MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereafter "MOU") is effective as of July 5, 2023, by and between Yuba County District Attorney (hereinafter "YCDA"), and the San Joaquin County District Attorney ("hereinafter SJCDA"). The purpose of this MOU is to outline the provision of legal services by the SJCDA on behalf of the YCDA in Napa County Superior Court Case 19CR001526.

BACKGROUND

On May 1, 1992, Eric Christopher Houston entered Lindhurst High School with a shotgun and a rifle. He shot and killed four people, wounded many others, and held approximately 80 to 90 students hostage for hours.

The Yuba County District Attorney prosecuted Houston for his crimes, eventually culminating in a jury trial held in Napa County due to a change of venue.

The trial involved multiple phases. After the guilt-phase of the trial, the jury found Houston guilty of the first degree murders of Robert Brens, Judy Davis, Beamon Hill, and Jason White, the attempted murders of Wayne Boggess, Patricia Collazo, Danita Gipson, Donald Graham, Thomas Hinojosal, Jon Kaze, Sergio Martinez, Jose Rodriguez, Rachel Scarberry, and Mireya Yanez, and the assault with a firearm of Joshua Hendrickson, Bee Moua, and Tracy Young. Houston was also found guilty of false imprisonment and various special circumstances and enhancements. The guilt phase was followed by a trial focused on Houston's sanity at the time of the offense. After the sanity phase, the jury found Houston legally sane at the time of the murders. Finally, after hearing evidence and argument during the penalty phase of the trial, the jury returned a verdict of death. Houston was sentenced to death on September 20, 1993.

Houston's convictions and sentence were upheld by the California Supreme Court on August 2, 2012. (*People v. Houston* (2012) 54 Cal.4th 1186.) The United States Supreme Court denied Houston's petition for writ of certiorari (U.S. Supreme Court case no. 12-8057). (*Houston v. California* (2013) 568 U.S. 1234.)

Houston filed a Petition for Habeas Corpus in state court in 2011, raising 21 claims. The petition and all of its claims were denied on the merits in 2013. In 2015, Houston filed a Petition for Habeas Corpus in the United States District Court for the Northern District of California. The petition in federal court, which contained new claims, was stayed so that the new claims could be litigated first in state court. In September 2016, Houston filed a new Petition for Habeas Corpus in the Napa County Superior Court, containing the new claims.

On July 5, 2023, Napa County Superior Court Judge Elia Ortiz, issued an Order, denying all but one of Houston's new claims. The Court found that Houston had stated a *prima facie* case for relief on Claim 23. In Claim 23, Houston avers that his death sentence constitutes cruel and unusual punishment because of his alleged intellectual disability, borderline intellectual

functioning, and severe mental impairment. The Court issued an Order to Show Cause, requiring that Claim 23 be litigated.

Houston's remaining claim, Claim 23, is generically referred to as an "Atkins Claim," a reference to United States Supreme Court case *Atkins v. Virginia*. In *Atkins*, the Supreme Court held that execution of a mentally retarded criminal would be a cruel and unusual punishment prohibited by the Eighth Amendment. (*Atkins v. Virginia* (2002) 536 U.S. 304.)

Litigating Claim 23 will likely take an experienced attorney approximately 6 to 18 months of fulltime work over the next 2 to 3 years. Capital habeas litigation is a very difficult and rare class of litigation that will require an attorney with specialized experience. The evidence and records are voluminous and will take a substantial amount of time to review. The litigation will also require the People to retain an expert on developmental disability to review the case and render an opinion as to whether Houston is a person who falls within the Atkins prohibition. Investigator time will also likely be required to supplement the record regarding Houston's alleged developmental disability.

The costs of litigating the capital habeas claim are reimbursable by the state pursuant to Penal Code section 4750(c). However, the YCDA does not currently have sufficient attorney staff to handle the litigation that will be required. The YCDA is currently experiencing difficulty recruiting entry-level attorneys. Even if a new attorney position was authorized to handle this habeas case, the YCDA is unlikely to be able to recruit an attorney that has the specialized experience necessary to handle the advanced litigation.

In recognition of the importance of the case to the public, SJCDA has agreed to assign an experienced attorney to litigate Houston's Atkins Claim in Napa Superior Court on behalf of the Yuba County District Attorney. SJCDA will bill the YCDA for this work, and YCDA will file with the State for reimbursement under Penal Code section 4750(c).

In consideration of the Services to be rendered, and each and every covenant and condition contained herein, the parties hereto agree to the following operative provisions.

