LOCAL GOVERNMENT SELF-INSURANCE COVERAGE DOCUMENT 15/17 BIENNIUM

PROVIDED BY STATE OF OREGON
DEPARTMENT OF ADMINISTRATIVE SERVICES
GOODS & SERVICES, RISK MANAGEMENT

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LIABILITY SELF-INSURANCE COVERAGE INTRODUCTION

Various provisions in this document restrict coverage. Read the entire document carefully to determine rights, duties and what is and is not covered.

Throughout this document, the words **YOU** and **YOUR** refer to the Covered Entity shown in the Declarations. The words **WE, US** and **OUR** refer to the Oregon Self-Insurance Fund.

The word "**covered person**" means any person or organization qualifying as such under the definition in SECTION II – DEFINITIONS.

Words or phrases appearing in **bold** type have special meaning. Refer to SECTION II-DEFINITIONS for other words and phrases which may have special meanings.

SECTION I – SELF-INSURANCE AGREEMENT AND LIMITS

The self-insurance fund pays only the coverages below:

SELF-INSURANCE AGREEMENT – COVERAGE A – GENERAL LIABILITY

Coverage A: General Liability

Except as provided under Coverage B or elsewhere in this self-insurance document, we will pay those sums that the covered person becomes legally obligated to pay as damages under the laws of any jurisdiction including the State of Oregon because of personal injury, bodily injury or property damage.

SELF-INSURANCE AGREEMENT – COVERAGE B – AUTOMOBILE LIABILITY

Coverage B: Automobile Liability

We will pay those sums that the covered person becomes legally obligated to pay for **bodily injury** or **property damage** because of an accident involving the ownership, maintenance or use of an **automobile** described on the Declarations page.

If you authorize your staff to use a personal or private automobile on entity business, he or she is responsible to carry the minimum liability insurance required by law. Their policy is primary and our coverage is secondary. If the amount of liability to third party exceeds their private policy limits, we will indemnify them up to the limits shown below.

For both coverages, we have the right to defend any suit, even if the suit is groundless or fraudulent. We have the right to investigate, negotiate and settle any suit or claim at our discretion. We do not defend a suit or pay a claim after the limit of coverage has been exhausted in paying judgements or settlements.

The coverage provided by us under Coverages A and B above shall not include coverage for punitive damages and shall NOT EXCEED the dollar amounts as follows, in any case. Those limits are:

LIMITS

1. Limitations on liability of local public bodies for bodily injury, personal injury and death
    a. The liability of the local public body and the liability of the local public body's officers, employees and agents acting within the scope of their employment or duties, to any single claimant for claims may not exceed the amount set by the Oregon Office of the State Court Administration following the required statutory methodology identified in ORS 30.272(4) to calculate the annual adjustment to the limitations on liability for local public bodies. The limits for bodily injury/personal injury/death causes of action arising on or after 07/01/2015 and before 06/30/2016 is $682,800 for single claimant and $1,365,500 for multiple claimants. See the Oregon Courts page for updated limits.

    b. The State Court Administrator shall determine the percentage increase or decrease in the these limits based on the changes in the Portland-Salem, OR-WA Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in the State Court Administrator makes the determination required, the State Court Administrator shall adjust the limitations imposed under subsections a) and b) of this section for the following calendar year. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest $100. The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made, and applies to all causes of action arising on or after July 1 of that year and before July 1 of the subsequent year.

    c. Section b) applies only to causes of action arising on or after July 1, 2009. Any cause of action that arose before July 1, 2009, shall continue to be governed by ORS 30.270, as that statute was in effect immediately before the effective date of the 2009 statute change.

