

# ATTACHMENT B

## I. COVERAGE

In consideration of the ENTITY's payment of the Deposit Premium, but subject to the MAXIMUM COVERAGE LIMIT shown in the DECLARATIONS, the California Sanitation Risk Management Authority, hereinafter called the Authority, will pay on behalf of the ENTITY any LOSS which the ENTITY shall become legally obligated to pay because of:

- A. BODILY INJURY and/or PROPERTY DAMAGE; and/or
- B. PERSONAL INJURY; and/or
- C. PUBLIC ENTITY ERRORS AND OMISSIONS; and/or
- D. AUTOMOBILE MEDICAL PAYMENTS

caused by an OCCURRENCE to which this MEMORANDUM applies. Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Section I – Coverage, plus interest at the same rate as the Authority earned on investments for the time period involved.

In the event of a coverage denial by staff and/or the Pooled Liability Committee, if the Executive Committee finds that coverage applies, the Executive Committee shall have the right, but not the duty, to reimburse the Member for amounts the Executive Committee determines to be the reasonable cost of the Member's attorney fees incurred in the coverage dispute. The reasonable rate for attorney fees shall be determined by the established rate for panel defense counsel.

Coverage provided under this Agreement is funded through member contributions for a pooled layer of coverage, and backed by reinsurance purchased by the Authority on behalf of its members for higher layers of coverage, per Government Code section 990.8(d).

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In the event of failure by the reinsurer to pay or reimburse for LOSS or DEFENSE COSTS within the reinsured layer of coverage, due to insolvency, the MAXIMUM COVERAGE LIMIT will be not more than \$5,000,000, provided that this limitation shall not relieve any reinsurer of its obligations under its reinsurance agreement, and shall not relieve the Authority of its coverage obligations if reinsurance coverage is established and is collectible.

In the event of a failure by the reinsurer to pay or reimburse for LOSS or DEFENSE COSTS within the reinsured layer of coverage, due to the application of an Exclusion in the reinsurance agreement, no COVERAGE shall apply under this MEMORANDUM within that layer either.

### II. DEFENSE AND SETTLEMENT

The Authority shall have the right and duty to defend any suit against the ENTITY, for which COVERAGE is afforded under this MEMORANDUM, even if allegations of the suit are groundless, false, or fraudulent, and may make such investigation and 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 the MAXIMUM COVERAGE LIMIT has been exhausted by payment of any LOSS.

### III. DEFINITIONS

When used in this MEMORANDUM (including endorsements forming a part hereof):

- A. ADDITIONAL COVERED PARTY - means any person, organization, trust or estate to whom or to which the ENTITY is obligated by virtue of a written contract to provide COVERAGE such as is afforded by this MEMORANDUM, but only with respect to contractual obligations for operations performed by or on behalf of the ENTITY or facilities owned or used by the ENTITY.
- B. AIRCRAFT - means a vehicle designed for the transport of persons or property principally in the air.

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- C. AUTOMOBILE - means a land motor vehicle, trailer or semitrailer, licensed for road use.
- D. AUTOMOBILE MEDICAL PAYMENTS - means reasonable expenses incurred for necessary medical and funeral services to or for a COVERED PARTY, who sustains BODILY INJURY caused by an OCCURRENCE involving AUTOMOBILE usage; provided, however, that only the following expenses are eligible for this coverage;
1. The expenses must be incurred within three years from the date of the AUTOMOBILE usage which results in BODILY INJURY; and
  2. The expenses are not otherwise eligible for COVERAGE under this MEMORANDUM; and
  3. The expenses are not covered by other insurance or forms of coverage available to the COVERED PARTY.
- E. BODILY INJURY - means physical injury, sickness, disease, mental or emotional distress sustained by a person, which occurs during the COVERAGE PERIOD, including death resulting from any of these.
- F. COVERED INDIVIDUAL - means a person who is a past or present elected or appointed official, employee or volunteer of the ENTITY, whether or not compensated, while acting for or on behalf of the ENTITY, including while acting on committees, commissions or boards at the direction of the ENTITY.

With respect to an AUTOMOBILE owned or leased by or on behalf of the ENTITY, COVERED INDIVIDUAL also means any person while using such AUTOMOBILE, and any person or organization legally responsible for the use thereof, provided the actual use is with the express permission of the ENTITY.

But with respect to any AUTOMOBILE usage, COVERED INDIVIDUAL does not include:

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1. Any person or organization, or any agent or employee thereof, operating an AUTOMOBILE sales agency, repair shop, service station, storage garage or public parking place, with respect to an OCCURRENCE arising out of the operation thereof;
2. The owner or any lessee, other than the ENTITY or COVERED INDIVIDUAL, of a hired AUTOMOBILE or any agent or employee of such owner or lessee; or,
3. Any ADDITIONAL COVERED PARTY.

G. COVERED INDEMNITY CONTRACT - means a written contract that satisfies all of the following:

1. The agreement pertains to the ENTITY's routine governmental operations (including mutual aid agreements) and by the contract terms the ENTITY assumes the Tort Liability of another to pay damages because of BODILY INJURY or PROPERTY DAMAGE to a third person or organization; and
2. The agreement is entered into prior to the BODILY INJURY or PROPERTY DAMAGE for which a Claim is made.

A COVERED INDEMNITY CONTRACT does not include any part of any contract or agreement that indemnifies any person or organization for LOSS that is excluded by the terms of this agreement; or that indemnifies an architect, engineer, or surveyor arising out of preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or giving or failing to give directions or instructions; or that indemnifies any person or organization for damages by fire, explosion, or water damage to premises rented or loaned to the ENTITY.

H. COVERED LOSS - means that portion of the LOSS that falls within the MAXIMUM COVERAGE LIMIT.

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- I. DAM - means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either (a) is or will be twenty-five (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 or will have an impounding capacity of fifty (50) acre-feet or more.