OPERATIVE PROVISIONS

1. SCOPE OF SERVICES

SJCDA shall assign an experienced Deputy District Attorney to litigate Houston's *Atkins* Claim on behalf of the Yuba County District Attorney in Napa Superior Court case 19CR001526. The attorney will provide good faith efforts under the day-to-day supervision of SJCDA to litigate the case.

YCDA will provide any necessary investigative or clerical support.

The SJCDA attorney will be cross-deputized by the Yuba County District Attorney. The YCDA is ultimately responsible for the case, and maintains the authority for any tactical or strategic decisions. The SJCDA attorney will consult regularly with the YCDA representative, and seek

guidance regarding any tactical or strategic decisions.

2. TERM

Commencement Date: July 5, 2023

Termination Date: June 30, 2026.

Each of the Parties shall have the right to terminate this MOU upon thirty (30) days written notice to the other Parties.

3. FUNDING

Direct Labor Costs

Each of the Parties will pay their own employees pursuant to their applicable employment contracts.

SJCDA will track hours expended by staff on the Houston case to the nearest $1/10^{th}$ of an hour. A log of activity for those hours will be kept with a description of the reimbursable activity on the case. The log in Attachment A (or an electronic equivalent) will be used to track and document direct labor.

YCDA will reimburse SJCDA for the direct labor cost of the services rendered. The direct labor cost will consist of the direct labor plus the employer's fringe benefits contribution.

Direct labor shall be computed using the employee's hourly rate. Fringe benefits will be calculated using either the actual fringe benefit contributions for the hours worked or as a percentage of salary for the hours worked.

Overtime

YCDA shall reimburse SJCDA for overtime paid to employees for work on the Houston case. How overtime is calculated will be determined by the applicable labor contract for the SJCDA employee. Overtime for the case must be approved by the YCDA representative in writing.

Legal Costs

It is anticipated that an expert in developmental disability will need to be retained to review the case and render an opinion as to Houston's *Atkins* claim. The contract for any experts will be done directly between YCDA and the expert. YCDA will provide the attorney from SJCDA with the support to retain and pay necessary experts. The SJCDA attorney should consult with the YCDA representative to find and retain any necessary experts.

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Travel Costs

Any necessary travel costs, such as mileage, room and board, and per diem, to litigate the case will be reimbursed under the applicable labor contracts for the SJCDA employee having to travel. YCDA shall reimburse SJCDA for necessary travel costs associated with litigation of the Houston case.

Supplies and Services

Each Party shall, at its sole cost and expense, furnish all facilities, equipment, and other materials that may be required for furnishing services pursuant to this MOU, unless an exception is specific in writing. Should there be extraordinary supplies or services needed, the YCDA representative may approve the expenditure in writing.

Billing and Reimbursement

SJCDA shall invoice YCDA monthly for all reimbursable costs. The SJCDA shall invoice YCDA within 30 days of the ratification of this MOU for any reimbursable costs incurred between July 5, 2023, and the first invoice. Costs incurred more than five months prior to the invoice shall not be reimbursed.

SJCDA shall provide with the invoice sufficient backup documentation for YCDA to seek reimbursement from the state under Penal Code section 4750. At a minimum, SJCDA shall provide the completed log (Attachment A), a completed Cost Report (Attachment B), and supporting documentation for the figures used for the salary and fringe benefit calculations.

SJCDA shall submit a copy of any receipts and reimbursement forms relied upon to reimburse travel costs, or any extraordinary services or supplies approved in writing by the YCDA representative.

4. ADDITIONAL PROVISIONS.

Those additional provisions unique to this MOU are set forth in Attachment "C".

5. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this MOU. Any inconsistency between said general provisions and any other terms or conditions of this MOU shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

6. DESIGNATED REPRESENTATIVES

The Yuba County Chief Deputy District Attorney is the authorized representative and will administer this MOU for YCDA. The San Joaquin County Assistant District Attorney is the authorized representative and will administer this MOU for SJCDA. Changes in designated representatives shall occur only by advance written notice to the other parties.

7. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

Attachment A – Habeas Time Log
Attachment B – Habeas Cost Report
Attachment C – Additional Provisions
Attachment D – General Provisions
Attachment E – Insurance Provisions

8. TERMINATION.

Each of the Parties shall have the right to terminate this MOU upon thirty (30) days written notice to the other Parties.

IN WITNESS WHEREOF, this MOU has been executed as follows:

YUBA COUNTY

Clinton J. Curry, District Attorney — Date: 10/27/2023

By: _____ — Date: _____
Chair, Yuba County Board of Supervisors

ATTEST:

_____
Mary Pasillas, Clerk of Board

APPROVED AS TO FORM:

_____
Joe Larmour, County Counsel
Recommended for Approval:

INSURANCE PROVISIONS APPROVED:

_____
Tiffany Manuel, HR Director & Risk Manger

SAN JOAQUIN COUNTY

_____
Ron Freitas, District Attorney

ATTACHMENT A
HABEAS TIME TRACKER

Date	Employee	Job Class	Case	Hours (to nearest 1/10th)	Activity

I certify the information in this cost report is accurate.

