

MEMORANDUM OF LIABILITY COVERAGE ("MLC")

FOR THE

WASHINGTON COUNTIES RISK POOL ("WCRP") JOINT SELF-INSURANCE LIABILITY PROGRAM

DECLARATIONS

1. **MLC NUMBER:** 1617-RISKPOOL-KTCO
2. **MLC PERIOD:** From 12:00:01 a.m. on October 1, 2016
until 12:00:01 a.m. on October 1, 2017
3. **MEMBER COUNTY:** Kittitas County
C/o Board of County Commissioners
County Courthouse
205 W 5th Ave, Ste 108
Ellensburg, Washington 98926-2887
4. **LIMIT OF LIABILITY COVERAGE:** \$10,000,000 each occurrence
5. **DEDUCTIBLE:** \$25,000 each occurrence
6. **COVERAGES:** The joint self-insurance liability coverage as is afforded by this MLC is only for the coverages that are indicated below. WCRP's liability under this MLC shall be subject to all terms and conditions herein and any endorsements attached.
- a. **Bodily injury**
 - b. **Personal injury**
 - c. **Property damage**
 - d. **Errors and omissions**
 - e. **Advertising Injury**
7. **DEFINITION OF TERMS:** Terms appearing in bold type in the provisions of this MLC shall be interpreted only as defined in Section 6, DEFINITIONS.
8. **MLC COMPOSITION:** This MLC consists of this Declarations page, the Coverage Form and applicable endorsements.

Dated this 28th day of September, 2016.

WASHINGTON COUNTIES RISK POOL

By: 
Keith Goehner, Py2017 President



**WASHINGTON
COUNTIES
RISK POOL**

Created by Counties for Counties

**2016-17
MEMORANDUM OF
LIABILITY COVERAGE**

**Washington Counties Risk Pool
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360-292-4500, FAX 360-292-4501
www.wcrp.info**

**MEMORANDUM OF
LIABILITY COVERAGE
FOR THE
WASHINGTON COUNTIES RISK POOL
JOINT SELF-INSURANCE
LIABILITY PROGRAM**

NOTICE: THE FOLLOWING LIABILITY COVERAGES ARE PROVIDED BY THE WASHINGTON COUNTIES RISK POOL, A JOINT SELF-INSURANCE PROGRAM AUTHORIZED BY RCW 48.62.031, IN CONSIDERATION OF THE ASSESSMENTS CONTRIBUTED BY THE MEMBER COUNTIES AND THEIR STATUS AS SIGNATORY PARTIES TO THE INTERLOCAL AGREEMENT. THE WASHINGTON COUNTIES RISK POOL IS NOT AN INSURANCE COMPANY, AND THIS DOCUMENT IS NOT AN INSURANCE POLICY.

COVERAGE FORM

1. JOINT SELF-INSURING AGREEMENT: The Washington Counties Risk Pool ("Pool" or "WCRP") shall pay on behalf of the **member county** and other **protected parties** identified in Section 2 below, subject to the terms and conditions of this Memorandum of Liability Coverage ("MLC"), all sums of monetary damages which a **protected party** shall become obligated to pay by reason of liability imposed by law or by reason of liability assumed under an indemnity contract for bodily injury, personal injury, property damage, errors and omissions, and advertising injury caused by an **occurrence** during the MLC period and occurring anywhere in the world, but only if a **suit** arising out of such occurrence is brought in the United States or Canada. The Pool may at its discretion investigate any **occurrence** and settle any claim or **suit** that may result and shall defend any **suit** against the **protected party** seeking monetary damages on account of any of the five coverages identified above, or any combination thereof.

A. Monetary damages shall include:

1. All judgments, settlements, **defense costs**, and expenses incurred by the Pool, all costs taxed against the **protected party** in any **suit** defended by the Pool, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Pool has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Pool's liability thereon;
2. Premiums on appeal bonds required in any such **suit**, and premiums on bonds to release attachments in any such **suit** for an amount not in excess of the limit of liability of this MLC, but the Pool shall have no obligation to apply for or furnish any such bonds; and

3. Expenses incurred by the **protected party** for first aid to others at the time of an **occurrence** of **bodily injury** to which this MLC applies; and

4. Reasonable expenses incurred by the **protected party** at the request of the Pool to assist the Pool in the investigation or defense of the claim or **suit**, including actual loss of earnings up to \$250 per day because of time off from work.