Any such barrier which is or will be not in excess of six (6) feet in height, regardless of storage capacity, or which has or will have a storage capacity not in excess of fifteen (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, and no road or highway fill or structure, no circular 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 or use as a sewage biosolids drying facility shall be considered a DAM. In addition, no obstruction in the channel of a stream or watercourse which is fifteen (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 obstruction for percolation underground shall be considered a DAM.

Regardless of the foregoing language, this DEFINITION, no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a DAM.

- J. DEFENSE COSTS - means all fees and expenses caused by and relating to the adjustment, investigation, defense or appeal of a suit, including but not limited to defense attorney's fees, court costs, post judgment interest (but only that amount accruing after the entry of judgment and before the Authority has paid, offered to pay, or deposited in court the part of the judgment that is within the MAXIMUM COVERAGE LIMIT) and pre judgment interest awarded against the COVERED PARTY on that part of the judgment the Authority

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pays. If the Authority makes an offer to pay the MAXIMUM COVERAGE LIMIT, the Authority will not pay any pre judgment interest based on that period of time after the offer. DEFENSE COSTS shall not include the office expenses or salaries of employees or officials of the Authority or any COVERED PARTY nor expenses of claims administrators, attorneys or others engaged by any COVERED PARTY without the Authority's written approval.

- K. DISCRIMINATION - as used in the DEFINITION of EMPLOYMENT RELATED PRACTICES only, means action or inaction with respect to any present or former employee or applicant for employment with respect to his or her compensation, terms, conditions, rights, privileges or opportunities because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation or other protected category or characteristic established pursuant to any applicable federal, state or local statute or ordinance.
- L. ECONOMIC LOSS - means LOSS due to diminution in or deprivation of intangible economic benefits such as profits, business goodwill, benefits of a bargain, investment returns and/or similar LOSSES of a strictly intangible economic nature. However, ECONOMIC LOSS does not include LOSS which as a matter of law is recoverable due to BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY and/or PUBLIC ENTITY ERRORS AND OMISSIONS.
- M. EMPLOYMENT RELATED PRACTICES - means DISCRIMINATION, SEXUAL HARASSMENT and/or WRONGFUL TERMINATION.
- N. ENTITY - means the organization named in the DECLARATIONS.
- O. FAMILY MEMBER - means a person related to you by blood, marriage or adoption who is a resident of the COVERED INDIVIDUAL'S household, including a ward or foster child.
- P. JOINT EXERCISE OF POWERS AGREEMENT - means the agreement forming the Authority as a California public agency pursuant to the California Government Code Sections 6500 and following.

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Q. LOSS - means the sum actually paid or payable in cash in the settlement or satisfaction of suits for which a COVERED PARTY is liable either by judgment after actual trial or by written agreement of the COVERED PARTY, the claimant and the Authority, after making proper deduction for all recoveries and salvages. LOSS shall also include DEFENSE COSTS. See also, ECONOMIC LOSS.

However, LOSS shall not include civil or criminal fines or penalties, non-monetary relief, the multiplied portion of multiplied damages, punitive or exemplary damages or damages which may be deemed uninsurable under law or public policy. LOSS shall not include payment of insurance plan benefits claimed by or on behalf of retired employees or to which a claimant would have been entitled as an employee had the COVERED PARTY provided the employee with a continuation of insurance. LOSS shall not include amounts awarded pursuant to a labor grievance arbitration pursuant to a collective bargaining agreement.

LOSS shall not include sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct or any non-monetary relief.

LOSS shall not include claims for attorney fees or costs made against a COVERED PARTY unless such fees or costs arise from a claim for damages covered by this MEMORANDUM, or from a COVERED INDEMNITY CONTRACT.

LOSS shall include damages, judgments, settlements, statutory attorneys fees and DEFENSE COSTS arising out of allegations of defamation, negligent infliction of emotional distress and invasion of privacy, if these allegations arise out of the facts or circumstances underlying a claim of DISCRIMINATION, SEXUAL HARASSMENT and/or WRONGFUL TERMINATION.

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- R. MAILING ADDRESS - the address of the ENTITY to which written notices may be mailed.
- S. MEMORANDUM - means this MEMORANDUM of Liability Coverage for the California Sanitation Risk Management Authority.
- T. 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 thereto.
- U. OCCUPYING - means in, upon, getting in, on, out or off.
- V. OCCURRENCE - means:
1. With respect to BODILY INJURY or PROPERTY DAMAGE: an accident or event, including continuous or repeated exposure to substantially the same generally harmful conditions, which results, during the COVERAGE PERIOD, excluding, however, BODILY INJURY and PROPERTY DAMAGE which is either expected or intended from the standpoint of the COVERED PARTY.
  2. With respect to PERSONAL INJURY: an offense described in the DEFINITION of that term in this section which takes place during the COVERAGE PERIOD.
  3. With respect to PUBLIC ENTITY ERRORS AND OMISSIONS: an offense described in the DEFINITION of that term in this section which takes place during the COVERAGE PERIOD.
  4. With respect to AUTOMOBILE MEDICAL PAYMENTS: a BODILY INJURY described in the DEFINITION of that term in this section, which takes place during the COVERAGE PERIOD.