_____ **Date**: _____

Name:

ATTACHMENT B
HABEAS COST REPORT

Report Date Range: _____

Employee	Job Class	Hours	Hourly Rate	Salary (*Hours x Rate*)	Fringe Benefits	Total S&B

I certify the information in this cost report is accurate.

_____ **Date**: _____

Name:

ATTACHMENT C
ADDITIONAL PROVISIONS

C.1 FORCE MAJEURE. No Party shall be liable in damages or have the right to terminate this MOU for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

C.2 LAW, POLICY AND PROCEDURES, LICENSES, AND CERTIFICATES. The Parties agree to administer this MOU in accordance with all applicable local, county, state, and federal laws, rules, and regulations applicable to their operations. The Parties shall further comply with all laws including, but not limited to, those relevant to wages and hours or employment, occupational safety, fire safety, health, sanitation standards and directives, guidelines, and manuals related to this MOU. All issues shall be resolved using reasonable administrative practices and judgment. The Parties shall keep in effect all licenses, permits, notices, and certificates required by law and by this MOU.

C.3 RECORDS. The Parties agree to maintain and preserve, and to be subject to examination and audit for a period of ten (10) years after termination of MOU to the other Parties' Auditor and/or to any duly authorized fiscal agent of the Parties, any books, documents, papers, and records which are relevant to this MOU for the purpose of making an audit, or an examination, or for taking excepts and transcriptions.

C.4 CONFIDENTIALITY. The Parties to this MOU agree to comply with all confidentiality legal requirements. Any media releases shall go through the YCDA.

C.5 OSHA AND CALOSHA COMPLIANCE. All work performed shall be in compliance with appropriate CalOSHA and OSHA standards, as well as all Federal, State, County, and local ordinances and regulations.

ATTACHMENT D
GENERAL PROVISIONS

D.1 INDEPENDENT CONTRACTOR STATUS. At all times during the term of this MOU, the following apply:

D.1.1 All acts of each Party shall be performed as an independent contractor and not as an agent, officer or employee of another Party. It is understood by all Parties that this MOU is by and between the independent parties and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

D.1.2 No Party shall have claim against another Party for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

D.1.3 Each Party is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medi-Care payments.

D.1.4 If in the performance of this MOU any third persons are employed by YCDA, such persons shall be entirely and exclusively under the direction, supervision and control of YCDA. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the YCDA.

D.2 TIME. The Parties shall devote such time to the performance of services pursuant to this MOU as may be reasonably necessary for the satisfactory performance of each Party's obligations pursuant to this MOU. No Party shall be considered in default of this MOU to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.3 INDEMNITY. Each party shall defend, indemnify and hold the other party, its elected and appointed councils, boards, commissions, officers, agents and employees harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injuries or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

D.4 CONTRACTOR NOT AGENT. Except as the Parties may specify in writing, no Party shall have authority, express or implied, to act on behalf of another Party in any capacity

whatsoever as an agent. The Parties shall have no authority, express or implied, pursuant to this MOU to bind another Party to any obligation whatsoever.

D.5 ASSIGNMENT PROHIBITED. The Parties may not assign any right or obligation pursuant to this MOU. Any attempted or purported assignment of any right or obligation pursuant to this MOU shall be void and of no legal effect.

D.6 PERSONNEL. The Parties shall assign only competent personnel to perform services pursuant to this MOU. In the event that all Parties determine that an individual is incompetent to perform services, a request will be made to remove any such person immediately upon receiving written notice from the Parties their desire for removal of such person or persons.

D.7 STANDARD OF PERFORMANCE. The Parties shall perform all services required pursuant to this MOU in the manner and according to the standards observed by a competent practitioner of the profession in which the Party is engaged.

D.8 POSSESSORY INTEREST. The parties to this MOU recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by the Parties with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the Parties. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.9 NON-DISCRIMINATION. Throughout the duration of this MOU, the Parties shall not unlawfully discriminate against any employee of the Parties or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. The Parties shall ensure that in the provision of services under this MOU, their employees and applicants for employment and any member of the public are free from such discrimination. The Parties shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this MOU by reference and made a part hereof as if set forth in full. The Parties shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. The Parties shall give written notice of its obligations under this clause to any labor agreement. The Parties shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this MOU.

