CIAW
Cities Insurance Association of Washington

159 Basin Street SW PMB #206 | Ephrata, WA 98823 | www.ciaw.us

September 17, 2026

Kelly Ross, City Clerk
Town of Elmer City
PO Box 179
Elmer City, WA 99124

RE:	Insured:	Town of Elmer City
	Claimant:	Town of Coulee Dam
	Claim #:	C3494
	Date of Loss:	09/02/2025
	Coverage:	Wrongful Acts – Primary
	Incident Desc:	Injunctive relief

This is to advise you Kumau McWilliams has been assigned to handle the above-referenced claim on behalf of Cities Insurance Association of Washington and the Town of Elmer City. Please refer all inquiries to the adjuster's attention at:

Toll free telephone #:	(800) 407-2027
Phone #:	(509) 717-4045
Fax #:	(509) 754-3406
E-mail address:	kmcwilliams@chooseclear.com

Please also refer to the above-referenced claim number when calling.

/kes

The loss description shown is based upon information provided to Clear Risk Solutions. This acknowledgement does not confirm coverage for this claim. Coverage will be determined following a review of the policy and the facts and circumstances of the claim.

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☆RECEIVED☆
OCT 14 2026

October 8, 2026

ELECTRONIC & CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Kelly Ross
Town of Elmer City
505 Seaton Avenue
Elmer City, WA 99124

Re: *Town of Coulee Dam v. Town of Elmer City*
Okanogan County Superior Court Case No. 25-2-00396-24
Member: Town of Elmer City
Claim No.: C3494

Dear Kelly Ross:

On behalf of Cities Insurance Association of Washington ("CIAW"), this letter is in response to the tender of the above-referenced lawsuit served on the Town of Elmer City and serves to advise the City of CIAW's position with respect to coverage for the claims alleged against Elmer City by the Town of Coulee Dam.

CIAW agrees to provide Elmer City a defense subject to a reservation of rights. The phrase "reservation of rights" means the rights and those of CIAW are fully reserved. Any action taken in the investigation, adjustment, claims handling, or defense of this matter shall not waive or prejudice any right belonging to any party under the CIAW Memoranda of Coverage ("MOCs"), whether referenced in this letter or otherwise.

I. Factual Background

CIAW received a copy of the Complaint for Damages and Injunctive Relief in the lawsuit on November 10, 2025. Please be assured that the following summary of the allegations in Complaint in no way implies that CIAW believes them to be true. They are briefly reviewed here only to clarify the nature of the allegations.

The plaintiff is the Town of Coulee Dam. Coulee Dam alleges that effective January 1, 1975, Coulee Dam and Elmer City entered into a 50-year Agreement for Joint Operation and Utilization of Sewage Disposal Facilities (Agreement) and that pursuant to that agreement, Coulee Dam provided treatment to and disposal of Elmer City's sewage. The agreement required that all costs of operation and maintenance of the Coulee Dam Treatment Plant were

paid for by each municipality, based on its proportion of the sewage flow generated by each municipality. Coulee Dam alleges that beginning in 2004 the parties investigated the need to upgrade both the treatment plant at Coulee Dam and the lift station at Elmer City and that their consulting engineers concluded both were necessary. Coulee Dam alleges that not only did Elmer City refuse to upgrade its lift station as required by the Agreement, but that it also ignored the engineers' recommendation that it provide for odor control of its sewage before it was transmitted to Coulee Dam because Elmer City's sewage was having corrosive effects on the Coulee City treatment plant. Coulee Dam alleges that ultimately it was required to fund on its own both the construction of a new treatment plant at Coulee Dam and a new lift station at Elmer City.

Coulee Dam alleges that the new treatment plant went into operation on May 2, 2019. Coulee Dam alleges that Elmer City's refusal to implement any odor control measures to prevent the corrosive effect of its sewage has caused premature deterioration of Coulee Dam's new treatment plant and that Elmer City owes Coulee Dam damages for such premature deterioration. Coulee Dam alleges that because of Elmer City's refusal to contribute any funds to the cost of the new treatment plant and the cost of the new lift station and its non-payment of invoices submitted by Coulee Dam, Coulee Dam notified Elmer City that it would not renew the Agreement when it expired on December 31, 2024, and that Elmer City would have to make alternative arrangements for the treatment of its sewage. Coulee City alleges that despite Elmer City's decision to ignore this notice, it has continued to treat Elmer City's sewage to avoid an environmental catastrophe. Coulee City alleges that as of the expiration of the Agreement on December 21, 2024, Elmer City owes Coulee Dam no less than $189,090.50 plus interest for its share of the funding of the improvements of the Coulee Dam treatment facility, $105,093.72 for the cost of treatment of Elmer City sewage for the first quarter of 2025 and $83,019.24 for the second quarter of 2025.

Coulee Dam asserts claims for Injunctive Relief, Breach of Contract, and Unjust Enrichment. Its Prayer for Relief seeks injunctive relief, monetary damage, its reasonable attorneys' fees and costs, and pre-and post-judgment interest.