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- W. PARTICIPATION AGREEMENT - means the written agreement which the ENTITY has executed as evidence of its legal commitment to participate in the program for which this MEMORANDUM has been issued.
- X. PERSONAL INJURY - means injury, other than BODILY INJURY, during the COVERAGE PERIOD resulting from:
1. False arrest, detention or imprisonment, or malicious prosecution;
  2. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
  3. The publication or utterance of a libelous or slanderous statement, including disparaging statements concerning the condition, value, quality or use of real or personal property, or a publication or utterance which violates a person's rights of privacy;
  4. Discrimination based upon race, religion, nationality, national origin, handicap, disability, color, creed, sex, sexual preference or age; and
  5. Assault and battery not committed by, at the direction of, or with consent of the ENTITY or a COVERED INDIVIDUAL, unless committed or directed for the purpose of protecting persons or property from injury or death.
- Y. POLLUTANTS - means all irritants or contaminants including but not limited to smoke, vapors, soot, fumes, acids, alkalis, chemicals, solids, liquids or gases and thermal POLLUTANTS; **provided, however**, that POLLUTANTS shall not include treated water or effluent, reclaimed water, biosolids or other byproducts of a COVERED PARTY's water or wastewater treatment processes discharged, used, sold or otherwise distributed in accordance with applicable federal, state and local laws, regulations, permits [including, in

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particular, all provisions of any National Pollutant Discharge Elimination System (NPDES) permit issued to a COVERED PARTY and orders authorizing such discharges, uses, sales and distribution; **provided, further**, that materials generated from composting activities which are independent of and not directly associated with a COVERED PARTY's water or wastewater treatment processes shall not be deemed to be "byproducts of a COVERED PARTY's water or wastewater treatment processes", as that phrase is used in the preceding clause of this DEFINITION, and such materials are deemed POLLUTANTS for purposes of this MEMORANDUM.

Z. PROPERTY DAMAGE - means:

1. Physical injury to or destruction of tangible property which occurs during the COVERAGE PERIOD, including loss of use thereof at any time resulting therefrom; or
2. Loss of use during the COVERAGE PERIOD of tangible property that is not physically injured, provided such loss of use is caused by an OCCURRENCE for which COVERAGE is provided under this MEMORANDUM.

AA. PUBLIC ENTITY ERRORS AND OMISSIONS - means an actual or alleged misstatement or misleading statement, act or omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the ENTITY or by a COVERED INDIVIDUAL, but not any ADDITIONAL COVERED PARTY, while acting within the course and scope of his or her duties with the ENTITY and includes EMPLOYMENT RELATED PRACTICES.

BB. RESERVOIR - means any body of water, which contains, or will contain, the water impounded by a DAM.

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- CC. **SEXUAL HARASSMENT** - means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment and/or (2) are used as a condition of employment and/or (3) create a work environment that interferes with performance or creates an intimidating, hostile or offensive work environment.
- DD. **SOLID WASTE TRANSFER STATION** - means a facility or facilities within the meaning of California Government Code Section 66723. **SOLID WASTE TRANSFER STATION** does not include, however, a site or facilities operated by an ENTITY at which treated biosolids produced during wastewater treatment is collected for further disposition.
- EE. **SUDDEN AND ACCIDENTAL** - means a singular and identifiable discharge, dispersal, release or escape of POLLUTANTS, which occurs abruptly and without warning in a short interval of time.
- FF. **WRONGFUL TERMINATION** - means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment. **WRONGFUL TERMINATION** shall not include damages determined to be owing under an express obligation to make payments in the event of the termination of employment.

### IV. DEDUCTIBLE

The obligation of the Authority to pay any LOSS on behalf of a COVERED PARTY shall apply only to the portion of the LOSS in excess of the DEDUCTIBLE stated in the DECLARATIONS. The DEDUCTIBLE so stated applies, on a per occurrence basis, to all of the LOSS caused by an OCCURRENCE. For this purpose, all LOSS arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one OCCURRENCE.

The terms of this MEMORANDUM, including those with respect to the Authority's rights and duties for the defense of claims or suits, apply irrespective of the application of the DEDUCTIBLE.

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Subject to the provisions of CONDITION Q, the Authority may pay any part or all of the DEDUCTIBLE to effect a settlement of any claim or suit, and the ENTITY shall promptly reimburse the Authority for such part of the DEDUCTIBLE as has been paid by the Authority.

### **V. MAXIMUM COVERAGE LIMIT**

The Authority's liability as the result of any one OCCURRENCE shall be only the MAXIMUM COVERAGE LIMIT less the amount of the ENTITY's DEDUCTIBLE specified in the DECLARATIONS.

For this purpose, all LOSS arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one OCCURRENCE.

Regardless of the number of covered AUTOMOBILES, COVERED INDIVIDUALS, premiums paid, claims made or vehicles involved in the OCCURRENCE, the most that will be paid for BODILY INJURY for each COVERED INDIVIDUAL in any one OCCURRENCE is the limit of COVERAGE shown in the DECLARATIONS.

### **VI. COVERAGE PERIOD AND TERRITORY**

A COVERED PARTY shall have COVERAGE for OCCURRENCES taking place anywhere in the world during the specified COVERAGE PERIOD stated in the DECLARATIONS of this MEMORANDUM.

### **VII. COVERED PARTIES**

The persons covered under COVERAGES A, B and C of this MEMORANDUM are the ENTITY, COVERED INDIVIDUALS and ADDITIONAL COVERED PARTIES, except as otherwise specified.

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The persons covered under COVERAGE D of this MEMORANDUM are COVERED INDIVIDUALS, including FAMILY MEMBERS while OCCUPYING an AUTOMOBILE, but not ADDITIONAL COVERED PARTIES.

### VIII. EXCLUSIONS

A. As respects COVERAGES A, B, C and D, this MEMORANDUM does not provide COVERAGE for LOSS resulting from:

1. The actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS:
  - a. At or from premises owned, leased to, or occupied by a COVERED PARTY;
  - b. At or from any site or location used by or for a COVERED PARTY, or by others on behalf of a COVERED PARTY, for the handling or disposal of POLLUTANTS;
  - c. Which are at any time transported, handled, stored, treated, disposed of or processed by or for a COVERED PARTY or by any person or organization for whom a COVERED PARTY may be legally responsible; or
  - d. At or from any site or location on which a COVERED PARTY or any contractor(s) or subcontractor(s) working directly or indirectly on a COVERED PARTY's behalf are performing operations:
    - (1) if the POLLUTANTS are brought on or to the site or location in connection with such operations; or
    - (2) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize the POLLUTANTS.