However, the amount the Pool shall be obligated to pay for monetary damages is limited as set forth in Section 3 below, and any defense provided by the Pool is fully satisfied and discharged when the Pool has used up the limit of liability coverage in the payment of judgments, settlements, **defense costs** or expenses under this MLC. This applies to both claims and **suits** pending at that time and any filed thereafter arising out of the same **occurrence**.

B. Monetary Damages shall not include:

1. **Penalties**; and
2. **Nominal Damages**.

C. Except as enumerated in this subsection, this MLC does not apply to claims, **suits**, demands or actions seeking relief or redress in any form other than monetary damages. Nor does this MLC pay for any fees, costs or expenses (including **defense costs**) which a **protected party** may become obligated to pay as the result of an adverse judgment for declaratory or equitable relief. However, subject to all of the other terms and conditions of this MLC, the Pool shall pay **defense costs** for **suits** requesting declaratory or equitable relief in addition to a request for monetary damages.

D. If, under any circumstances, it is determined that any employee of the **member county** is injured in the course of his or her employment but is not entitled to receive (or elects not to accept) the benefits provided by the workers' compensation law, then this MLC shall cover the legal liability of the **member county** for such **bodily injury**, disease, or death and pay on behalf of the **member county** all sums which the **member county** shall become legally obligated to pay as damages and expenses, except as otherwise provided by the MLC.

E. An **occurrence** that takes place during more than one MLC period will be deemed for all purposes to have taken place during the most recent MLC period in which any part of the **occurrence** took place, and shall be treated as a single **occurrence** during such MLC period. No **occurrence** will be deemed to have taken place after the **protected party** has knowledge of the alleged **bodily injury, property damage, personal injury, errors and omissions, or advertising injury** that gave rise to the **occurrence**.

2. PROTECTED PERSONS AND ORGANIZATIONS: This MLC shall provide liability coverage to:

A. The county identified as a **member county** in the Declarations;

B. All past and present employees, elected and appointed officials, and volunteers, whether or not compensated, while acting or in good faith purporting to act within the scope of their official duties for the **member county** or on its behalf, including, but not limited to, all commissions, agencies, districts, authorities, boards (including the governing board) or similar entities which operate under the member county's supervision or control. This includes, but is not limited to, the following:

1. The "local health officer" as defined by RCW 70.05.050, and the "administrative officer" as defined by RCW 70.05.040.

2. With respect to any **automobile** owned or leased by the **member county** or loaned to or hired for use by it or on its behalf, any person while operating, maintaining or using such **automobile** with the permission of the **member county** and any person or organization legally responsible for such permissive operation, maintenance or use, but this coverage does not apply to:

a. 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; or

b. The owner or any lessee, other than the **member county**, of any **automobile** hired by or loaned to the **member county** or to any agent or employee of such owner or lessee;

provided, however, that such liability coverage as is provided by this MLC involving the operation, maintenance or use of an **automobile** shall be excess to any other collectible liability coverage or insurance available to the **protected party**.

3. The Pool, all directors, officers, employees, and agents of the Pool, all persons serving at the request of the Pool, and all persons serving at the request of the Pool as members, directors, officers, employees, agents, or trustees of another pool, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, but only while acting in an official capacity therefor.

4. Spouses of **protected parties** but only for vicarious liability for an **occurrence** imposed by virtue of the community property laws of the state.

3. LIMIT OF LIABILITY COVERAGE:

A. The total limit of liability coverage of the Pool under this MLC for monetary damages resulting from any one **occurrence** shall not exceed Ten Million Dollars (\$10,000,000). This shall be true regardless of:

1. The number of persons or organizations who are **protected parties** under this MLC;

2. The number of coverages provided under this MLC;

3. The number of claims made and **suits** brought against any or all **protected parties**; and

4. The number of persons or organizations making claims or bringing **suits**.

B. In determining the limit of liability of the Pool, all injuries, damages and losses arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one **occurrence**.

C. There is no limit to the number of **occurrences** during the MLC period for which claims may be made.

4. DEDUCTIBLE: After the Pool pays monetary damages on behalf of the **member county** or other **protected parties**, the **member county** shall reimburse the Pool for the total expended by the Pool up to the amount of the **member county's** deductible specified in the Declarations.