II. Memoranda of Coverage

This letter addresses coverage for this lawsuit under the General Liability Coverage Part of the CIAW Memorandum of Coverage ("MOC") effective December 1, 2018, to December 1, 2019, ("2018-2019 MOC") and under the **Wrongful Acts** Coverage Part of the current MOC, effective December 1, 2024, to December 1, 2025, ("2024-2025 MOC"). The 2018-2019 MOC contains provisions applicable to the General Liability coverage that require, for example, **Property Damage** to be caused by an **Occurrence** that first takes place during the MOC period.[1] The definition of **Occurrence** in this MOC as it applies to **Property Damage**

[1] Although the Complaint alleges that Elmer City was aware of the corrosive effects of its failure to apply odor controls to its sewage as early as 2011, Coulee appears to be claiming damage to the new treatment plant, which allegedly went into operation in May 2019. Our evaluation of the

classifies as a single **Occurrence** all damages arising from substantially the same general conditions that gave rise to the alleged **Property Damage**. Finally, this MOC includes a provision that limits the amount of coverage available for any one **Occurrence**, regardless of the number of claims made against the **Covered Party** or the number of claimants to the available limit or sublimit in the MOC. General Liability coverage in the 2020-2021 MOC is subject to a $10 Million per occurrence and a $20 Million aggregate limit.

Because the **Wrongful Acts** liability coverage is provided on a claims-made and reported basis, the applicable MOC for any such liability under this coverage part is the 2024-2025 MOC, when these claims were first made and reported to CIAW. **Wrongful Acts** coverage in the 2024-2025 MOC is subject to $10 Million per occurrence and $10 Million aggregate limits.

The 2018-2019 MOC and the 2024-2025 MOC include several other liability coverage parts, such as **Automobile** Liability Coverage and **Miscellaneous Professional Liability**. Because these other coverage parts are not implicated, we do not discuss their terms, conditions, and exclusions. By not discussing particular terms, conditions, and exclusions, CIAW does not waive the right to rely on those terms, conditions, and exclusions. CIAW reserves the right to rely on each and every term of the MOCs, whether discussed in this letter or not. If the District has questions about whether or why these coverages do not apply, please let us know and we can provide further explanation.

III. RESERVATION OF RIGHTS

A. General Liability Coverage

The Coverage Agreement in the General Liability Coverage Part in the 2020-2021 MOC provides as follows:

> A. COVERAGE AGREEMENT
>
> In return for the payment of the premium, we agree with you to pay those amounts for which the **Covered Party** becomes legally obligated to pay as damages because of **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** to which this Coverage Part applies. The Coverage Part applies to **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** only if:
>
> 1. The **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** is caused by an **Occurrence** that takes place in the **Coverage Territory**;

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coverage for Property Damage under the General Liability coverage part of the 2018-2019 MOC is necessarily subject to change as facts are developed in the litigation.

2. The **Occurrence** first takes place during the **Coverage Period**; and
3. The **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** occurs during the **Coverage Period**.

This agreement applies separately to each **Covered Party**. However, the limits of coverage and Deductibles shown in the Liability Coverages Declarations are shared by all **Covered Parties**. Any right or duty specifically assigned to the **Covered Member** remains unchanged.

B. DEFENSE AND SETTLEMENT

1. We have the right and duty to defend, through attorneys of our choice, any **Claim** against a **Covered Party** seeking damages because of **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** to which this Coverage Part applies. If we defend, we will pay **Defense Costs** of a **Claim** or **Suit** against a **Covered Party** who is covered under this Coverage Part. However, we have no duty to defend against any **Claim** or **Suit** seeking damages to which this Coverage Part does not apply. Our defense obligation will end when we have used up the applicable Limit of Coverage with the payment of judgments, settlements, or **Defense Costs**, whichever comes first.
2. You and any **Covered Party** must obtain our prior written approval before offering or agreeing to pay an amount or settle any **Claim** under this Coverage Part.
3. We shall have the right to propose a settlement for any **Claim** or **Suit**. If a **Covered Party** refuses to consent to a settlement, we will limit the total amount we will pay for damages and **Defense Costs** to no more than the amount we would have paid had you given consent to the proposed settlement.

No other obligation to pay any additional sums or perform acts or services is covered.

* * *

D. LIMIT OF COVERAGE

1. The Limits of Coverage specified in the Liability Coverages Declarations and the rules below set the most we will pay regardless of:

   a. The number of persons and organizations who are **Covered Parties** under this MOC;
   b. The number of Claims made against any or all **Covered Parties**; or
   c. The number of persons or organizations making **Claims.**

2. The General Liability Each **Occurrence** Limit, specified in Item 2. of the Liability Coverages Declarations is the most we will pay for all damages because of **Bodily Injury**, **Personal Injury**, **Advertising Injury**, and **Property Damage** arising out of one **Occurrence.**

* * *

8. When **Defense Costs** are subject to a sublimit listed in Item 2. of the Liability Coverage Declarations, **Defense Costs** are in addition to and are not included in the Limits of Coverage provided by this Coverage Part. When Item 2. states "Included," **Defense Costs** are included in and will reduce the Limits of Coverage provided by this Coverage Part.

