



**WATER & SEWER
RISK MANAGEMENT POOL**

MEMORANDUM(S) OF COVERAGE

LIABILITY AND PROPERTY

2021-2022

(REVISED 11-1-2020)

WSRMP Liability Memorandum of Coverage

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 Water and Sewer Risk Management Pool, hereinafter called the Pool, will pay on behalf of the COVERED PARTY any LOSS, which the COVERED PARTY 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.

II. DEFENSE AND SETTLEMENT

The Pool shall have the right and duty to defend any suit against a COVERED PARTY, 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 Pool shall not be obligated to pay any claim or judgment 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.
- 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**;
 3. The expenses are not covered by other insurance or forms of coverage available to the **COVERED PARTY**; and
 4. The expenses will not exceed the sub-limits for **AUTOMOBILE MEDICAL PAYMENTS** set forth in the Declarations
- 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.

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

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

H. COVERED PARTY – means any ENTITY, COVERED INDIVIDUAL, FAMILY MEMBER or ADDITIONAL COVERED PARTY as those terms are defined herein.

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.

J. DEFENSE COSTS - means all fees and expenses caused by and relating to the adjustment, investigation, defense or appeal of a claim, including but not limited to attorney's fees, court costs, post judgment interest (but only that amount accruing after the entry of judgment and before the Pool 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 Pool pays. If the Pool makes an offer to pay the MAXIMUM COVERAGE LIMIT, the Pool 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 Pool or any COVERED PARTY nor expenses of claims administrators, attorneys or others engaged by any COVERED PARTY without the Pool'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. EMPLOYMENT RELATED PRACTICES - means DISCRIMINATION, SEXUAL HARASSMENT and/or WRONGFUL TERMINATION.
- M. ENTITY - means the organization named in the Declarations.
- N. 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.
- O. INTERLOCAL GOVERNMENTAL AGREEMENT means the agreement forming the Pool as a governmental pooling agency pursuant to the Washington Revised Code Section 48.62.
- P. LOSS - means the sum actually paid or payable in cash in the settlement or satisfaction of claims 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 Pool, after making proper deduction for all recoveries and salvages. LOSS shall also include DEFENSE COSTS.

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 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.

- Q. MAILING ADDRESS - the address of the ENTITY to which written notices may be mailed.
- R. MAXIMUM COVERAGE LIMIT – means the maximum limit of coverage shown in the Declarations and operates as set forth in Section V. herein.
- S. MEMORANDUM - means this MEMORANDUM of Liability Coverage for the Water and Sewer Risk Management Pool.
- 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 in BODILY INJURY or PROPERTY DAMAGE, 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.
- 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 if such byproducts have been or are being discharged, used, sold or otherwise distributed in accordance with applicable federal, state and local laws, regulations, permits, including, in 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. PUBLIC OR PRIVATE ROADWAY – means a roadway, street or highway owned, managed or maintained by (a) the federal, state, county, city or other local government; or (b) a private party other than a member district.
- CC. RESERVOIR - means any body of water, which contains, or will contain, the water impounded by a DAM.
- DD.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.
- 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. With respect to odorous POLLUTANTS, a series of two or more discharges, dispersals, releases or escapes, all of which are produced by or derived from the same cause and source and which take place in close proximity in time to each other, shall not be deemed to be SUDDEN AND ACCIDENTAL.

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 Pool 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 Pool's rights and duties for the defense of claims or suits, apply irrespective of the application of the **DEDUCTIBLE**.

Subject to the provisions of **CONDITION Q**, the Pool 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 Pool for such part of the **DEDUCTIBLE** as has been paid by the Pool.

V. MAXIMUM COVERAGE LIMIT

The Pool'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 under

Coverages A, B, C and D of this MEMORANDUM for all COVERED INDIVIDUALS 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.

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.

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.

- 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. Violation of the civil rights of any employee or official of a COVERED PARTY.
 4. **Workers' Compensation.** Any obligation for which a COVERED PARTY or the Washington State Department of Labor and Industries may be held liable under any workers' compensation or disability benefits law or any similar law. This exclusion does not apply where an employee of a COVERED PARTY is injured in the course of such employment where it is determined that the employee is not entitled to receive workers' compensation benefits.
 5. Ownership or operation of any airport.
 6. Ownership or operation of any hospital, clinic or established health care facilities by a COVERED PARTY.
 7. 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 VIII.A.7. does not pertain to levees or dikes which surround wastewater holding ponds.