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This Exclusion does not apply, however, to (1) BODILY INJURY or PROPERTY DAMAGE caused by heat, smoke or fumes from a hostile fire (meaning one which becomes uncontrollable or breaks out where it was not intended to be), or to (2) a SUDDEN AND ACCIDENTAL discharge, dispersal, release or escape of POLLUTANTS from a COVERED PARTY's wastewater, collection, transmission, treatment or disposal systems or a SUDDEN AND ACCIDENTAL release of toxic chemicals required to be used in a COVERED PARTY's normal operations. This exception for SUDDEN AND ACCIDENTAL events shall not apply to claims based upon nuisance, diminution in value, or inverse condemnation based upon offensive odors emitted over a period of time longer than 72 hours.

2. Any cost or expense arising out of a governmental requirement that a COVERED PARTY conduct, pay or contribute to the cost of testing, monitoring, clean up, removal, containment, treatment, detoxification, neutralization or remediation of:
  - a. POLLUTANTS; and/or
  - b. The byproducts, such as biosolids or treated effluent, of a COVERED PARTY's water or waste water treatment process which a COVERED PARTY has deposited as waste at a landfill or other waste disposal site.
3. (a) The construction, operation or maintenance of any Class I Waste Management Unit (as the same is identified in California Administrative Code, Title 23, Chapter 3, Subchapter 15, Section 2531) or any SOLID WASTE TRANSFER STATION. CSRMA will not under any circumstances provide coverage for any cost or expenses arising out of a governmental requirement that the entity conduct, pay or contribute to the cost of testing, monitoring, cleanup, removal, containment, treatment, detoxification, neutralization or remediation of POLLUTANTS.

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- (b) Suits brought under the Clean Water Act, including state or federal enforcement actions under 33 U.S. Code sections 1319, et seq.; citizen suits brought under sections 1365, et seq.; or state enforcement actions brought under the California Water Code sections 13385, et seq.; or suits brought under any similar law relating to discharge permit violations.
4. Salary, wages or any related employee benefits owed by a COVERED PARTY as contract damages under a contract for employment, or as severance payments in the event of termination of employment (even if designated as liquidated damages), or to prospective salary, wages or benefits resulting from promotion or reinstatement.
  5. Any obligation for which a COVERED PARTY or any insurance company as its insurer may be held liable under any workers' compensation or disability benefits law or any similar law.
  6. Ownership or operation of any airport.
  7. Ownership or operation of any hospital, clinic or established health care facilities by a COVERED PARTY.
  8. Except as limited by the DEDUCTIBLE and MAXIMUM COVERAGE LIMIT identified in the DECLARATIONS or MEMORANDUM ENDORSEMENT, partial or complete structural failure of (1) a DAM, (2) a RESERVOIR, and/or (3) any protection barrier or incidental works necessary to control and/or conserve storm, flood or any other surface waters. Except, this EXCLUSION 8 does not pertain to levees or dikes which surround wastewater holding ponds.
  9. Fines, punitive damages, penalties, exemplary damages or damage multiples such as double or treble damages awardable pursuant to statute.
  10. PROPERTY DAMAGE to:

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- a. Property owned by a COVERED PARTY; or
  - b. Property rented to or leased to a COVERED PARTY where it has assumed liability for damage to or destruction of such property, unless a COVERED PARTY would have been liable in the absence of such assumption of liability.
- 11. The ownership, operation, use or maintenance of any AIRCRAFT of any size or any watercraft over 26 feet in length.
  - 12. The ownership or operation by a COVERED PARTY of any transit authority, transit system or public transportation system.
  - 13. Arising out of failure or inability to supply or provide an adequate supply of electricity, gas or water. This exclusion, however, does not apply if: a) such failure arises out of sudden and accidental physical damage to tangible property used in the generation or transmission of the supply, or a sudden and accidental failure of computer software or programs used in the generation or transmission of the supply, b) failure caused by an interruption in the supply of electricity, gas or water to the COVERED PARTY by a third party utility supplier, and c) the combined capacity of your installed production facilities and contractual supply arrangements is equal to 110% of the electricity and/or gas demand or 100% of the water demand, whichever demand is applicable to your electric, gas or water system.
  - 14. The principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, and whether or not such liability accrues against any COVERED PARTY as a matter of law or by virtue of any agreement entered into by or on behalf of the COVERED PARTY. This exclusion shall not apply to liability, loss, cost or expense arising from property damage caused by earth movement, subsidence of land, sewer backup, or flooding, even though a legal theory upon which a claimant seeks recovery is the principle of inverse condemnation.
  - 15. The hazardous properties of NUCLEAR MATERIAL.