The definitions of **Bodily Injury**, **Personal Injury**, **Advertising Injury**, **Property Damage Occurrence** and **Covered Party** and other definitions pertinent to CIAW's evaluation of coverage are found in the Liability Coverages (General Liability, **Sexual Abuse**, **Wrongful Acts**, **Automobile**) Common Conditions, Definitions and Exclusions form ("Liability Coverages Common Conditions Form").

The Liability Coverages Common Conditions Form in the 2018-2019 MOC contains the following relevant definitions:

1. **Accident**

Means: An **Accident**, including continuous or repeated exposure to substantially the same general harmful conditions which results in **Bodily Injury** or **Property Damage**. All such exposure to substantially the same general conditions will be considered as arising out of one **Accident**.

3. **Advertising Injury**

Means: One or more of the following offenses:

a. Libel, slander or defamation;
b. Any infringement of copyright, title or slogan;
c. Misappropriation of advertising ideas or style of doing business;
d. Oral or written publication of material that violates a person's right of privacy; committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of your advertising activities except if arising out of electronic chat rooms or bulletin boards.

5. **Bodily Injury**

Means: Any harm to the health of other persons. It includes any of the following that results at any time from such harm:

a. Physical harm, sickness, or disease;
b. Mental anguish, injury, or illness;
c. Emotional distress;
d. Care, loss of services, or death;
e. Humiliation.

6. **Claim**

Means: A written or oral notice, including a **Suit**, demanding payment of money to compensate for damages.

10. **Covered Party**

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

a. The **Covered Member**;
b. While acting within the scope of their duties for the **Covered Member**:

(1) Your current or former lawfully elected, appointed, or employed officials;

* * *

15. **Impaired Property**

Means: Tangible property, other than **Your Product** or **Your Work** that cannot be used or is less useful because:

a. It incorporates **Your Product** or **Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
b. You have failed to fulfill the terms of a contract or agreement.

If such property can be restored to use by:

a. The repair, replacement, adjustment or removal of **Your Product** or **Your Work**; or
b. Your fulfilling the terms of the contract or agreement.

* * *

22. **Occurrence**

Means:

a. With respect to **Bodily Injury** and **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions which results in **Bodily Injury** or **Property Damage**. All such exposure to substantially the same general conditions will be considered as arising out of one **Occurrence,** the date of which shall be fixed as the date of the first exposure to harm;

b. With respect to **Personal Injury**, only the offenses specified in the **Personal Injury** Definition. All damages arising out of substantially the same **Personal Injury** regardless of frequency, repetition, the number or kind of offenses, or number of claimants, will be considered as arising out of one **Occurrence,** the date of which shall be fixed as the date of the first offense;

c. With respect to **Advertising Injury**, only the offenses listed in the **Advertising Injury** Definition. All damages arising out of substantially the same **Advertising Injury** regardless of frequency, repetition, the number or kind of media used, the number or kind of offenses, or the number of claimants, will be considered as arising out of one **Occurrence,** the date of which shall be fixed as the date of the first offense.

d. Regardless of any subsequent renewals or extensions of MOC terms, only one MOC issued by us, one **Deductible** and one Limit of Coverage is applicable to any one **Occurrence**. A **Claim** or **Suit** involving an **Occurrence** as defined under two or more paragraphs a., b., or c. above shall be deemed to be one **Occurrence** and shall be assigned to only one MOC, coverage form, or insurance policy (whether issued by this risk pool, another risk pool, coverage provider, or insurer) and if this MOC applies, only one limit of coverage shall apply.

23. **Personal Injury**

Means: One or more of the following offenses:

a. False arrest, false imprisonment, wrongful detention, or malicious prosecution;

b. Libel, slander, defamation of character, or oral or written publication of material that violates a person's right of privacy, unless arising out of advertising activities, electronic chatrooms, or bulletin boards, if not arising out of **Employment Practices Violations**.

c. 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 the owner, landlord, or lessor, or by a person acting on behalf of the owner, landlord, or lessor.

24. **Pollutant**

Means: Any solid, liquid, gaseous, or thermal irritant or contaminant including, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and Waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

29. **Property Damage**

Means:

a. Physical injury to tangible property, including all resulting loss of use of such property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
b. Loss of use of tangible property that is not physically damaged. All such loss of use shall be deemed to occur at the time of the **Occurrence** or **Accident** that caused it.

* * *

35. **Your Product**

Means:

a. Any goods or products (other than real property) manufactured, sold, handled, distributed, or disposed of by:
b.
(1) You;
(2) Others trading under your name; or
(3) A person or organization whose business or assets you have acquired;

c. Containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.

Your Product includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included above. **Your Product** also includes the providing of or failure to provide warnings or instructions.

Your Product does not include vending machines or other Property rented to or located for the use of others but not sold.

36. **Your Work**

Means:

a. Work or operations performed by you or on your behalf;
b. Materials, parts, or equipment furnished in connection with such work or operations.

Your Work includes warranties or representations made at any time with respect to the fitness, quality, durability, or performance of a. and b. above. **Your Work** also includes the providing of or failure to provide warnings or instructions.