8. Fines, punitive damages, penalties, exemplary damages or damage multiples such as double or treble damages awardable pursuant to statute, as well as costs and attorneys' fees awarded pursuant to the Washington Public Records Act (RCW 42.56).

9. PROPERTY DAMAGE to:
 - 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.
10. The ownership, operation, use or maintenance of any AIRCRAFT of any size or any watercraft over 26 feet in length.
11. The ownership, operation or use by a COVERED PARTY of any transit Pool, transit system or public transportation system.
12. The complete or partial failure of a COVERED PARTY to supply electricity or gas. Also any and all liability arising out of the interruption of a COVERED PARTY's electrical power or fuel.
13. The principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, and whether or not 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.
14. The hazardous properties of NUCLEAR MATERIAL.
15. War, insurrection, invasion, armed rebellion, revolution or terrorism.
16. Liability, including all loss, cost or expense, directly or indirectly arising out of, resulting as a consequence of, or related to:
 - a. Asbestos;
 - b. Silica;

whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

17. 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.
 18. Failure to perform, or breach of, a contractual obligation. However, this exclusion does not apply to liability for damages arising out of the failure to: 1) supply water; 2) supply sewage services.
 19. Activities outside the course and scope of a COVERED INDIVIDUAL's employment.
 20. Claims, demands or actions seeking relief or redress in any form other than money damages.
 21. Acts of fraud or dishonesty.
 22. The failure to effect, procure or maintain insurance or any other form of coverage against a risk of loss of any kind or nature.
- B. This MEMORANDUM also does not provide Coverage for LOSS under Coverage A. - BODILY INJURY and/or PROPERTY DAMAGE for:
1. Any claim or suit by employee(s) against any other employee(s).
 2. BODILY INJURY or PROPERTY DAMAGE which is either expected or intended from the standpoint of the COVERED PARTY.
 3. BODILY INJURY and PROPERTY DAMAGE if prior to the policy period a COVERED PARTY, or an employee authorized by the COVERD PARTY to give

or receive notice of an OCCURENCE or claim, knew that the BODILY INJURY or PROPERTY DAMAGE had occurred, in whole or in part. If such a COVERED PARTY or authorized employee knew, prior to the policy period, that the BODILY INJURY or PROPERTY DAMAGE occurred, then any continuation, change or resumption of such BODILY INJURY or PROPERTY DAMAGE during or after the policy period will be deemed to have been known prior to the policy period.

- a. BODILY INJURY or PROPERTY DAMAGE that occurs during the policy period and was not, prior to the policy period, known to have occurred by a COVERED PARTY, or an employee authorized by the COVERED PARTY to give or receive notice of an OCCURENCE or claim, includes any continuation, change or resumption of that BODILY INJURY or PROPERTY DAMAGE after the end of the policy period.
- b. BODILY INJURY or PROPERTY DAMAGE will be deemed to have been known to have occurred at the earliest time when a COVERED PARTY or an employee authorized by the COVERED PARTY to give or receive notice of an OCCURENCE or claim:(1) Reports all, or any part, of the BODILY INJURY or PROPERTY DAMAGE to us or any other insurer; (2) Receives a written or verbal demand or claim for damages because of the BODILY INJURY or PROPERTY DAMAGE; or (3) Becomes aware by any other means that BODILY INJURY or PROPERTY DAMAGE has occurred or has begun to occur."

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.
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. Either the actual or alleged use, misuse, or loss of funds, grants, or appropriations or for the return of such funds, grants, or appropriations for any reason; however, the Pool 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.
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 INTERLOCAL GOVERNMENTAL AGREEMENT and the PARTICIPATION AGREEMENT.

B. Inspection and Audit

The Pool 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 Pool 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. COVERED PARTY'S Duty in the Event of an OCCURRENCE, Claim or Suit

1. In the event of an OCCURRENCE reasonably likely to involve the Pool, the ENTITY and any other COVERED PARTY shall provide written notice to the Pool 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 Pool, but in any case the notice shall include all pertinent details of the OCCURRENCE known or readily accessible to the ENTITY or other COVERED PARTY. The notice shall be given as promptly as possible after the ENTITY or other COVERED PARTY becomes aware of the OCCURRENCE.
2. If a claim is made or suit brought against any COVERED PARTY, the ENTITY and any other COVERED PARTY shall immediately forward to the Pool every demand, notice, summons or other process received by the COVERED PARTY, ENTITY or ENTITY's representative.
3. The COVERED PARTY shall cooperate with the Pool and, upon its request, assist in enforcing any right of contribution or indemnity against any person or organization who may be liable to the COVERED PARTY because of an OCCURRENCE with respect to which Coverage is afforded under this MEMORANDUM; and the COVERED PARTY shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The COVERED PARTY shall not, except at its own cost, make any payment, assume any obligation or incur any expense.