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16. Operation of an AUTOMOBILE by a COVERED INDIVIDUAL who does not possess a valid driver's license for the class of vehicle being operated at the time of the OCCURRENCE; or operation of an AUTOMOBILE by a COVERED INDIVIDUAL who has accumulated six or more violation points under the Department of Motor Vehicles Negligent Operator Count Sheet within three years prior to the OCCURRENCE, unless CSRMA has granted a waiver from this limitation under Policy and Procedure Memorandum #3-L. This exclusion applies to the COVERED INDIVIDUAL only, and not the vicarious liability of the ENTITY, except that if the ENTITY knowingly permits a COVERED INDIVIDUAL to operate a vehicle without a valid driver's license or after accumulating six or more violation points, this exclusion applies to the ENTITY as well. For any COVERED INDIVIDUAL who is required by Vehicle Code section 1808.1 to be included in the mandatory Employee Pull Notice program, if the ENTITY fails to comply with the statutory requirement of enrollment, the entity will be deemed to be on notice of any information that would have been provided under that program, for determining the ENTITY's knowledge under this exclusion.
17. War, insurrection, invasion, armed rebellion, revolution or terrorism. "War", as used herein, shall mean war whether or not declared, civil war, martial law, insurrection, revolution, invasion, bombardment or use of military force, usurped power or confiscation, nationalization or damage of property by any government, military or other authority. "Terrorism" shall mean actions described in the definition of "terrorism" contained in the reinsurance certificate applicable to this coverage. Provided, however, that this exclusion for LOSS arising out of "terrorism" shall not apply to the first \$1,500,000 of any LOSS, for any OCCURRENCE; but this exception shall not apply within the reinsured layer of coverage to any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in any way connected with any of the following, regardless of any other cause or event contributing concurrently or in any sequence to the loss: the use or threatened use of, or release or threatened release of any nuclear, biological, chemical or radioactive agent, material, device or weapon..

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18. Liability, including all LOSS, cost or expense, directly or indirectly arising out of, resulting as a consequence of, or related to asbestos, silica, mold, or any products containing asbestos fibers. Provided, however, that this exclusion for LOSS arising out of mold shall not apply to the first \$500,000 of any LOSS, for any OCCURRENCE. Pursuant to Condition H, "Duration of an Occurrence" and Definition U, "Occurrence," continuous or repeated exposure to substantially the same generally harmful condition shall be treated as a single OCCURRENCE arising during the latest dated COVERAGE PERIOD.
19. Willful violation of a penal statute or ordinance committed by or with the knowledge or consent of a COVERED PARTY; except that any act pertaining to any one COVERED PARTY shall not be imputed to any other COVERED PARTY for the purpose of determining the application of this EXCLUSION.
20. LOSS arising from (a) failure to perform, or breach of, a contractual obligation, or (b) any liability for which the ENTITY is obligated to pay damages by reason of liability assumed in a contract or agreement. This part (b) does not apply to liability for BODILY INJURY or PROPERTY DAMAGE: (i) assumed in a contract or agreement that is a COVERED INDEMNITY CONTRACT; or (ii) that the ENTITY would have independent of the written contract or agreement.
21. Activities outside the course and scope of a COVERED PARTY's employment.
22. Claims, demands or actions seeking relief or redress in any form other than money damages.
23. Acts of fraud or dishonesty.
24. The failure to effect, procure or maintain insurance or any other form of coverage against a risk of loss of any kind or nature.
25. ECONOMIC LOSS.

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- B. This MEMORANDUM also does not provide COVERAGE for LOSS under COVERAGE A. - BODILY INJURY and/or PROPERTY DAMAGE resulting from:

1. BODILY INJURY to:

- a. An employee of a COVERED PARTY arising out of and in the course of employment by a COVERED PARTY or,
- b. The spouse, child, parent, brother or sister of that employee as a consequence of actions of the employee arising out of and in the course of his/her employment by a COVERED PARTY.

This exclusion applies whether a COVERED PARTY may be liable as an employer or in any other capacity, except with respect to liability of others assumed under contract.

2. Any claim or suit by employee(s) against any other employee(s).

- C. This MEMORANDUM also does not provide COVERAGE for LOSS under COVERAGE B - PERSONAL INJURY resulting from:

Publication or utterance concerning any organization or business enterprise, or its products or service, made by or at the direction of a COVERED PARTY with knowledge of the falsity thereof.

- D. This MEMORANDUM also does not provide COVERAGE for LOSS under COVERAGE C - PUBLIC ENTITY ERRORS AND OMISSIONS, arising out of:

1. BODILY INJURY or PROPERTY DAMAGE or PERSONAL INJURY or AUTOMOBILE MEDICAL PAYMENTS.

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2. Any employee benefit plan because of unlawful discrimination, whether the plan is voluntarily established by a COVERED PARTY or mandated by statute.
  3. Failure to refund taxes, fees or assessments.
  4. Obtaining remuneration or financial gain to which the COVERED PARTY was not legally entitled.
  5. Estimates of probable costs; cost estimates being exceeded; faulty preparation of bid specifications or plans, including architectural plans; or failures to award contracts in accordance with statutes or ordinances which under law must be submitted for bids.
  6. The willful violation of penal statute or ordinance committed by or with the knowledge or consent of any COVERED PARTY except that any act pertaining to any one COVERED PARTY shall not be imputed to any other COVERED PARTY for the purpose of determining the application of this exclusion.
  7. Either the actual or alleged use, misuse, or loss of grants or appropriations for the return of such grants or appropriations for any reason; however, the Authority will defend any such action or suit brought against any COVERED PARTY.
- E. This MEMORANDUM does not provide COVERAGE for LOSS under COVERAGE C - PUBLIC ENTITY ERRORS and OMISSIONS for EMPLOYMENT RELATED PRACTICES with respect to:
1. Any liability arising out of a lockout, strike, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations.
  2. Any liability arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379, or any amendment thereto or any similar federal, state or local law.