General Liability coverage for **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** is subject to the following exclusions in the Liability Coverages Common Conditions Form ("Common Exclusion(s)"):

EXCLUSIONS

All Liability Coverage Parts (General Liability, **Sexual Abuse**, **Wrongful Acts**, **Automobile**) included in the MOC are subject to any applicable exclusions in that Coverage Part and the following Exclusions, except as otherwise indicated:

The coverage under any Liability Coverage Part in the MOC does not apply to:

5. Damages of the following types:

a. Any costs, civil fines, penalties, or expenses levied or imposed against a **Covered Party** arising from any complaint or enforcement action from any federal, state, or local government regulatory agency;
b. Punitive damages, exemplary damages, or the multiplied portion of any damage award; or
c. Relief or redress in any form other than monetary damages, or for any fees, costs, or expenses which a **Covered Party** may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief;
d. Any fines and/or attorney fees awarded through any administrative hearing process including, but not limited to the Washington Public Records Act and Open Public Meetings Act.
e. Back wages.

* * *

8. Any liability arising out of any criminal, fraudulent, dishonest act, or bad faith of a **Covered Party** or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation committed by or with the knowledge of a **Covered Party**.

   This exclusion does not apply to the **Automobile** Liability Coverage Part.

   However, we may defend the **Covered Party** until it has been determined or admitted in a legal proceeding that these acts were committed by the **Covered Party** or with the consent or knowledge of the **Covered Party**.

* * *

11. Any **Claim** for breach of contract. However, with respect to **Employment Practices Violations**, this exclusion does not apply to implied contracts or employment contracts that are not part of a collective bargaining agreement.

12.

   a. Any liability arising from the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **Pollutants**; or

   b. Any loss, cost, or expense arising out of any:

      (1) Request, demand, or order that a **Covered Party** or 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

      (2) Any **Claim** by or on behalf of a governmental authority or others for damages because of testing for monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of **Pollutants**.

   c. With respect to the General Liability Coverage Part, this exclusion does not apply to:

      (1) **Bodily Injury** or **Property Damage** caused by heat, smoke, or fumes from a Hostile Fire. As used herein, Hostile Fire means a fire which becomes uncontrollable or breaks out from where it was intended to be.

(2) **Bodily Injury** if sustained within a building owned or occupied by, or rented or loaned to, a **Covered Party** and caused by smoke, fumes, vapor, or soot from equipment used to heat that building.

(3) **Bodily Injury** or **Property Damage** that first occurs during the **Coverage Period** that results from chemicals used in the maintenance or cleaning of facilities; or the use of chlorine or other sanitizing or cleaning chemicals in swimming pool operation or maintenance.

(4) **Bodily Injury** or **Property Damage** that results from the testing of sewer lines that you own, operate, or maintain by use of artificially generated smoke when such testing meets the standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government that applies.

(5) In addition, we will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from the application or use of any pesticide or herbicide by or for you; if such application or use meets all legal or license requirements of any governmental agency or authority which apply to it.

(6) We will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from the back-up of sewage into a building from any sewage facility or sanitary sewer that you own, operate, or maintain.

However, we will not cover such **Bodily Injury** or **Property Damage** to the extent that it results from any corrosive or radioactive material or waste in the sewage.

(7) We will not apply this exclusion to injury or damage that results from the providing of or failure to provide firefighting or emergency response services at, on, or in any **Premises**, site, or location, other than a protected person's **Premises**.

(8) **Bodily Injury** or **Property Damage** that results from **Your Product** or completed work, other than waste products or completed work; or **Premises** liability that results from fire.

(9) In addition, we will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from **Pollution** caused by fuels, lubricants, fluids, exhaust gases, or similar pollutants that: are needed for or result from the

normal electrical, hydraulic, or mechanical functioning of a covered auto, other than the operations of specialized equipment; and escape, seep, or migrate, or are discharged, dispersed, or released, directly from a part of a covered auto designed by its manufacturer to hold, store, receive, or dispose of such Pollutants.

General Liability coverage for **Bodily Injury**, **Personal Injury**, **Advertising Injury**, or **Property Damage** is subject to the following exclusions in the General Liability Coverage Part ("General Liability Exclusions"):

E. EXCLUSIONS

The following exclusions apply to this Coverage Part in addition to the exclusions in the Liability Coverages (General Liability, **Sexual Abuse, Wrongful Acts**, and **Automobile**) Common Conditions, Definitions, and Exclusions section of the MOC.

The coverage under this Coverage Part does not apply to:

1. Any **Bodily Injury**, **Property Damage**, **Personal Injury,** or **Advertising Injury** for which coverage is provided under another Coverage Part of this MOC or any other MOC issued by us.

2. **Bodily Injury** or **Property Damage** either expected or intended from the standpoint of a **Covered Party**. This exclusion does not apply to:

   a. **Claims** arising out of use of reasonable force to protect persons or property; or
   b. To the extent that coverage is provided under the Law Enforcement Liability Endorsement.