2. Limitations on liability of local public bodies for property damage or destruction
    a. The liability of the local public body and the liability of the local public body's officers, employees and agents acting within the scope of their employment or duties, to any single claimant for claims may not exceed the amount set by the Oregon Office of the State Court Administration following the required statutory methodology identified in ORS 30.273(4) to calculate the annual

adjustment to the limitations on liability for local public bodies. The limits for causes of action arising on or after 07/01/2015 and before 06/30/2016 is $112,000 for single claimant and $560,000 for multiple claimants. See the Oregon Courts page for updated limits.

b. The State Court Administrator shall determine the percentage increase or decrease in the these limits based on the changes in the Portland-Salem, OR-WA Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in the State Court Administrator makes the determination required, the State Court Administrator shall adjust the limitations imposed under subsections a) and b) of this section for the following calendar year. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest $100. The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made, and applies to all causes of action arising on or after July 1 of that year and before July 1 of the subsequent year.

c. Section b) applies only to causes of action arising on or after July 1, 2009. Any cause of action that arose before July 1, 2009, shall continue to be governed by ORS 30.270, as that statute was in effect immediately before the effective date of the 2009 statute change.

The limits of self-insurance shown in Section I and the rules below are the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made or suits brought; or
3. Persons or organization making claims or bringing suits.

Occurrence Limit is the most we will pay for the sum of:

1. Damages under Coverage A; and
2. Damages under Coverage B.

Because of all personal injury, bodily injury and property damage arising out of any one occurrence.

SECTION II – DEFINITIONS

1. **Agent** is not a precisely defined term. The courts are likely to decide someone is your agent if that person performs a duty or function on your behalf and is subject to the direction and control of you or your staff. That direction and control applies to the method, manner, means, location and timing of the duty or function. Any person or organization with legal capacity to contract could be your agency. Volunteers can be your agents.
2. **Automobile or Auto** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment.
3. **Bodily injury** means bodily injury, physical sickness, or physical disease sustained by a person, including death resulting from any of these at any time.
4. **Covered Person** means you, your officers, employees, and agents, authorized to act on your behalf, all while acting within the scope of their employment or duties regardless if they are governmental or proprietary functions. You CANNOT extend this coverage to your contractors or other entities.
5. **Coverage territory** means anywhere in the world provided that claims or suits are asserted within the United States of America, its territories, possessions, or Canada.
6. **Damages** means all sums recoverable by law from any liability covered person under this document, excluding punitive damages.
7. **Insured Contract** means any written contract or agreement pertaining to you under which you assumed the tort liability of another to pay damages because of bodily injury or property damage arising out of your negligence, if the contract or agreement is made prior to the bodily injury or property damage.

   An insured contract does not include that part of any contract or agreement:

   a. That indemnifies any person other than a covered person under this Certificate for their share of liability arising out of their own acts or omissions.
   b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      1. Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specification; or
      2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
   c. Under which the covered person, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the covered person's rendering or failing to render professional services, including those listed in a. above and supervisory inspection or engineering services.

8. **Nuclear Energy Liability** means injury, sickness, disease, death, or destruction.

   a. With respect to which a covered person under this policy is also a covered person under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance

Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be a covered person under any such policy but for its termination upon exhaustion of its limits of liability; or

b. resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof, or (ii) the covered person is or had such policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, with an person or organization;

c. resulting from the hazardous properties of nuclear material, if (i) the nuclear material is at any nuclear facility owned by, or operated by or on behalf of, any covered person, or has been dispersed therefrom; (ii) 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 a covered person; or (iii) the injury, sickness, disease, death, or destruction arises out of the furnishing by a covered person of services, materials, parts or equipment in connection with 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 part (iii) applies only to injury or destruction of or loss of property at such nuclear facility.

As used in this definition:

a. **Hazardous properties** include, but are not limited to, radioactive, toxic or explosive properties;

b. **Nuclear material** means **source material, special nuclear material,** or **byproduct material;**

c. **Source material, special nuclear material** and **byproduct 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
   i. containing byproduct material and
   ii. resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

f. **Nuclear facility** means:
   i. any nuclear reaction,
   ii. 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, procession or packaging waste,

iii. 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 custody of the covered person at the premises where such equipment or device is located consists of or contains more than 25 grams plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

iv. any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises 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. With respect to injury to or destruction of property, the work **injury** or **destruction** includes all forms of radioactive contamination of property.

9. **Occurrence** means an event, act, error or omission or a continuous or repeated exposure to substantially the same general harmful conditions any of which occur during the Coverage Period, and which results in personal injury, bodily injury, or property damage during the Coverage Period.