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3. Any liability or costs required to modify any building or property to make such more accessible or accommodating to any disabled person.
  4. Any obligation which a COVERED PARTY may have for workers' compensation disability benefits, unemployment compensation, social security benefits or other similar employment benefits which may be required by law, whether or not the COVERED PARTY'S obligation is payable directly or is secured by insurance or another indirect funding and payment mechanism.
  5. Any COVERED PARTY who intentionally caused the harm alleged to have arisen out of any act or DISCRIMINATION or SEXUAL HARASSMENT. However, defense will be provided until such time as such COVERED PARTY is judicially determined to have intentionally caused the resulting harm.
  6. With respect to any particular claimant, to any liability arising out of any act occurring or series of actual or alleged acts the first of which occurs prior to the date this coverage first goes into effect for the ENTITY or COVERED PARTY.
- F. This MEMORANDUM does not provide COVERAGE for LOSS under COVERAGE D. - AUTOMOBILE MEDICAL PAYMENTS, resulting from:
1. BODILY INJURY sustained by a COVERED INDIVIDUAL or any FAMILY MEMBER of a COVERED INDIVIDUAL while OCCUPYING or when struck by any vehicle (other than a covered AUTOMOBILE) owned by, furnished or available for his or her regular use.
  2. BODILY INJURY sustained by any FAMILY MEMBER while OCCUPYING or struck by any vehicle (other than a covered AUTOMOBILE) owned by or furnished or available for the regular use of any FAMILY MEMBER.
  3. Any claim or suit by an employee(s) against another employee(s).

## IX. CONDITIONS

### A. Deposit Premium

The ENTITY shall pay all deposit premiums, premium adjustments, and assessments as specified in this MEMORANDUM, the JOINT EXERCISE OF POWERS AGREEMENT and the PARTICIPATION AGREEMENT.

### B. Inspection and Audit

The Authority shall be permitted but not obligated to inspect the ENTITY's property and operations at any time. Neither such right to make inspections nor the inspection nor any report resulting from the inspection shall constitute an undertaking, on behalf of or for the benefit of the ENTITY or others, to determine or warrant that such property or operations are safe. The Authority may examine the ENTITY's books and records at any time during the COVERAGE PERIOD and extensions thereof and within three years after the final termination of this MEMORANDUM for any purpose related to the subject matter of this MEMORANDUM.

### C. ENTITY'S Duty in the Event of an OCCURRENCE, Claim or Suit

1. In the event of an OCCURRENCE reasonably likely to involve the Authority, the ENTITY shall provide written notice to the Authority giving the particulars of the OCCURRENCE. The form, content and manner of transmission of the notice shall conform with the policies and procedures of the Authority, but in any case the notice shall include all pertinent details of the OCCURRENCE known or readily accessible to the ENTITY. The notice shall be given as promptly as possible after the ENTITY becomes aware of the OCCURRENCE.

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2. If a claim is made or suit brought against any COVERED PARTY, the ENTITY shall immediately forward to the Authority every demand, notice, summons or other process received by ENTITY or ENTITY's representative.
3. The ENTITY shall cooperate with the Authority and, upon its request, assist in enforcing any right of contribution or indemnity against any person or organization who may be liable to the ENTITY because of an OCCURRENCE with respect to which COVERAGE is afforded under this MEMORANDUM; and the ENTITY shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The ENTITY shall not, except at its own cost, make any payment, assume any obligation or incur any expense.

### D. Duties of the ENTITY

The failure of an ENTITY to fulfill its obligations and duties under these CONDITIONS or as set forth in the PARTICIPATION AGREEMENT will relieve the Authority of its COVERAGE obligations to the extent the ENTITY's failure inhibits or precludes the Authority from diminishing or eliminating the financial impact to the Authority of a LOSS.

### E. Bankruptcy

Bankruptcy or insolvency of the ENTITY shall not relieve the Authority of any of its obligations hereunder.

### F. Other Coverage or Insurance

If a COVERED PARTY has insurance or coverage provided to it by any insurer or other source, there shall be no obligation under this MEMORANDUM to pay a LOSS or portion thereof until all other such insurance or coverage has been exhausted.

In no case shall any of the ENTITY'S funds, which have been set aside in reserves or contingency accounts for purposes of self-insurance or responses to potential, contingent,

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catastrophic or incurred but not reported claims, be deemed to be other collectible coverage under this CONDITION F.

G. [Prior condition relating to driving standards deleted; see Exclusion 16.]

H. Duration of an OCCURRENCE

An OCCURRENCE with a duration of more than one COVERAGE PERIOD shall be treated as a single OCCURRENCE arising during the latest dated COVERAGE PERIOD.

I. Cancellation

This MEMORANDUM may be canceled by the Authority in accordance with the JOINT EXERCISE OF POWERS AGREEMENT. The Authority shall mail written notice to the ENTITY at the address shown in this MEMORANDUM stating when such cancellation shall be effective.

A duly executed certificate attesting to mailing of the notice as described above shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the COVERAGE PERIOD. Physical delivery of written notice to the ENTITY by the Authority shall be equivalent to mailing.

J. Action Against the Authority

No action shall lie against the Authority with respect to the COVERAGE and related provisions of this MEMORANDUM unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this MEMORANDUM, nor until the amount of a COVERED PARTY's obligations to pay shall have been finally determined either by judgment against a COVERED PARTY after actual trial or by written agreement of a COVERED PARTY, the claimant and the Authority. No person shall have any right under this MEMORANDUM to join the Authority as a party to any action against a COVERED PARTY to determine a COVERED PARTY's liability, nor shall the Authority be impleaded by a COVERED PARTY or its legal representative.

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### K. Severability of Interest

The term COVERED PARTY is used severally and not collectively, but the inclusion herein of more than one COVERED PARTY shall not operate to increase the Authority's MAXIMUM COVERAGE LIMIT.

### L. Subrogation

The Authority shall be subrogated to the extent of any payment made by it under this MEMORANDUM to all of a COVERED PARTY's rights of recovery and the ENTITY shall do nothing to prejudice the Authority's subrogation rights, and shall do everything necessary to secure those rights.

### M. Assignment

No purported assignment of rights or interests under this MEMORANDUM shall bind the Authority without its written consent.

### N. Changes

This MEMORANDUM may not be amended or changed in any respect, nor shall any provision of this MEMORANDUM be deemed to have been waived by the Authority, unless and until a written endorsement has been duly issued by the Authority and made a part of the MEMORANDUM.