* * *

8. Any **Property Damage** to:

   a. Property owned, occupied, or leased by a **Covered Party** or purchased by a **Covered Party** under installment sales contract or property on consignment to a **Covered Party**;

This exclusion shall not apply to amounts which you become legally obligated to pay in case of physical injury to any one premises, while rented to you or temporarily occupied by you with permission of the owner. Such physical injury must first arise out of an **Occurrence** during

the **Coverage Period** and in the **Coverage Territory** and is subject to the Premises Liability Sublimit Each **Occurrence** and Annual Aggregate specified in Item 2. of the Liability Coverages Declarations;

b. Property loaned to a **Covered Party**;
c. Personal property in the care, custody or control of a **Covered Party**, except to the extent that coverage is provided under the Law Enforcement Liability Endorsement;
d. Premises you sell, give away or abandon, if the **Property Damage** arises out of any part of those premises;
e. That particular part of real property on which you or any of your contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the **Property Damage** arises out of those operations; or
f. That particular part of any property that must be restored, repaired or replaced because **Your Work** was incorrectly performed on it.

9. Any **Property Damage** to:

a. **Your Work** or arising out of **Your Work** or any part of it;
b. **Your Product** or arising out of **Your Product** or any part of it; or
c. **Impaired Property** or property not physically injured, arising out of a defect, deficiency, inadequacy, or dangerous condition in **Your Product** or **Your Work**, or 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 the loss of use or use of other property arising out of unexpected and unintended physical injury to **Your Product** or **Your Work** after it has been put to its intended use.

As an initial matter, the allegations in the Complaint do not appear to fall within the definitions of **Bodily Injury, Personal Injury,** or **Advertising Injury**. CIAW reserves all rights accordingly.

While the allegations in Complaint do appear to allege **Property Damage** as defined in the 2018-2019 MOC in that Elmer City's failure to install odor control measures has allegedly caused premature deterioration to Coulee Dam's treatment plant, under the Coverage Agreement of the General Liability Coverage Part, any such **Property Damage** must first arise out of an **Occurrence** during the Coverage Period. Because the alleged conduct causing the claimant's

alleged **Property Damage** may have been intentional, not accidental, the alleged **Property Damage** may not have been caused by an **Occurrence**. CIAW reserves all rights accordingly.

In addition, even if the alleged **Property Damage** was caused by an **Occurrence**, several exclusions may apply to limit or preclude coverage.

Common Exclusion 5 quoted above may apply to limit or preclude coverage for any claims that do not seek monetary relief or seek only declaratory or injunction relief. This includes Coulee Dam's first claim for relief. CIAW reserves all rights accordingly.

Common Exclusion 11 quoted above may apply to limit or preclude coverage for Coulee Dam's second claim for relief for Breach of Contract. CIAW reserves all rights accordingly.

Common Exclusion 8 quoted above may apply to limit or preclude coverage to the extent Coulee Dam alleges that in its ongoing dealings with Coulee Dam relating to the treatment of Elmer City's sewage, Elmer City acted dishonestly or with bad faith and/or to the extent Elmer City deliberately violated a federal or state statute. CIAW reserves all rights accordingly.

Common Exclusion 12 quoted above may apply to limit or preclude coverage to the extent Elmer City's sewage is considered a **Pollutant** that has been released and resulted in damage to Coulee Dam's treatment plant and to the extent that none of the exceptions within Common Exclusion 12 apply. In particular, while certain types of sewage back-ups may be subject to an exception from the application of this exclusion, **Property Damage** that results from the corrosive materials in the sewage is still subject to this exclusion. CIAW reserves all rights accordingly.

General Liability Exclusion 1 quoted above may apply to limit or preclude coverage to the extent coverage for **Property Damage** is provided under another coverage part of the MOC. CIAW reserves all rights accordingly.

General Liability Exclusion 2 quoted above may apply to limit or preclude coverage to the extent Elmer City expected or intended Coulee Dam's alleged **Property Damage**. CIAW reserves all rights accordingly.

General Liability Exclusion 8 quoted above applies to limit or preclude coverage to the extent any alleged **Property Damage** was: (1) to any property owned, occupied or leased to Elmer City; (2) to that particular part of real property on which Elmer City or any of its contractors or subcontractors working directly or indirectly on its behalf are performing operations, if the **Property Damage** arises out of those operations; and (3) to that particular part of any property that must be restored, repaired or replaced because **Your Work** was incorrectly performed on it. While it is not clear from the allegations in the Complaint if these exclusions apply, if facts develop that they do apply, CIAW will provide further analysis. CIAW reserves all rights accordingly.

Finally, General Exclusion 9 quoted above applies to limit or preclude coverage to the extent any alleged **Property Damage** was to: (1) **Your Work** or arising out of **Your Work** or any part of it as that term is defined above; (2) **Your Product** or arising out of **Your Product** or any part of it as that term is defined above; and (3) **Impaired Property** (as that term is defined above) or property not physically injured, and arising out of a defect, deficiency, inadequacy or dangerous condition in **Your Product** or **Your Work** or a delay or failure by Elmer City to perform a contract or agreement. While it is not clear from the allegations in the Complaint if these exclusions apply, if facts develop that they do apply, CIAW will provide further analysis. CIAW reserves all rights accordingly.

CIAW reserves the right to rely on each and every term of the 2018-2019 MOC, whether discussed in this letter or not.