D. Duties of the COVERED PARTY

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

E. Bankruptcy

Bankruptcy or insolvency of the ENTITY shall not relieve the Pool 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 the event that this MEMORANDUM is excess of other coverage or insurance, LOSS may consist of such other coverage or insurance. However, if the limits of the other coverage or insurance, or the amount collectible thereunder, is less than the ENTITY'S DEDUCTIBLE, the ENTITY shall bear the risk of the difference; if such limits or collectible amounts are greater than the ENTITY'S DEDUCTIBLE, the coverage under this MEMORANDUM is excess of the greater limit or amount. The coverage under this MEMORANDUM is not subject to the terms, conditions or limitations of any other coverage or insurance.

For the purposes of the Pool's reinsurance, the Pool's reinsurer considers LOSS to include other coverage or insurance, and such collectible coverage or insurance will erode the Pool's retention, or other financial obligation, to the reinsurer.

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

G. 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.

H. Cancellation

This MEMORANDUM may be canceled by the Pool in accordance with the INTERLOCAL GOVERNMENTAL AGREEMENT. The Pool 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 Pool shall be equivalent to mailing.

I. Action Against the Pool

No action shall lie against the Pool 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 Pool. No person shall have any right under this MEMORANDUM to join the Pool as a party to any action against a COVERED PARTY to determine a COVERED PARTY's liability, nor shall the Pool be impleaded by a COVERED PARTY or its legal representative.

J. 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 Pool's MAXIMUM COVERAGE LIMIT.

K. Subrogation

The Pool 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 neither the ENTITY nor any other COVERED PARTY shall do anything to prejudice the Pool's subrogation rights, and shall do everything necessary to secure those rights.

L. Assignment

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

M. 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 Pool, unless and until a written endorsement has been duly issued by the Pool and made a part of the MEMORANDUM.

N. Resolution of Disputes

In the event that a dispute arises between the COVERED PARTY and the Pool 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 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 COVERED PARTY and the Pool, which either party may decline to give in its absolute and sole discretion.

O. 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 Pool and the ENTITY relating to this Coverage.

P. Settlement of Claims

The Pool shall not effect a settlement of a LOSS, nor shall it pay all or any portion of an ENTITY's DEDUCTIBLE in settlement of a LOSS, unless:

1. The Pool has first notified the ENTITY of the Pool's intention to settle and has requested the consent of the ENTITY to the proposed settlement; and
2. The ENTITY has given its consent.

If, however, having been advised of the Pool's intention to settle, the ENTITY fails to give its consent to the proposed settlement, then upon the Pool's payment to the ENTITY of the amount the Pool would otherwise have paid to settle the LOSS, the Pool's duties to defend and indemnify are terminated and the ENTITY, and not the Pool, shall be solely responsible for the LOSS, whether or not the amount of the LOSS is less than or above the DEDUCTIBLE. Further, at that time, the Pool shall have no obligation to pay any additional amounts to defend or indemnify the ENTITY against the loss.

Q. Expenses Related to Coverage

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

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

R. 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.

S. Recovery of Payments Made by the Pool in Cases Where Coverage Does Not Exist

If the Pool has undertaken to defend a claim tendered to the Pool by the COVERED PARTY and the Pool 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 Pool shall be entitled to recover from the COVERED PARTY all payments made by the Pool 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 Pool had no duty to defend it.

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

The foregoing provisions do not apply unless:

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

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

Water and Sewer Risk Management Pool (WSRMP)

PROPERTY PROGRAM

MEMORANDUM OF COVERAGE

Form No. WSRMP 2021 – 22 PROP

07/01/21 to 7/01/22

DECLARATIONS

1. *Coverage Provider*

Water and Sewer Risk Management Pool (WSRMP) as now or may be hereafter constituted.

2. *Member Districts*

As per the “Schedule of Member Districts”

3. *WSRMP Mailing Address*

40 Lake Bellevue Drive, Suite 220, Bellevue, WA 98005

4. *Coverage Period*

July 1, 2021 to July 1, 2022, beginning and ending at 12:01 AM standard time.