### O. Resolution of Disputes

In the event that a dispute arises between the ENTITY and the Authority concerning the existence or extent of COVERAGE or any other matter under this MEMORANDUM, neither party shall commence a legal action against the other as to that dispute until the parties have explored the possibility of using nonjudicial dispute resolution mechanisms, such as

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mediation or arbitration, to narrow or resolve the parties' differences. However, actual use of a form of dispute resolution, other than litigation before a judicial or administrative tribunal, shall not be required except upon the mutual written consent of the ENTITY and the Authority, which either party may decline to give in its absolute and sole discretion.

### P. Acceptance

By acceptance of this MEMORANDUM, the ENTITY represents that the information contained in the DECLARATIONS and any application submitted to obtain this COVERAGE is accurate and provided in good faith and the ENTITY acknowledges that this MEMORANDUM is issued in reliance upon such representation. It is understood and agreed that this MEMORANDUM embodies all agreements between the Authority and the ENTITY relating to this COVERAGE.

- Q. The Authority shall be authorized to effect settlement of a LOSS, including a settlement requiring payment of all or any portion of an ENTITY'S DEDUCTIBLE. This includes routine payment of expenses of a claimant as they are incurred, even if payment does not completely or finally settle a claim. The ENTITY shall be promptly advised of all claims settlement authority requests from the Authority's third party administrator, including for routine payment of expenses, and will receive contemporaneous copies of requests for authority from the third party administrator. If an ENTITY objects to a proposed settlement or payment, it shall immediately advise the Authority of its objection and will be permitted to participate in closed session discussions with the Authority concerning the claim. The ENTITY may enter into an agreement with the Authority under which the ENTITY assumes control of the claim, at its own expense and risk, but if it does so the Authority shall have no obligation to pay any additional amounts to defend the ENTITY against the LOSS, or to make any indemnity payment in excess of the amount which the Authority had approved for settlement of the LOSS. Notwithstanding any objection from the ENTITY, however, if the ENTITY does not agree to assume defense of the claim and assume all risks for payment of LOSS in excess of the amount which the Authority had approved for

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settlement of the LOSS, the Authority shall have the right to control the negotiation, investigation, defense, appeal or settlement of the claim, and the ENTITY shall be responsible to pay its DEDUCTIBLE in settlement of the LOSS.

### R. Expenses Related to COVERAGE

If a claim is tendered to the Authority by a COVERED PARTY and COVERAGE is denied, the costs incurred by the Authority or its Claims Administrator to process the claim while the question of coverage is being considered shall be paid by the Authority.

The costs incurred by the Authority to obtain an opinion of its legal counsel regarding the Authority's duties to defend and indemnify a COVERED PARTY from a claim shall be paid by the Authority.

### S. Exclusivity of COVERAGE for EMPLOYMENT RELATED PRACTICES

With respect to any LOSS covered under the EMPLOYMENT RELATED PRACTICES portion of the PUBLIC ENTITY ERRORS AND OMISSIONS COVERAGE, no other COVERAGE shall be applicable.

### T. Recovery of Payments Made by the Authority in Cases Where Coverage Does Not Exist

If the Authority has undertaken to defend a claim tendered to the Authority by the ENTITY and the Authority has accepted the tender subject to a reservation of its rights on the grounds that the claim does not appear to be eligible for COVERAGE under this MEMORANDUM, the Authority shall be entitled to recover from the ENTITY all payments made by the Authority in connection with the defense of the claim if it is subsequently determined that, in fact, there was no COVERAGE for the claim, and the Authority had no duty to defend it.

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Similarly, if the Authority determines that its best interests will be served by paying indemnity to resolve a claim the Authority has undertaken to defend under a reservation of its rights with respect to COVERAGE, the Authority shall also be entitled to recover from the ENTITY the amounts of any indemnity paid by the Authority on behalf of the ENTITY if it is subsequently determined that, in fact, there was no COVERAGE for the claim, and the Authority had no duty to indemnify a COVERED PARTY against the claim.

The foregoing provisions do not apply unless:

1. The Authority shall have delivered to the ENTITY a written reservation of the Authority's rights describing the reasons why COVERAGE did not apply;
2. The reservation of rights shall have included an express reservation of the Authority's rights under this CONDITION "T"; and
3. Only expenditures for defense and/or indemnity made by the Authority after delivery of the reservations of rights notice to the ENTITY are sought to be recovered.

Notwithstanding the foregoing provisions, CONDITION "T" does not limit the Authority's right to be reimbursed by the ENTITY for payments made by the Authority which were subject to the ENTITY's DEDUCTIBLE.

## ATTACHMENT B

### **Endorsement Number: 1**

This endorsement forms part of the Memorandum of Liability Coverage for the California Sanitation Risk Management Authority.

### **SUPPLEMENTAL COVERAGE ENDORSEMENT FOR DEFENSE OF CRIMINAL ACTIONS BROUGHT AGAINST EMPLOYEES**

Government Code Section 995.8 provides that, under certain circumstances, a public entity may provide for the defense of criminal actions brought against employees. A defense may be provided only if the criminal action or proceeding is brought on account of an act or omission in the scope of employment as an employee of the public entity; and where the public entity determines that such defense would be in the best interests of the public entity and that the employee or the former employee acted or failed to act, in good faith, without actual malice, and in the apparent interests of the public entity. Government Code sections 6500, 990.4 and 990.8 provide authority for California public agencies to jointly exercise any power common to all of them, including the power to self-insure claims of losses. Pursuant to this authority, this Endorsement pools the authority of the member districts to provide for a defense of criminal actions, under certain circumstances.

Where any criminal action or proceeding is brought pursuant to State or Federal criminal statutes relating to environmental hazards or environmental exposures, or the release or escape of POLLUTANTS, and the ENTITY has determined that it is appropriate to provide a defense to the covered individual pursuant to Government Code Section 995.8, the Authority will indemnify the ENTITY for any DEFENSE COSTS expended, subject to the terms and limitation in this Endorsement, and any other terms or limitations in the Memorandum of Coverage.

