (including reasonable attorneys' fees) in accordance with the merits of the arbitration. The panel must render its decision by a majority of the panel within ninety (90) days of the appointment of the third arbitrator, following reasonable opportunities for presentation of evidence, law and argument.

The parties to this agreement hereby waive any right to a jury trial.

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

The **Authority** shall be subrogated to the extent of any payment hereunder to all the **Covered Parties'** rights of recovery thereof and the **Covered Parties** shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amounts so recovered shall be apportioned as follows:

a. The highest layer of coverage shall be reimbursed first, and if there are sufficient recoveries, then the next highest layer shall be reimbursed until all recoveries are used up.

b. The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by the **Authority**, it shall bear the expenses thereof.

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 10/1/2026 - 10/1/2027

COVERAGE LIMIT	COVERAGE TYPE	CARRIER
$5,000,000*	Self-funded	ACWA JPIA
$5,000,001 to $10M*	Reinsurance	Safety National Casualty Corporation
$10,000,001 to $20M	Reinsurance	California Water Insurance Fund
$20,000,001 to $30M	Reinsurance	Everest Reinsurance Company/ Continental Indemnity Company/Upland Specialty Insurance Company
$30,000,001 to $35M	Reinsurance	Midvale Indemnity Company
$35,000,001 to $45M*	Excess Insurance	Allied World National Assurance Company
$45,000,001 to $50M	Excess Insurance	StarStone Specialty Insurance Company
$50,000,001 to $55M	Excess Insurance	Palomar Excess and Surplus Insurance Company

*SUBLIMITS:
$ 5,000,000 **Terrorism**
$10,000,000 **Communicable Disease**
$45,000,000 **Subsidence**
$45,000,000 **Lead**
$45,000,000 **Mold**
**It should be noted this is not an exhaustive list of all reinsurance/excess sublimits.*

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