5. EXCLUSIONS: This liability coverage does not apply to:

A. **Aircraft Activities.** Liability arising out of the ownership, maintenance, loading or unloading or operation of any **aircraft**, airfields and runways, or hangars or buildings in connection with **aircraft** ownership, maintenance, loading or unloading or operation of any **aircraft**.

B. **Employment Relations.**

1. Any obligation of the **protected party** under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

2. Except as provided in section 1.D and except for claims brought under the Jones Act, 46 USC § 688, **bodily injury** to an employee of any **member county** arising out of and in the course of employment by the **member county**. This exclusion shall not apply to a third-party claim brought by an employee of one **member county** against a separate **member county**.

3. **Bodily injury** suffered or caused by any person knowingly employed by the **member county** in violation of any law as to age, or under

the age of fourteen (14) years regardless of any such law.

4. Any claim recoverable under the insurance provisions of any workers' compensation or occupational disease law or under the United States Longshore and Harbor Workers' Compensation Act or any other insurance available for the protection of the **member county**.

5. Any premium, assessment, penalty, fine or other obligation imposed by any workers' compensation law.

6. Any claim for **bodily injury** with respect to which the **member county** is deprived of any defense or defenses or is otherwise subject to penalty because of default in premium payment under, or any other failure to comply with the provisions of the workers' compensation laws of the State of Washington.

7. Past salary or wages due.

8. Benefits payable under an employee benefit plan.

9. Liability imposed under the Employee Retirement Income Security Act of 1974 and any law amendatory thereof.

10. Liability of a **protected party** for **personal injury, advertising injury or errors and omissions** if such liability is alleged by another **protected party** and arises out of conduct that, based upon an objective standard, is wanton, willful, reckless, malicious, or grossly negligent. This exclusion shall not apply to the **member county**. Without limiting the foregoing in any manner, the Pool shall have the right and duty to defend any such suit brought against a **protected party**.

C. Pollutants.

1. Liability arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:

a. At or from premises owned, rented or occupied by the **protected party**.

b. At or from any site or location used by or for the **protected party** or others for the handling, storage, disposal, processing or treatment of waste.

c. Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the **protected party** or any person.

d. At or from any site or location on which the **protected party** or any contractor(s) or subcontractor(s) working directly or indirectly on its behalf are performing operations:

(1) If the **pollutants** are brought on 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 **pollutants**.

This exclusion does not apply to loss or injury caused by heat, smoke or fumes from a **hostile fire**, or liability for **personal injury or bodily injury** and **property damage** arising out of collision, upset or overturn of any **automobile or mobile equipment**, or arising from acts or omissions of **member county** noxious weed control boards activated pursuant to Chapter 17.10 RCW, and **member county** employee roadside spraying, while performing, or in good faith purporting to perform, their official duties.

2. Any loss, cost or expense arising out of any governmental direction or request that a **protected party** tests for, monitors, cleans up, removes, contains, treats, detoxifies or neutralizes **pollutants**.

D. Watercraft. Liability arising out of ownership, maintenance or use, including loading or unloading, of watercraft over forty-nine (49) feet in length.

E. Property Loss. **Property damage** to:

1. Property owned by the **member county**, or

2. Property rented or leased by the **protected party** where it has assumed liability for damage to or destruction of such property unless it would have been liable in the absence of such assumption of liability, or

3. Property in the care, custody or control of the **protected party**. This exclusion does not apply to non-owned automobiles, recreational vehicles or boats and trailers that are in the care, custody or control of the **member county** or in the **member county's** custody as part of the operations of impound lots or seizure activities.

F. Taking of Property. Liability arising out of or in any way connected with any operation of the principles of eminent domain, condemnation proceedings or **inverse condemnation**, by whatever name called, and whether or not liability accrues directly against any **member county** by virtue of any agreement entered into by or on behalf of any **member county**.

G. Certain Municipal Activities. Liability arising out of:

1. Public Housing, or

2. The activities of a Public Transit Authority, as defined in RCW 36.57.020 or Public Transportation Benefit Area Authority, as defined in RCW 36.57A.010(2), or

3. Ferry Systems, or
4. Sanctioned **Vehicle** Racing events at designated **vehicle** racing facilities, or
5. Horse Racing licensed by the Washington Horse Racing Commission pursuant to Chapter 67.16 RCW, or
6. Carnival or Mechanical Amusement Devices, or
7. Rodeos.