10. **Personal injury** means injury arising out of one or more of the following:
    a. False arrest, detention, or imprisonment;
    b. Malicious prosecution;
    c. Wrongful entry into, or eviction of a person from a room, dwelling, or premises that the person occupies;
    d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or
    e. Oral or written publication of material that violates a person's right of privacy.
    f. Any actual or alleged error or misstatement or act or omission or neglect or breach of duty including misfeasance, malfeasance and nonfeasance by the covered persons in the discharge of their duties subject to Section III, 1., Intentional Acts.

11. **Property damage** means:
    a. Physical injury to tangible property, including all resulting loss of use of that property; or
    b. Loss of use of tangible property that is not physically injured.

11. **Suit** means a civil proceeding because of bodily injury, property damage, or personal injury to which this self-insurance applies. Suit includes an arbitrational proceeding alleging such damages to which you must submit or submit with our consent.

SECTION III – EXCLUSIONS – CLAIMS WE DO NOT COVER

1. **Intentional Acts:** We do not cover bodily injury, personal injury or property damage expected or intended from the standpoint of the covered person. This exclusion does not apply to bodily injury, personal injury or property damage resulting from the use of reasonable force to protect persons or property.
2. **Contractual:** We do not cover bodily injury, personal injury or property damage for which the covered person is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
    a. Assumed in a contract or agreement that is an insured contract; or
    b. That the covered person would have in the absence of the contract or agreement.
3. **Workers' Compensation:** We do not cover obligations of the covered person under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
4. **Employer Liability:** We do not cover bodily injury to:
    a. An employee of the covered person arising out of and in the course of employment by the covered person; or
    b. The spouse, child, parent, brother, or sister of that employee as a consequence of a. above.
5. **Protective Relief Liability:** We will not cover defense expenses, legal expenses, costs, attorney fees, or damages arising out of a declaratory, injunctive, or other protective relief action, or arising out of any action or proceeding under, or in which the proceedings are governed by, ORS Chapter 183.
6. **Pollution:** We do not cover bodily injury, personal injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants including any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

    Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
7. **Aircraft:** We do not cover bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, owned or operated by, or rented, or loaned, to any covered person. Use includes operation and loading or unloading.
8. **Watercraft:** We do not cover bodily injury, personal injury or property damage arising out of the ownership, maintenance or use of watercraft over 25 feet in length.
9. **Taxes:** We do not cover any claim resulting from the assessment or collection of taxes.
10. **Eminent Domain:** We do not cover any claim resulting from the principles of eminent domain, condemnation proceedings or inverse condemnation.

11. **Nuclear Energy Liability:** We do not cover liability arising out of the **Nuclear Energy Liability Hazard.**
12. **War:** We do not cover **bodily injury** or **property damage** due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, or revolution.
13. **Property:** We do not cover **property damage** to property you own or which is owned by any of your sub-division, boards, or commissions.
14. **Miscellaneous Exclusions:** We do not cover the following:
    a. Administrative Procedures. Administrative hearings or other proceedings under any statute, including judicial review or appeals of your administrative proceedings.
    b. "CERCLA" Cost-Recovery Claims. Claims/actions brought by the United States Government, or any other person, for recovery of costs incurred in removing or cleaning-up hazardous substances, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq.
    c. Contract Issues. Breach of contract, contract disputes, disputes over requests for proposals, bid openings and selections, and related causes of action.
    d. Election Law Claims. Appeals from acts or omissions of election officers under elections laws brought pursuant to ORS 246.910.
    e. Habeas Corpus. Actions brought to challenge the legality of confinement, conditions or confinement, conviction or sentence under state and federal constitutions and statutes.
    f. Public Meetings Law Claims. Actions brought to require compliance, prevent violations, and/or determine the applicability of public meetings law, ORS 192.610 to 192.690, pursuant to ORS 192.680.
    g. Public Records Law Claims. Actions brought for disclosure of public records law, ORS 192.410 to 192.505.
    h. Inverse Condemnation.