B. Wrongful Acts Liability Coverage

As stated above, **Wrongful Acts** liability coverage is a claims-made and reported coverage in the CIAW MOC, and because CIAW received the lawsuit in November 2025, the 2024-2025 MOC applies. The Coverage Agreement for this liability coverage is as follows:

> A. COVERAGE AGREEMENT
>
> In return for the payment of the premium, we agree to pay those amounts for which the **Covered Party** becomes legally obligated to pay as damages because of a **Wrongful Act** to which this Coverage Part applies for a **Claim** "first made" against a **Covered Party**, provided that:
>
> 1. The **Wrongful Act** first takes place in the **Coverage Territory** after the Retroactive Date shown in Item 3. of the Liability Coverages Declarations and before the end of the **Coverage Period**; and
> 2. A **Claim** is "first made" against a **Covered Party** during the **Coverage Period** or any applicable Extended Reporting Period we may provide under Section F. of this Coverage Part; and
> 3. We receive a written notice in accordance with the reporting requirements in the Duties in the Event of an **Accident**, **Occurrence**, **Wrongful Act**, or **Claim** Condition in the Liability Coverages (General Liability, **Sexual Abuse**, **Wrongful Acts**, **Automobile**), Common Conditions, Definitions, and Exclusions section of this MOC, no later than:
>
>   a. Sixty (60) days after the termination date of this endorsement coverage or the expiration date of the **Coverage Period**, whichever comes first; or
>   b. The end of any applicable Extended Reporting Period we may provide under Section F. of this Coverage Part.

A **Claim** will be deemed to have been "first made" at the earlier of the following times:

1. When you give written notice to us of a **Wrongful Act**, of which you have become aware, which may reasonably and subsequently give rise to a **Claim** being made against a **Covered Party**; or
2. When notice of such **Claim** is received and recorded by you or by us, whichever comes first.

All **Claims** based on or arising out of a **Wrongful Act** will be considered "first made" when the first of such **Claims** is made.

This agreement applies separately to each **Covered Party**. However, the limits of coverage and **Deductibles** shown in the Liability Coverages Declarations are shared by all **Covered Parties**. Any right or duty specifically assigned to you remains unchanged.

No other obligation to pay any additional sums or perform acts or services is covered.

B. DEFENSE AND SETTLEMENT

1. We have the right and duty to defend, through attorneys of our choice, any **Claim** against a **Covered Party** seeking damages for Wrongful Acts that are covered under this Coverage Part. If we defend, we will pay **Defense Costs** of a **Claim** or **Suit** against a **Covered Party** who is covered under this Coverage Part. Our defense obligation will end when we have used up the applicable Limit of Coverage with the payment of judgments, settlements, or **Defense Costs**, whichever comes first.

2. A **Covered Party** must obtain our prior written approval before offering or agreeing to pay an amount or settle any **Claim** under this Coverage Part.

3. We shall have the right to propose a settlement for any **Claim** or **Suit**. If a **Covered Party** refuses to consent to a settlement, we will limit the total amount we will pay for damages and **Defense Costs** to no more than the amount we would have paid had you given consent to the proposed settlement.

No other obligation to pay any additional sums or perform acts or services is covered.

D. LIMITS OF COVERAGE

1. The Limits of Coverage specified in the Liability Coverages Declarations and the rules below set the most we will pay regardless of:

   a. The number of persons and organizations who are **Covered Parties** under this MOC;
   b. The number of Claims made against any or all **Covered Parties**; or
   c. The number of persons or organizations making **Claims.**

2. The **Wrongful Act** Liability Limit Each Wrongful Act, specified in Item 2. of the Liability Coverages Declarations is the most we will pay for all damages resulting from any one **Wrongful Act.**

* * *

6. When **Defense Costs** are subject to a sublimit listed in Item 2. of the Liability Coverage Declarations, **Defense Costs** are in addition to and are not included in the Limits of Coverage provided by this Coverage Part. When Item 2. states "Included," **Defense Costs** are included in and will reduce the Limits of Coverage provided by this Coverage Part.

The following definitions in the Liability Coverages Common Conditions Form in the 2024-2025 MOC are pertinent for purposes of the **Wrongful Acts** coverage part:

10. **Covered Party**

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

a. The **Covered Member**;
b. While acting within the scope of their duties for the **Covered Member**:

   (1) Your current or former lawfully elected, appointed, or employed officials;

29. **Property Damage**

Means:

a. Physical injury to tangible property, including all resulting loss of use of such property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

b. Loss of use of tangible property that is not physically damaged. All such loss of use shall be deemed to occur at the time of the **Occurrence** or **Accident** that caused it.

34. **Wrongful Act**

Means: Any actual or alleged tortious error, act, omission, misstatement, misleading statement, neglect, or breach of duty committed by a **Covered Party**, including but not limited to violation of civil rights, **Employment Practices Violations**, misfeasance, malfeasance, or nonfeasance in the discharge of duties, individually or collectively, that results directly but unexpectedly and unintentionally in damages to others. All **Claims** involving the same **Wrongful Act** or a series of continuous or interrelated **Wrongful Acts**, by one or more **Covered Parties**, will be considered as arising out of one **Wrongful Act**. The **Wrongful Act** will be deemed to have occurred when it first takes place. Only one MOC issued by us, one **Deductible** and **Limit of Coverage** is applicable to any one **Wrongful Act**.