This exclusion shall not apply to spectator liability arising out of **vehicle** racing, horse racing, carnival or mechanical amusement devices, or rodeos.

H. Publication of Material. Personal injury or advertising injury arising out of:

1. Oral or written publication of material, if done by or at the direction of the **protected party** with knowledge of its falsity, or
2. Oral or written publication of material whose first publication took place before the beginning of the MLC period.

However, any fact pertaining to any one **protected party** shall not be imputed to any other **protected party** for the purpose of determining the application of this exclusion.

I. Revenue Refunds. Refund of taxes, fees or assessments.

J. Punitive Damages. Liability for punitive or exemplary damages, except to the extent that the **member county** is legally liable therefore, because of the conduct of its officers, employees or volunteers. The exception to this exclusion does not apply to any agreement by a member county, pursuant to RCW 4.96.041 or otherwise, to pay an award for punitive or exemplary damages entered against an officer, employee, volunteer or any other individual or organization other than the **member county** itself.

K. Improper Financial Gain. Liability arising in whole, or in part, out of any **protected party** obtaining remuneration or financial gain to which the **protected party** was not legally entitled. However, any fact pertaining to any one **protected party** shall not be imputed to any other **protected party** for the purpose of determining the application of this exclusion.

L. Police Duty. Liability incurred by any **protected party** arising out of the performance of any act or services of police duty for any person or organization other than the **member county**. This exclusion shall not apply if the act or service arises as the result of a mutual law enforcement assistance agreement or contract with other units of government.

M. Willful Penal Violations and Fraud. Liability arising out of the willful violation of any penal statute or ordinance or liability for acts of fraud committed by or at the direction of any **protected party**.

N. Asbestos.

1. Any liability for **property damage** or **bodily injury** at any time arising out of the manufacture, mining, use, sales, installation, removal or distribution of, or exposure to, asbestos, asbestos products, asbestos fibers or asbestos dust; or

2. Any obligation of the **protected party** to indemnify any party because of damages arising out of such **property damage** or **bodily injury**, at any time as a result of the manufacture, mining, use, sales, installation, removal or distribution of, or exposure to, asbestos, asbestos products, asbestos fibers or asbestos dust; or

3. Any obligation to defend any **suit** or claim against the **protected party** alleging **bodily injury** or **property damage** and seeking damages, if such **suit** or claim arises from **bodily injury** or **property damage** resulting from or contributed to or by any and all manufacture, mining, use, sales, installation, removal or distribution of, or exposure to, asbestos, asbestos products, asbestos fibers or asbestos dust.

O. Willful Civil Violations. Liability arising out of the willful or wanton violation of any civil statute, ordinance or regulation.

P. War and Uprisings. Liability due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

Q. Expected or Intended Acts. **Bodily injury, property damage, or errors and omissions** expected or intended from the standpoint of the **protected party**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

R. Official Bonds. Liability of the **protected party** or a surety for the **protected party** arising out of any claim, **suit**, demand, or action to recover on an official bond.

S. Budget Overexpenditures. Liability of the **protected party** or a surety for the **protected party** arising out of expenditures made, liabilities incurred, or warrants issued in excess of budget appropriations.

T. Sale of Alcoholic Beverages. Liability arising out of the sale of alcoholic beverages by any **protected party**.

U. Landfill, transfer station and drop box operations. **Bodily injury, property damage, personal injury and advertising injury** arising out of ongoing or completed landfill, transfer station or drop box operations, regardless of whether such operations are conducted by

the **member county** or on its behalf; conducted for the **member county** or for others; or conducted by a tenant or other entity under contract with the **member county**. This exclusion does not apply to damage or injury arising out of the loading or unloading of motor vehicles at a landfill, transfer station or drop box location and to persons at landfill, transfer station or drop box locations for that purpose.

V. Nuclear Energy.

This MLC shall not apply to **bodily injury, personal injury, property damage, errors and omissions or advertising injury**:

1. With respect to which the **member county** under the MLC is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be insured under any such policy but for its termination upon exhaustion of its limit of liability; or
2. Resulting from the hazardous properties of nuclear material and with respect to which:
 - a. Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b. The **member county** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
3. Resulting from the hazardous properties of nuclear material, if:
 - a. The nuclear material:
 - (1) is at any nuclear facility owned by, or operated by or on behalf of, the **member county**; or
 - (2) has been discharged or dispersed therefrom.
 - b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the **member county**; or
 - c. The **bodily injury or property damage** arises out of the furnishing by a **protected party** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America,

its territories or possessions or Canada, this exclusion (c) applies only to **property damage** to such nuclear facility and any property thereat.