5. *Territory*

This memorandum covers Real and Personal Property within the United States. Personal Property while in transit therein is extended to Worldwide coverage.

6. *Limits of Liability*

In no event shall liability for loss under this Memorandum of Coverage arising out of one “occurrence” (see APIP form Section II(F)) from all contributing coverages exceed \$25,000.

7. *Sublimits*

[If there are any sublimits less than \$25K, describe; otherwise omit this section.].

8. *Property Deductibles*

From each adjusted loss or claim for damage granted under this Memorandum of Coverage and occurring from any one loss, disaster or casualty, the following applicable amount(s) shall be deducted:

\$1,000, \$5,000,
\$10,000, or \$25,000 All Risk per occurrence for District property and automobiles, depending on Member Deductible as scheduled on the following page, except:

\$100,000 Flood per occurrence, All Flood Zones excluding Flood Zones A & V,

\$250,000 Flood per occurrence, Flood Zones A & V

5% Subject to \$100,000 minimum Earthquake Shock: The deductible will apply Per Occurrence on a Per Unit basis, as defined in the APIP form, subject to the stated minimum.

\$500,000 per occurrence for Unscheduled tunnels, bridges, dams, catwalks, (except those not for public use), roadways, highways, streets, sidewalks, culverts, street lights, and traffic signals unless a specific value has been declared (excluding coverage for the peril of Earthquake Shock, and excluding Federal Emergency Management Agency (FEMA) and/or Office of Emergency Services (OES) declared disasters)

*** NOTE: Pool Resolution No. 11-2016, attached to the Joint Protection Program and incorporated herein by reference, and in particular Section 6: If a member terminates any employee without first notifying WSRMP and obtaining a formal consultation with an employment practices attorney selected by WSRMP, or fails to follow the advice of the employment practices attorney, then the member shall be responsible for the first \$100,000 of claim and indemnity expenses for that claim, and that responsibility shall supersede the member's ordinary deductible for liability claims.

SCHEDULE OF DEDUCTIBLES BY MEMBER

Member Deductibles are listed in the table below. In addition to the specific property deductibles listed above, the following specific deductibles may apply to a member LOSS under the conditions or circumstances described:

Specific Liability Deductibles

1. **Pool Resolution No. 11-2016, attached to the Joint Protection Program and incorporated herein by reference, and in particular Section 6:** If a member terminates any employee without first notifying the Pool and obtaining a formal consultation with an employment practices attorney selected or approved by the Pool, or fails to follow the advice of the employment practices attorney, then the member shall be responsible for the first \$100,000 of claim and indemnity expenses for that claim, and that responsibility shall supersede the member's ordinary deductible for liability claims.

2. **Deductible for Damage to a PUBLIC OR PRIVATE ROADWAY.** If an otherwise covered LOSS results in damage to a PUBLIC OR PRIVATE ROADWAY, then the member shall be responsible for the costs of repairing the PUBLIC OR PRIVATE ROADWAY up to \$100,000, and that responsibility shall supersede the member's ordinary deductible for liability claims.

Member District	Ded	Member District	Ded
ACME WATER DISTRICT #18	1,000	LAKE WENATCHEE WATER DISTRICT	1,000
ALDERWOOD WATER & WASTEWATER DISTRICT	25,000	LAKE WHATCOM WATER & SEWER DISTRICT	5,000
BEACON HILL WATER AND SEWER DISTRICT	1,000	LENORA WATER AND SEWER DISTRICT	1,000
BELFAIR WATER DISTRICT #1	5,000	LEWIS COUNTY WATER-SEWER DISTRICT #4	5,000
BIRCH BAY WATER & SEWER DISTRICT	10,000	LEWIS COUNTY WATER DISTRICT #2	1,000
CAMANO VISTA WATER DISTRICT	5,000	MAGGIE LAKE WATER DISTRICT	1,000
CAPE SAN JUAN WATER DISTRICT	1,000	MACKAYE HARBOR WATER DISTRICT	1,000
CASCADE WATER ALLIANCE	25,000	MUKILTEO WATER AND WASTEWATER DISTRICT	1,000
CATTLE POINT WATER DISTRICT	1,000	NORTH PERRY AVENUE WATER DISTRICT	5,000
CEDAR RIVER WATER & SEWER DISTRICT	1,000	NORTHEAST SAMMAMISH SEWER & WATER DISTRICT	1,000
CHIPPEWA WATER & SEWER DISTRICT	1,000	POINT ROBERTS WATER DISTRICT #4	1,000
CLARK REGIONAL WASTEWATER DISTRICT	1,000	REGIONAL WATER SUPPLY SYSTEM	10,000
CLEARVIEW WATER SUPPLY AGENCY	5,000	RONALD WASTEWATER DISTRICT	5,000
CLINTON WATER DISTRICT	5,000	SAMMAMISH PLATEAU WATER	5,000