D.10 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this MOU, above, the Parties agree to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the

prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

D.11 OWNERSHIP OF INFORMATION. All professional and technical information, excluding writings relating to client treatment and care, developed under this MOU and all work sheets, reports, and related data shall become the property of the Parties. All Parties agree to indemnify and hold the other Parties harmless from any claim arising out of reuse of the information for other than this project.

D.12 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.13 COMPLETENESS OF INSTRUMENT. This MOU, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

D.14 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this MOU shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.15 CAPTIONS. The captions of this MOU are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this MOU.

D.16 DEFINITIONS. Unless otherwise provided in this MOU, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.16.1 NUMBER AND GENDER. In this MOU, the neutral gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.16.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.17 TERM INCLUDES EXTENSIONS. All references to the term of this MOU or the MOU Term shall include any extensions of such term.

D.18 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this MOU, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.19 MODIFICATION. No modification or waiver of any provision of this MOU or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.20 COUNTERPARTS. This MOU may be executed simultaneously and, in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.21 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this MOU and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.22 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this MOU is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.23 JURISDICTION. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

D.24 CONTROLLING LAW. The validity, interpretation and performance of this MOU shall be controlled by and construed under the laws of the State of California.

D.25 TIME IS OF THE ESSENCE. Time is of the essence of this MOU and each covenant and term a condition herein.

D.26 AUTHORITY. All parties to this MOU warrant and represent that they have the power and authority to enter into this MOU in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this MOU have been fully complied with. Further, by entering into this MOU, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.27 CONFLICT OF INTEREST. Neither a Party employee whose position enables such employee to influence the award of this MOU or any competing MOU, nor a spouse or economic dependent of such employee, shall be employed in any capacity by any Party herein, or have any other direct or indirect financial interest in this MOU.

D.28 NOTICES. Any notice required or permitted to be given under this MOU shall be in writing and shall be served by certified mail, return receipt requested, or personal service upon the

other party. When service is by certified mail, service shall be conclusively deemed complete three (3) days after deposit in the United States mail, postage prepaid, addressed to the party to whom such notice is to be given as hereafter provided. Notices shall be addressed as follows:

If to YCDA:

District Attorney
Yuba County District Attorney
215 5th Street, Suite 152
Marysville, CA 95901

If to SJDCA:

District Attorney
San Joaquin County District Attorney
P.O. Box 990
Stockton, CA 95201

ATTACHMENT E
INSURANCE PROVISIONS

E. INSURANCE. All Parties to this MOU shall procure and maintain for the duration of the MOU insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by each Party, its agents, representatives, or employees.

E.1. MINIMUM SCOPE AND LIMIT OF INSURANCE. Coverage shall be at least as broad as:

> **E.1.1. Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

E.1.2. Automobile Liability Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if a Party has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

E.1.3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

E.1.4. Professional Liability (Errors and Omissions) Insurance as appropriate to each Party's profession, with limits no less than $2,000,000 per occurrence or claim, $2,000,000 aggregate.

If a Party maintains higher limits than the minimums shown above, the other Parties may require and shall be entitled to coverage for the higher limits maintained by the Party maintaining the higher limits.

E.2 Other Insurance Provisions The insurance policies are to contain, or be endorsed to contain, the following provisions:

E.2.1. Additional Insured Status each Party, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the other Parties; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of any MOU Party including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Party's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

E.2.2. Primary Coverage For any claims related to this MOU, each Party's insurance coverage shall be primary insurance as respects the other MOU Parties, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by a Party, its officers, officials, employees, or volunteers shall be excess of the other Parties' insurance and shall not contribute with it.

E.2.3. Notice of Cancellation Each insurance policy required above shall state that coverage shall not be canceled, except with notice to all MOU Parties.

E.3. Waiver of Subrogation Each Party hereby grants to other MOU Parties a waiver of any right to subrogation which any insurer of said Party may acquire against another MOU Party by virtue of the payment of any loss under such insurance. Each Party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not another MOU Party has received a waiver of subrogation endorsement from the insurer.

E.4. Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by each MOU Parties. Each Party may require the MOU Parties to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

E.5. Acceptability of Insurers Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the MOU Parties.

E.6. Claims Made Policies If any of the required policies provide coverage on a claims-made basis:

E.6.1. The Retroactive Date must be shown and must be before the date of the MOU or the beginning of MOU work.

E.6.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the MOU of work.

E.6.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the MOU effective date, each Party must purchase "extended reporting" coverage for a minimum of five (5) years after completion of MOU work.

E.7. Verification of Coverage Each Party shall furnish the Parties with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Parties before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Party's obligation to provide them. The Parties reserve the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

E.8. Subcontractors Each Party shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

E.9. Special Risks or Circumstances The Parties reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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