4. As used in this exclusion:

- a. "Hazardous properties" include radioactive, toxic or explosive properties;
- b. "Nuclear material" means source material, special nuclear material or by-product material;
- c. "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- d. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- e. "Waste" means any waste material:
 - (1) Containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for this source material content; and
 - (2) Resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility;
- f. "Nuclear Facility" means:
 - (1) Any nuclear reactor;
 - (2) Any equipment or device designed or used for:
 - (a) Separating the isotopes of uranium or plutonium;
 - (b) Processing or utilizing spent fuel; or
 - (c) Handling, processing or packaging wastes;
 - (3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **protected party** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and

(5) Includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

g. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

h. "Property damage" as used in this exclusion includes all forms of radioactive contamination of property.

W. Railroad Lines. Bodily injury, personal injury, property damage, errors and omissions, or advertising injury arising out of the operation or maintenance or use of railroad lines, including bridges, trestles or other structures supporting railroad lines. However, this exclusion shall not apply to bodily injury, personal injury, property damage, errors and omissions, or advertising injury arising solely out of the member county's ownership of a railroad line, including a bridge, trestle or other structure supporting a railroad line, and only if such liability is asserted on the basis of vicarious liability.

X. Contractual Disputes. Any liability to a party to a contract or agreement with a member county, whether for bodily injury, property damage, errors and omissions, personal injury or advertising injury, arising in whole or in part, out of an alleged failure to pay, an alleged failure to perform, or an alleged default, under the contract or agreement, whether intentional or accidental. This exclusion does not apply to claims for monetary damages by reason of liability assumed under an indemnity contract as contemplated in Paragraph 1 of this MLC.

Y. Quantum Meruit. Any claim, whether for bodily injury, property damage, errors and omissions, personal injury, or advertising injury, which seeks to hold a protected party liable for Quantum Meruit. For purposes of this exclusion, Quantum Meruit is defined as a remedy implied by law for the payment of the value of services rendered in the absence of any contract or agreement between the claimant and a protected party.

Z. Financial Instruments. Any liability for bodily injury, personal injury, property damage, errors or omissions, or advertising injury arising in whole or in part out of a member county's guarantee or, or offer to guarantee, or sale of, or offer to sell: loans, mortgages, bonds, securities or any other financial instruments.

AA. Debt Financing. Any liability, whether for bodily injury, personal injury, property damage, errors or omissions, or advertising injury, arising out of any

type of debt financing issued by or for the member county. Debt financing includes, but is not limited to, bonds, debentures, guarantees of debt or notes.

6. **DEFINITIONS:** When used in this MLC, including endorsements forming a part hereof:

"accident" includes continuous or repeated exposure to the same conditions resulting in bodily injury or property damage the protected party neither expected nor intended.

"advertising injury" means (1) libel, slander or defamation, (2) any infringement of copyright or of title or of slogan, (3) piracy or unfair competition or idea misappropriation under an implied contract, or (4) any invasion of right of privacy, committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast arising out of the protected party's advertising activities.

"aircraft" means a vehicle designed for the transport of persons or property principally in the air.

"assessment" shall have the meaning described in Section 7 of this MLC.

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"bodily injury" means physical trauma, sickness, disease or shock sustained by any person which occurs during the MLC period, including death at any time resulting therefrom and, if arising out of the foregoing, mental anguish and emotional injury.

"defense costs" means all fees and expenses caused by and relating to the adjustment, investigation, defense or litigation of a claim or suit including attorneys' fees, court costs and interest on judgments accruing after entry of judgment. Defense costs shall not include the office expenses of the Pool or the member county or the salaries of employees or officials of the Pool or any protected party.

"disciplinary proceedings" means all proceedings before the entity or entities established by constitutional provision, statute, court rule or professional society or association, to investigate, review or impose disciplinary sanctions for professional misconduct.

"errors and omissions" means any error, misstatement, misleading statement or act or omission, neglect or breach of duty committed, attempted or allegedly committed or attempted by a protected party.

"hostile fire" means a fire which becomes uncontrollable or breaks out from where it was intended to be confined.