COAL CREEK UTILITY DISTRICT	10,000	SARATOGA WATER DISTRICT	1,000
COVINGTON WATER DISTRICT	25,000	SKAGIT COUNTY SEWER DISTRICT #1	5,000
COWICHE SEWER DISTRICT	1,000	SKYWAY WATER AND SEWER DISTRICT	1,000
CROCKETT LAKE WATER DISTRICT	1,000	SNOQUALMIE PASS UTILITY DISTRICT	5,000
CROSS VALLEY WATER DISTRICT	5,000	STEPTOE SEWER AND WATER DISTRICT	1,000
DISCOVERY CLEAN WATER ALLIANCE	25,000	SUNNYSLOPE WATER DISTRICT	1,000
EAST GIG HARBOR WATER DISTRICT	5,000	TERRACE HEIGHTS SEWER DISTRICT	10,000
FALL CITY WATER DISTRICT	1,000	TRAILS END WATER DISTRICT #2	1,000
FISHERMAN BAY SEWER DISTRICT	5,000	VALLEY WATER DISTRICT	10,000
GLACIER WATER DISTRICT	1,000	VASHON SEWER DISTRICT	1,000
GRAYS HARBOR COUNTY WATER DISTRICT #1	1,000	WALLA WALLA HOUSING AUTHORITY	1,000
GRAY'S HARBOR COUNTY WATER DISTRICT #2	5,000	WATER DISTRICT #19	5,000
GREATER BAR WATER DISTRICT	1,000	WEST SOUND UTILITY DISTRICT	25,000
HARTSTENE POINTE WATER & SEWER DISTRICT	1,000	WHATCOM COUNTY WATER DISTRICT #2	10,000
HIGHLANDS SEWER DISTRICT	1,000	WHATCOM COUNTY WATER DISTRICT #7	10,000
HIGHLAND WATER DISTRICT	1,000	WILLIAMS LAKE SEWER DISTRICT #2	5,000
HOLMES HARBOR SEWER DISTRICT	1,000	WOLLOCHET HARBOR SEWER DISTRICT	1,000
INCHELIUM WATER DISTRICT	1,000	WOODINVILLE WATER DISTRICT	1,000
JUNIPER BEACH WATER DISTRICT	1,000	WSRMP	1,000
KAPOWSIN WATER DISTRICT	1,000		
KING COUNTY WATER DISTRICT #54	5,000		
KING COUNTY WATER DISTRICT #90	5,000		
KING COUNTY WATER DISTRICT #125	1,000		
KITSAP SEWER DISTRICT #7	5,000		
KITTITAS WATER DISTRICT #5	1,000		
LAKE MERIDIAN WATER DISTRICT	1,000		

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SECTION I GENERAL CONDITIONS

1. Coverage Agreement

The Water and Sewer Risk Management Pool, is a municipal entity open to municipal or governmental or public entities or agencies which provide public water and/or sewer services in the state of Washington, and formed pursuant to RCW 48.62 and for the purpose of joint insurance and risk management,, hereinafter referred to as “WSRMP,” in return for the payment of premiums as they become due, in reliance upon the statements in the declarations made a part hereof and subject to all the terms and conditions of this Memorandum of Coverage, the Inner Local Agreement and Bylaws, agrees to provide first party, pooled self insurance coverage to the member districts against all risk of direct physical loss or damage to the property covered from external cause except as excluded herein.

Coverage is provided according to terms, conditions, definitions and exclusions contained in the “APIP USA Form No. 16 Master Policy Wording: Coverage Incepting from July 1, 2021 to July 1, 2022” also referred to as “Public Entity Property Insurance Program (PEPIP) Form No. 16” which is incorporated by reference (hereinafter referred to as “the APIP form”). Should any term in this Memorandum of Coverage conflict with the APIP form, the language in this Memorandum of Coverage will prevail.

Coverage includes Sections II, III, V, VI, and VII of the APIP form, subject to the conditions, definitions and exclusions in the APIP form.