Liability coverage for **Wrongful Acts** is subject to the following exclusions in the Liability Coverages Common Conditions Form of the 2024-2025 MOC ("Common Exclusion(s)"):

EXCLUSIONS

All Liability Coverage Parts (General Liability, **Sexual Abuse**, **Wrongful Acts**, **Automobile**) included in the MOC are subject to any applicable exclusions in that Coverage Part and the following Exclusions, except as otherwise indicated:

The coverage under any Liability Coverage Part in the MOC does not apply to:

5. Damages of the following types:

a. Any costs, civil fines, penalties, or expenses levied or imposed against a **Covered Party** arising from any complaint or enforcement action from any federal, state, or local government regulatory agency;
b. Punitive damages, exemplary damages, or the multiplied portion of any damage award; or
c. Relief or redress in any form other than monetary damages, or for any fees, costs, or expenses which a **Covered Party** may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief;

d. Any fines and/or attorney fees awarded through any administrative hearing process including but not limited to the Washington Public Records Act and Open Public Meetings Act.
e. Back wages.

* * *

8. Any liability arising out of any criminal, fraudulent, dishonest act, or bad faith of a **Covered Party** or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation committed by or with the knowledge of a **Covered Party**.

This exclusion does not apply to the **Automobile** Liability Coverage Part.

However, we may defend the **Covered Party** until it has been determined or admitted in a legal proceeding that these acts were committed by the **Covered Party** or with the consent or knowledge of the **Covered Party**.

* * *

11. Any **Claim** for breach of contract. However, with respect to **Employment Practices Violations**, this exclusion does not apply to implied contracts or employment contracts that are not part of a collective bargaining agreement.

12.

a. Any liability arising from the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **Pollutants**; or

b. Any loss, cost, or expense arising out of any:

(1) Request, demand, or order that a **Covered Party** or 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
(2) Any **Claim** by or on behalf of a governmental authority or others for damages because of testing for monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of **Pollutants**.

c. With respect to the General Liability Coverage Part, this exclusion does not apply to:

(1) **Bodily Injury** or **Property Damage** caused by heat, smoke, or fumes from a Hostile Fire. As used herein, Hostile Fire means a fire which becomes uncontrollable or breaks out from where it was intended to be.

(2) **Bodily Injury** if sustained within a building owned or occupied by, or rented or loaned to, a **Covered Party** and caused by smoke, fumes, vapor, or soot from equipment used to heat that building.

(3) **Bodily Injury** or **Property Damage** that first occurs during the **Coverage Period** that results from chemicals used in the maintenance or cleaning of facilities; or the use of chlorine or other sanitizing or cleaning chemicals in swimming pool operation or maintenance.

(4) **Bodily Injury** or **Property Damage** that results from the testing of sewer lines that you own, operate, or maintain by use of artificially generated smoke when such testing meets the standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government that applies.

(5) In addition, we will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from the application or use of any pesticide or herbicide by or for you; if such application or use meets all legal or license requirements of any governmental agency or authority which apply to it.

(6) We will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from the back-up of sewage into a building from any sewage facility or sanitary sewer that you own, operate, or maintain.

However, we will not cover such **Bodily Injury** or **Property Damage** to the extent that it results from any corrosive or radioactive material or waste in the sewage.

(7) We will not apply this exclusion to injury or damage that results from the providing of or failure to provide firefighting or emergency response services at, on, or in any **Premises**, site, or location, other than a protected person's **Premises**.

(8) **Bodily Injury** or **Property Damage** that results from **Your Product** or completed work, other than waste products or completed work; or **Premises** liability that results from fire.

(9) In addition, we will not apply this exclusion to **Bodily Injury** or **Property Damage** that results from **Pollution** caused by fuels, lubricants, fluids, exhaust gases, or similar pollutants that: are needed for or result from the normal electrical, hydraulic, or mechanical functioning of a covered auto, other than the operations of specialized equipment; and escape, seep, or migrate, or are discharged, dispersed, or released, directly from a part of a covered auto designed by its manufacturer to hold, store, receive, or dispose of such Pollutants.

In addition, liability coverage for **Wrongful Acts** is subject to the following exclusions in the **Wrongful Acts** coverage part of the 2024-2025 MOC ("**Wrongful Act** Exclusion(s)"):

This Coverage Part does not apply to:

1. Any Wrongful Act for which coverage is provided under another Coverage Part of this MOC and any other MOC issued by us.

8. Any **Bodily Injury**, **Property Damage**, **Personal Injury**, or **Advertising Injury**, or any damages arising out of any **Bodily Injury**, **Property Damage**, **Personal Injury**, or **Advertising Injury** except to the extent that coverage is provided for **Employment Practice Violations**.

9. Any **Wrongful Act** based on or attributable to a **Covered Party** gaining profit, advantage, or remuneration to which a Covered Party is not entitled.