"indemnity contract" means a contract or agreement in which the member county has agreed to assume the

tort liability of another party to pay monetary damages for **Bodily Injury, Personal Injury, Property Damage, Errors or Omissions or Advertising Injury** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

"inverse condemnation" means a claim by anyone other than a **protected party** that a **protected party** has taken or diminished the value of land through land use restrictions on such land or use of adjacent land or air space by a **protected party**.

"member county" means the county identified as a member of the Pool in the Declarations.

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **member county** including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); bulldozers, graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; farm machinery; street sweepers or other cleaners; forklifts; and geophysical exploration and well-servicing equipment.

"nominal damages" means a small or token sum sought as damages where a legal right has allegedly been infringed but no real or substantial monetary loss is claimed.

"occupying" means in, upon, or getting in, on, out, or off.

"occurrence" means an **accident**, including continuous or repeated exposure to substantially the same conditions, which results in **bodily injury, property damage, or errors and omissions**. With respect to **personal injury and advertising injury**, **"occurrence"** means an event, including continuous or repeated exposure to substantially the same conditions.

"penalties" means any monetary fine, penalty or other monetary award for anything other than compensatory damages to an injured party or person and/or any award of attorney fees and costs to a prevailing party seeking a fine, penalty or non-compensatory damages award against a **member county**. **"Penalties"** also includes any monetary award, cost, fine or penalty arising out of, or occurring, in whole or in part, due to a violation of the Open Public Meetings Act (RCW 42.30) or the Public Records Act (RCW 42.56).

"personal injury" means: (1) False arrest, false imprisonment, wrongful eviction, wrongful entry, wrongful detention, malicious prosecution, or defective

service of process; (2) Libel, slander, defamation of character, humiliation or the invasion of the rights of privacy, unless arising out of advertising, broadcasting or telecasting activities; (3) Assault or battery by an employee or agent of the **member county**, provided that the **member county** is held legally liable therefor and that the assault or battery was not committed by or at the direction of the **member county**, except when committed for the purpose of protecting life or property owned by or otherwise in the care, custody or control of the **member county**; (4) Discrimination or violation of Civil Rights protected by 42 U.S.C. 1981, et seq., or state law; or (5) Violation of property rights.

"pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot fumes, acids, alkalis, chemicals and waste and hazardous waste. Waste includes materials to be stored, recycled, reconditioned, reclaimed or discarded.

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the MLC period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by an **occurrence** during the MLC period.

"protected party" means any person or organization identified in Section 2 of this MLC and includes the **member county**.

"suit" means a civil proceeding in which monetary damages are alleged because of **bodily injury, property damage, personal injury, errors and omissions or advertising injury** to which this MLC and its self-insurance liability coverage applies. **Suit** includes an arbitration proceeding alleging such damages to which the **protected party** must submit or submit with the Pool's consent.

"vehicle" means every device in, upon or by which any person is or may be transported. "Vehicle" does not include an animal.

7. CONDITIONS AND RESPONSIBILITY:

A. Compliance with Claims Handling Policies and Procedures:

Every **protected party** shall comply with the Pool's Claims Handling Policies and Procedures in all respects.

B. Protected Party's Duties in the Event of Occurrence, Claim or Suit:

1. In the event of an **occurrence**, written notice containing particulars sufficient to identify the **protected party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **protected party** to the

Pool or any of its authorized agents as soon as practicable.

2. If claim is made or suit is brought against the **protected party**, the **protected party** shall immediately forward to the Pool every demand, notice, summons or other process received by it or its representative.

3. The **member county** shall have the right to waive the coverage afforded by this MLC's self-insurance liability coverage as to any particular claim or lawsuit; provided, however, that any such waiver must:

- a. occur after the particular claim or lawsuit is received by the Pool; and
- b. be in a writing signed by the member county's legislative authority on a form which:
 - (1) shall contain a complete release of any liability arising out of or relating to the underlying claim or lawsuit on the part of the Pool, its directors and officers, employees, agents, attorneys, successors, or any other person serving on behalf the Pool, other member counties, or any reinsurer of the Pool; and
 - (2) shall contain provisions in which the **member county** holds harmless, defends and indemnifies the Pool, its directors and officers, employees, agents, attorneys, successors, or any other person serving on behalf the Pool, other member counties, or any reinsurer of the Pool from any and all claims, demands, losses, and liabilities to or by third parties arising from, or connected with the underlying claim or lawsuit.