2. Limits of Liability

This Memorandum of Coverage may contain sublimits applicable to specific locations, or specific coverages or specific causes of loss. Such limits shall be the total payable as a result of a single occurrence (or an annual aggregate of certain occurrences where so specified) and neither the Memorandum of Coverage limit nor any sublimits shall be increased by the application of one or more sublimits.

3. Losses Excluded

This Memorandum of Coverage does not cover loss or damage excluded under the terms of the APIP form.

4. *Assignment*

Assignment of interest under this Memorandum of Coverage shall not bind WSRMP until its consent is endorsed hereon.

5. *Loss Clause*

Except with respect to any aggregate limits of liability in this Memorandum of Coverage, any loss hereunder shall not reduce the limit.

6. *Other Insurance*

WSRMP shall not be liable for loss if, at the time of loss there is any other insurance that would attach if this coverage had not been in effect, except that this coverage shall apply only as excess and in no event as contributing coverage, and then only after all other insurance has been exhausted.

7. *Excess Insurance*

Permission is granted to the member district to have excess insurance over the limit(s) of liability set forth in this Memorandum of Coverage without prejudice to this Memorandum of Coverage and the existence of such insurance, if any, shall not reduce any liability under this Memorandum of Coverage.

8. *Underlying Insurance*

Permission is granted to the member district to purchase insurance on all or any part of the deductible and against all or any of the perils covered by this Memorandum of Coverage. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this Memorandum of Coverage.

If the limits of such underlying insurance exceed the deductible amount that would apply in the event of loss under this Memorandum of Coverage, then that portion which exceeds such a deductible amount shall be considered "other insurance."

9. *Inspection and Examination; Cooperation*

WSRMP shall be permitted, but not obligated, to inspect the member district's property and operations. Neither the right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the member district or others, to determine or warrant that such property or operations are safe.

WSRMP shall be permitted to inspect the premises and to examine and audit the member district's books and records at any time during the coverage period and an extension thereof and within three years after the final termination of the Memorandum of Coverage to verify the amount of recoveries of accounts receivable, valuable papers and records on which WSRMP has made any settlement or any other subject matter related to this coverage.

In the event of a loss or claim, the member district involved shall have a duty to cooperate with WSRMP in its investigation, examination and adjustment of the loss or claim. The member district's duty to cooperate is in addition to any other duty to cooperate as set forth in the APIP policy and WSRMP's Joint Protection Program. These duties include but are not limited to: (1) notifying the Pool as soon as practicable after the member becomes aware of any situation, circumstance or occurrence that may result in a property loss or other insurable loss; and (2) cooperating with the Pool in the investigation and adjustment of any reported potential or actual claim, suit or loss, including subrogation as set forth below.

10. *Protection of Property*

In case of actual or imminent danger of loss or damage, the member district shall take all necessary steps to preserve and protect property from any further damage. Expense necessarily incurred for such preservation or protection shall be borne equally by the member district and WSRMP, but any payment by WSRMP shall not be an additional amount of coverage and shall be subject to the deductible.

11. *Notice of Loss*

The member district shall immediately notify WSRMP by written notice of any occurrence, the cost of which is likely to result in payment by WSRMP under this Memorandum of Coverage.

12. *Abandonment*

There can be no abandonment of any property to WSRMP.

14. *Conformance*

The terms of this Memorandum of Coverage that are in conflict with the applicable statutes of the state wherein this Memorandum of Coverage applies, are hereby amended to conform to such statutes.

15. *Subrogation*

In the event of any payment under this Memorandum of Coverage, WSRMP shall be subrogated to all the member district's rights of recovery therefore against any person or organization, and the member district shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The member district shall do nothing after loss to prejudice such rights and shall cooperate with WSRMP in the prosecution of any subrogation claim or suit.

16. APIP USA

Coverage is not provided by WSRMP above the level of \$25,000 per occurrence for any loss, and any such coverage above \$25,000 is subject to the terms and conditions of the excess policy provided by APIP USA. To the extent that any loss exceeds \$25,000, if the loss is subject to a sublimit in the APIP USA policy, that sublimit will apply to the loss even if the sublimit is not referred to in this Memorandum.

17. Coverage as Applicable to WSRMP

All provisions of this Memorandum of Coverage are applicable to property of every kind and description owned by WSRMP, including personal property of others in WSRMP's care, custody and control, actual or constructive, to which WSRMP may have an obligation to insure, subject to a \$1,000 deductible per occurrence.