12. Any **Wrongful Act** arising out of actions taken as a participant, member, partner, director, or shareholder of any board, commission, partnership, association, or corporation, not operated by you and under your jurisdiction; except if the participant, member, partner, director, or shareholder serves on such board, commission, partnership, association, or corporation at your specific written request, and any other coverage is not available to cover a **Claim** for such person.

As an initial matter, because the Complaint includes allegations that the dispute between Coulee Dam and Elmer City existed for a number of years before Elmer City reported the lawsuit to CIAW in November 2025, it is possible that Coulee Dam made a **Claim,** as defined, against Elmer City during a coverage period before the 2024-2025 MOC year. If that is the case, the requirement that the Claim be first made and reported to CIAW during the 2024-2025 MOC coverage period is not met and there may be no coverage under the **Wrongful Acts** liability coverage part. CIAW reserves all rights accordingly. In addition, while the alleged conduct took place after the applicable September 1, 1991, Retroactive Date, there is an issue as to whether the allegations in the Complaint fall within the definition of **Wrongful**

Act in the 2024-2025 MOC because it does not appear that the alleged neglect, breach of duty, malfeasance or nonfeasance in the discharge of duties resulted directly but unexpectedly and unintentionally in damage to Coulee Dam. CIAW reserves all rights accordingly. Finally, these claims appear to arise out of a series of continuous and interrelated **Wrongful Acts** and therefore are considered to be a single **Wrongful Act**, subject to a single limit of liability of a single MOC. CIAW reserves all rights accordingly.

In addition, Common Exclusion 5 quoted above may apply to limit or preclude coverage for any claims that do not seek monetary relief or seek only declaratory or injunction relief. This includes Coulee Dam's first claim for relief. CIAW reserves all rights accordingly.

Common Exclusion 11 quoted above may apply to limit or preclude coverage for Coulee Dam's second claim for relief for Breach of Contract. CIAW reserves all rights accordingly.

Common Exclusion 8 quoted above may apply to limit or preclude coverage to the extent Coulee Dam alleges that in its ongoing dealings with Coulee Dam relating to the treatment of Elmer City's sewage, Elmer City acted dishonestly or with bad faith and/or to the extent Elmer City deliberately violated a federal or state statute. CIAW reserves all rights accordingly.

Common Exclusion 12 quoted above may apply to limit or preclude coverage to the extent Elmer City's sewage is considered a **Pollutant** that has been released and resulted in damage to Coulee Dam's treatment plant and to the extent that none of the exceptions within Common Exclusion 12 apply. In particular, while certain types of sewage back-ups may be subject to an exception from the application of this exclusion, **Property Damage** that results from the corrosive materials in the sewage is still subject to this exclusion. CIAW reserves all rights accordingly.

To the extent the allegations are covered under the General Liability coverage part of the 2018-2019 MOC, **Wrongful Act** Exclusion 1 quoted above may apply to limit or preclude coverage under the **Wrongful Acts** liability coverage part. CIAW reserves all rights accordingly. Similarly, to the extent the allegations allege **Property Damage**, **Wrongful Act** Exclusion 8 quoted above applies to preclude coverage under the **Wrongful Acts** coverage part. CIAW reserves all rights accordingly.

Wrongful Act Exclusion 9 quoted above may apply to preclude coverage for Coulee Dam's third claim for relief for Unjust Enrichment. CIAW reserves all rights accordingly.

Finally, **Wrongful Act** Exclusion 12 quoted above may apply to limit or preclude coverage to the extent Elmer City's operations in conjunction with Coulee Dam relating to sewage treatment constituted a partnership or association not operated by Elmer City. CIAW reserves all rights accordingly.

CIAW reserves the right to rely on each and every term of the 2024-2025 MOC, whether discussed in this letter or not.

III. Additional Reservation of Rights

Please note that this reservation of rights is not intended to provide an exhaustive list of all of the MOC provisions that may affect the availability of coverage. CIAW fully reserves the right to rely on any additional language, terms, conditions, or exclusions in the MOCs that may be relevant to the issues of coverage for this claim, and in no way waives any of its coverage defenses. The following may also operate to limit or bar coverage:

- Any coverage afforded by the MOCs is qualified by and/or subject to applicable limits, sublimits, and any retention and/or deductible provisions in the MOCs.
- To the extent there is other insurance or other coverage applicable to this matter, any coverage under the MOCs may be barred or limited pursuant to the "other insurance" provision in the MOCs.
- To the extent recovery is sought against Elmer City for punitive or exemplary damages, or civil or criminal penalties or fines, such recovery may be barred by applicable law, public policy, and/or the language of the MOCs.

CIAW also reserves the right not to pay any settlement if the settlement is not covered under the MOCs. In the event it is shown that some of the claims are covered and some are not, CIAW reserves the right to allocate between covered and non-covered claims. CIAW also reserves the right to modify this reservation of rights in the future.

Please submit copies of any legal invoices of Elmer City's general counsel related to Elmer City's defense in this matter for consideration.

Once you have had an opportunity to review this letter, please contact me at (509) 717-4045, with any questions or concerns regarding the issues discussed in this letter.

Sincerely,

Kumau McWilliams
Claims Adjuster
Clear Risk Solutions
on behalf of CIAW

/kes

cc: Scott Flage