Until such time as the coverage for a particular claim or lawsuit is waived under this Section, expenses and costs incurred associated with that claim or lawsuit shall be paid by the Pool in accordance with the terms and conditions of the applicable MLC.

4. The **protected party** shall cooperate with the Pool in all respects, including, upon the Pool's request, in the appointment of the Pool's designated defense counsel, assisting in the making of settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **protected party** because of injury or damage with respect to which liability coverage is afforded under this MLC; and the **protected party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **protected party** shall not, except at its own cost, voluntarily make

any payment, assume any obligation or incur any expense other than for first aid to others at the time of an occurrence of **bodily injury**.

5. It is a condition of coverage under this MLC that any person or organization which is defined as a **protected party** under Section 2 of this MLC be acting or in good faith purporting to act within the scope of their official duties for the **member county** or on its behalf at the time of the occurrence.

6. If a **member county** denies the request of a person or organization made pursuant to RCW 4.96.041 and does not authorize defense at the expense of the **member county** or approval of payment of any related monetary judgment, the **member county** shall immediately advise the Pool in writing of its determination. If the Pool disagrees with the **member county's** determination, the **member county** at its own expense shall defend the **member county's** determination and pay all sums of monetary damages, including any attorney fees and costs awarded to such person or organization, which the **member county** may become obligated to pay by reason of liability imposed by law for the denial.

C. Action Against Pool: No action shall lie against the Pool unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this MLC, the Interlocal Agreement creating the Pool and the Membership Compact, the Pool's Bylaws, and the Pool's Claims Handling Policies and Procedures, nor until the amount of the **protected party's** obligation to pay shall have been finally determined either by judgment against the **protected party** after actual trial or by written agreement of the **protected party**, the claimant and the Pool.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this MLC to the extent of the liability coverage afforded by this MLC. No person or organization shall have any right under this MLC to join the Pool as a party to any action against the **protected party** to determine the **protected party's** liability, nor shall the Pool be impleaded by the **protected party** or its legal representative. Bankruptcy or insolvency of the **protected party** or of the **protected party's** estate shall not relieve the Pool of any of its obligations hereunder.

D. Other Liability Coverage: The liability coverage afforded by this MLC is secondary to and excess of any valid and collectible insurance or other liability coverage which is available to the **protected party**.

When both this MLC and other joint self-insurance liability coverage apply to the loss on the same basis, unless a prior agreement between the two or more member entities subject to the joint self-insurance programs provides otherwise, the Pool shall not be liable under this MLC for a greater proportion of the loss than would be payable if each joint self-insurer

contributes an equal share until the share of each joint self-insurer equals the lowest applicable limit of liability under any one liability coverage document or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining joint self-insurers then continue to contribute equal shares of the remaining amount of the loss until each such joint self-insurer has paid its limit in full or the full amount of the loss is paid. Provided, however, this paragraph shall not prevent the two or more joint self-insurance programs from agreeing to allocate defense expenses and indemnity in a different manner nor shall this paragraph limit any such allocation as may be judicially determined at a later date.

E. Declarations: By acceptance of this MLC, the **member county** agrees that the statements in the Declarations are its agreements and representations, that this MLC is issued in reliance upon the truth of such representations and that this MLC embodies all agreements existing between itself and the Pool or any of its agents relating to this joint self-insurance liability coverage program.

F. Separation of Interests: Except with respect to the limit of joint self-insurance liability coverage and any rights or duties specifically assigned to the **member county**, this MLC applies:

1. As if each **protected party** were the only **protected party**, and
2. Separately to each **protected party** against whom claim is made or suit is brought.

G. Subrogation: In the event the Pool pays any claim on behalf of a **protected party**, the Pool shall be subrogated to the extent of such payment to all the rights of the **protected party** against any person or other entity legally responsible for damages arising under the claim. The **protected party** shall render all reasonable assistance, other than pecuniary assistance, to effect recovery on the subrogated claims.

H. Non-renewal: If the Pool decides not to renew this MLC, the Pool will mail or deliver to the **member county** written notice of the nonrenewal not less than thirty (30) days before the expiration date. Even if the Pool does not comply with these terms, this MLC will terminate:

1. On the expiration date, if:
 - a. The **member county** has notified the Pool that it does not want to renew this MLC;
 - b. The Pool mails notice of the contributory assessment for renewal due to the **member county** not more than forty-five (45) days or less than ten (10) days before the expiration date which states that the liability coverage will end if the **member county** has not paid the renewal assessment before such expiration date.