Notwithstanding any Maximum Coverage Limit stated within the declarations, the limit of coverage under this Supplemental Coverage Endorsement is limited to \$250,000 for any covered individual, regardless of the number of criminal actions or proceedings brought, or the number of jurisdictions (including Federal or State) within which a criminal action or proceeding is brought, arising from any accident or event, including continuous or repeated exposure to substantially the same generally harmful conditions.

Notwithstanding what is stated in the Declarations Pages, this coverage shall be subject to a deductible of \$25,000, payable by the ENTITY and applicable to the defense of each Covered Individual.

This Endorsement does not create any rights of any third party beneficiary, and specifically, is not intended to provide any direct right or claim in favor of the covered individual. Instead, this Endorsement is intended only to provide an indemnity benefit to the Entity itself. The entity retains the sole discretion in determining whether the conditions of Government Code Section 995.8 are met. Any decision of the Entity that the act or omission occurred within the scope of

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### **Endorsement Number: 1 (Continued)**

employment, and that defense would be in the best interests of the entity, and that the employee acted or failed to act, in good faith without actual malice and in the apparent interests of the Entity, shall be conclusive and determinative with respect to this coverage.

Notwithstanding any other provision of the Memorandum of Coverage, this Supplemental Coverage Endorsement shall be subject to an annual aggregate limit, such that \$500,000 is the most that the Authority shall be required to pay on account of all defense costs for all covered individuals employed by the Entity for all occurrences arising during any Coverage Period. For the purposes of this Supplemental Coverage Endorsement, an occurrence with a duration of more than one coverage period shall be treated as a single occurrence arising during the latest dated coverage period.

All DEFENSE COSTS indemnified under this Endorsement shall be reimbursed only upon submission of timely and reasonably detailed bills for services, including detailed descriptions of defense activities reported by date, activities, and hours/tenths. Hourly rates shall not exceed \$400 per hour, however the ENTITY may, at its own expense, agree to hourly rates exceeding this limit, in which case indemnity will apply only up to the \$400 maximum hourly rate.

Adjusting fees of CSRMA's third party administrator shall be charged against the MAXIMUM COVERAGE LIMIT under this endorsement.

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### **Endorsement Number: 2**

This Endorsement forms part of the Memorandum of Liability Coverage for the California Sanitation Risk Management Authority.

#### **EXCLUSION FOR COMMUNICABLE DISEASE – EXCESS LAYER**

“Coverage for LOSS reinsured in excess of \$500,000 per OCCURRENCE up to \$10,500,000 per OCCURRENCE is subject to the following exclusion:

Notwithstanding any provision to the contrary within this Agreement, this Agreement excludes any LOSS, damage, liability, claim, cost or expense of whatsoever nature, directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease; all regardless of any other cause or event contributing concurrently or in any other sequence thereto.

“Communicable Disease” means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.

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### Endorsement Number: 3

This Endorsement forms part of the Memorandum of Liability Coverage for the California Sanitation Risk Management Authority.

#### EXCLUSION FOR COMMUNICABLE DISEASE AND LEAD – EXCESS LAYER

This Endorsement forms part of the Memorandum of Liability Coverage for the California Sanitation Risk Management Authority.

“Coverage for LOSS reinsured in excess of \$10,500,000 per OCCURRENCE up to \$25,500,000 per OCCURRENCE is subject to the following exclusion(s):

#### COMMUNICABLE DISEASE

Notwithstanding any other provision of this Agreement, coverage for LOSS does not apply to any actual or alleged liability, injury, loss, damages, claim, cost, expense, fee or any other payment of any kind, directly or indirectly based upon, in whole or in part, arising out of:

1. a **Communicable Disease**; or
2. the fear or threat (whether actual or perceived) of a **Communicable Disease**; or
3. any requirement or recommendation of any **Governmental Authority** regarding a **Communicable Disease**;
4. the actual or alleged transmission, spread or failure to prevent, suppress or remove a **Communicable Disease**; or
5. the reporting of, monitoring of, disclosure of, testing for, or failure to report, monitor, disclose or test for, a **Communicable Disease**.

This Exclusion applies regardless of whether:

1. any other cause, event, material, product or incident of whatever kind or nature contributed, concurrently or in any sequence, to the actual or alleged liability, injury, loss, damage, claim, cost, expense or any other payment of any kind; or
2. such actual or alleged liability, injury, loss, damage, claim, cost, expense or any other payment of any kind is based upon, caused by, resulting from, arising from, related to, or attributable, in whole or in part, to any persons (including, without limitation, any insured or other person or entity).

For the purpose of this Exclusion, the following definitions are added to the Definitions Section:

**Communicable Disease** means a disease, illness or condition directly or indirectly based upon, caused by, arising out of, relating or attributable to, in whole or in part, any actual, alleged, direct or indirect contact with or exposure to any **Infectious Agent**.

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### Endorsement Number: 3 (Continued)

**Infectious Agent** means one or more of any bacteria, viruses, markers, microbial agents, micro-organisms, biological organisms, parasites, insects, protozoa, or any other source, combination, variant or mutation thereof, capable of transmission or spreading by any means from any source.

### LEAD

Any loss, cost or expense arising out of, resulting from, caused by or contributed to by:

- a. The toxic or pathological properties of lead, lead compounds or lead contained in any materials;
- b. The abatement, mitigation, removal, or disposal of lead, lead compounds or lead contained in any materials;
- c. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with a. and b. above; or
- d. Any obligation to share damages, remediation or other relief or compensation of any kind with, or to repay someone else who must pay such damages in connection with a., b. or c. above.