SECTION IV – DUTIES OF NOTIFICATION AND COOPERATION

Duties in the Event of Occurrence, Claim or Suit

1. You must notify us in writing promptly of an occurrence which may result in a claim. Notice should include:
    a. How, when and where the occurrence took place; and
    b. The names and addresses of any injured persons and witnesses.
2. If a claim is made or suit is brought against any covered person, you must give us prompt written notice of the claim or suit.
3. You and any other involved covered person must:

a. Immediately send us copies of any demands, notices, summons or legal papers received in connection with the claim or suit;

b. Authorize us to obtain records and other information;

c. Cooperate with us in the investigation, settlement, or defense of the claim or suit; and

d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the covered person because of injury or damage to which this self-insurance may also apply.

NOTICE OF AN OCCURRENCE, CLAIM OR SUIT

Notice of an occurrence, claim or suit shall promptly be sent to:

Claims Manager
Risk Management
Department of Administrative Services
1225 Ferry Street SE U150
Salem, OR 97301-4287

All other notice or inquiries regarding this certificate shall be directed to the Authorized Representative shown in the Declaration.

The terms of this coverage document shall not be waived or changed except by written endorsement issued and made a part of this coverage document.

COOPERATION

You shall cooperate with us in the defense of any claim or suit and upon our request attend hearings of trials, assist in achieving settlements, securing and giving evidence, and participate in any legal proceedings in connection with the self-insurance provided by this Certificate.

You shall not, except at your own expense, voluntarily make any payment or assume any obligation without our express approval other than for emergency medical care that may be required at the time of an occurrence.

SECTION V - COVERAGE PERIOD/TERRITORY

This self-insurance applies to occurrences during the coverage document time period which take place anywhere, provided that the resulting claims or suits are asserted within the United States of America, its territories, possessions or Canada.

SECTION VI - COVERAGE DETAILS

ORDER OF COVERAGE - OTHER INSURANCE

If other valid and collectible insurance is available to the covered person for a loss we cover under Coverages A or B of this coverage document, self-insurance provided by this coverage document is excess over any other insurance.

When this coverage document is excess, we will have no duty under Coverage A or B to defend any claim or suit that any other insurer is obligated to defend.

When this self-insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

1. The total amount that all such other insurance would pay for the loss in the absence of this self-insurance; and
2. The total of all deductible amounts under all such other insurance.

PREMIUM

We will compute all premiums for this coverage document in accordance with our rules and rates.

Premiums shown in the Declarations are fixed premiums for the Coverage Period and are based upon the exposure information provided in your application. We reserve the right to charge additional premiums if it is found that significant exposure information was omitted from the application.

AUDIT

We may inspect your premises and audit any records at any reasonable time to verify the accuracy of information provided in your application for self-insurance and to assure compliance with the terms and conditions of this Coverage document and with Oregon Law.

SEPERATION OF COVERED PERSONS

Except with respect to the limits of self-insurance and any rights or duties specifically assigned in this policy to the Covered Entities, this self-insurance applies:

1. As if each Covered Entity were the only Covered Entity; and
2. Separately to each covered person against whom claim is made or suit is brought.

If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall (1) hold in trust for us the proceeds of the recovery and (2) reimburse us to the extent of our payment.

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If the covered person has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The covered person must do nothing after loss to impair them. At our request, the covered person shall bring **suit** or transfer those rights to us to help us enforce them.

SECTION VII - CANCELLATION

This coverage document may be canceled by the Covered Entity at any time by surrendering the coverage document to the Department of Administrative Services, State of Oregon, or to its Authorized Representative shown in the Declarations. If canceled by the Covered Entity, the effective date shall be the end of the coverage document effective period and the premiums paid shall be fully earned and no return premium shall be made.

The Department of Administrative Services or its Authorized Representative may cancel the coverage document or reduce or cancel any portion thereof by mailing to the Covered Entity at the address shown in the Declarations, a written notice stating when, not less than 30 days (10 days for non-payment of premium) thereafter the cancellation or reduction shall be effective. If coverage is canceled or reduced by the Department of Administrative Services, earned premiums shall be computed pro rata to the effective date of reduction or cancellation. Any unearned premiums shall be returned to the Covered Entity as soon as practical.

SECTION VIII - GOVERNMENT INSTRUMENTALITY

Self-insurance provided by this coverage document shall not be deemed a waiver of any statutory immunities, defenses, or limits of liability in favor of any covered person that would apply in the absence of this self-insurance.