2. On the effective date of any insurance policy issued as replacement for any liability coverage offered by this MLC, with respect to liability coverage to which the insurance policy and this MLC both apply.

If notice is mailed, proof of mailing will be sufficient proof of notice.

I. Cancellation: This MLC may be cancelled by the Pool by mailing to the **member county** at the address shown in this MLC, written notice stating when such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. Delivery of such written notice by the Pool shall be equivalent to mailing.

J. Withdrawal: After the initial sixty-month period of membership, a **member county** may withdraw at the end of any Pool fiscal year, provided it has given the Pool a twelve-month written notice of its intent to withdraw.

K. Changes: Notice to any agent or knowledge possessed by an agent or by any other person shall not effect a waiver or a change in any part of this MLC or stop the Pool from asserting any right under the terms of this MLC; nor shall the terms of this MLC be waived or changed, except by endorsement issued to form a part of this MLC.

L. Assessability: The Pool, in accordance with RCW 48.62.141, is an assessable joint self-insurance pool. The Pool may at any time, even after cancellation or non-renewal by the **member county** or by the Pool, further assess the **member county** for amounts needed to fund MLC periods during which the Pool covered the **member county**. Assessments shall be prorated in accordance with procedures and methods determined by the Pool's Board of Directors.

M. Inspection and Audit: The Pool shall be permitted but not obligated to inspect the **member county's** property and operations at any time. Neither the Pool's right to make inspections nor the making thereof nor any report thereon shall constitute and undertaking, on behalf of or for the benefit of the **member county** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Pool may examine and audit the **member county's** books and records at any time during the MLC period and extensions thereof and within three (3) years after the final termination of this MLC, as far as they relate to the subject matter of this joint self-insurance liability coverage.

N. Assessment: All assessments, reassessments or other form of contribution for this MLC shall be computed in accordance with the Pool's rules, rates, rating plans, and assessment formulas applicable to the liability coverage afforded herein.

An assessment designated in this MLC as an "advance assessment" is a deposit assessment only which shall be

credited to the amount of the earned assessment due at the end of the MLC period. At the close of each period (or part thereof terminating with the end of the MLC period) designated in the declarations as the audit period, the earned assessment shall be computed for such period and, upon notice hereof to the **member county**, shall become due and payable. If the total earned assessment for the MLC period is less than the assessment previously paid, the Pool shall return to the **member county** the unearned portion paid by the **member county**.

The **member county** shall maintain records of such information as is necessary for assessment computation, and shall send copies of such records to the Pool at the end of the MLC period and at such times during the MLC period as the Pool may direct.

O. Assignment: No **protected party** shall assign any right, claim or interest it may have under this MLC. No creditor, assignee or third-party beneficiary of any **protected party** shall have any right, claim or title to any part, share, interest, fund, assessment or asset of the Pool. If, however, a **protected party** shall die, such liability coverage as is afforded by this MLC shall apply (1) to the **protected party's** legal representative, as the **protected party**, but only while acting within the scope of his duties as such, and (2) with respect to the property of the **protected party**, to the person having proper temporary custody thereof, as the **protected party**, but only until the appointment and qualification of the legal representative.

P. Financial Responsibility Laws: When this MLC is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such liability coverage as is afforded by this MLC for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. A **protected party** shall reimburse the Pool for any payment made by the Pool which it would not have been obligated to make under the terms of this MLC except for the agreement contained in this paragraph.

Q. Applicable Law: This MLC shall be governed by and construed in accordance with the laws of the State of Washington.

R. Member County Decision Making Authority: The **member county's** legislative authority, or in the case of a charter county having an executive officer, its county executive, shall be the final authority and representative of the **member county**.

S. Settlement Authority: Ultimate settlement authority for any claim or lawsuit lies with the Pool's Executive Committee; however, the Pool's Executive Director may authorize a settlement amount that does not exceed a **member county's** deductible by more than \$50,000. Settlement amounts exceeding a **member county's** deductible by more than \$50,000 must be authorized by a two-thirds majority of the Executive Committee. Polling for this purpose may be made by email or telephone authorization and shall be

confirmed at the next meeting of the Executive Committee.
