

# **Workers' Compensation Risk Retention Program of the Montana Municipal Interlocal Authority**

## **Workers' Compensation, Occupational Disease and Employer's Liability Insurance Coverage Policy**

The Montana Municipal Interlocal Authority, (the "Authority") as the sponsor of the Workers' Compensation Risk Retention Program (the "Program") entered into by and between the members of the Authority which are the participants in the Program, in consideration of the total initial deposit stated in the Coverage Declarations of this policy and of assessments paid upon the total remuneration of employees during each reporting period, does hereby agree with the covered party as follows:

### **Section A: Coverage Agreements**

The Workers' Compensation Risk Retention Program of the Authority hereby agrees:

1. To assume the entire liability of the covered party to its employees under the Workers' Compensation Act of Montana, as amended, and as may be amended, and including the Occupational Disease Act, as amended, and as may be amended. (See exceptions under "Exclusions.")
2. To defend, on the behalf of the covered party, such claims, actions and occurrences which may at any time be instituted against it under the Workers' Compensation Act or Occupational Disease Act of Montana for injuries or diseases originating during such period as this policy may be in effect; with the express reservation that the Workers' Compensation Risk Retention Program of the Authority may make such investigation, negotiation and settlement as it deems expedient. The Authority through the Workers' Compensation Risk Retention Program of the Authority does not defend any suits or actions for which it does not provide benefits under the Workers' Compensation or Compensation or Occupational Disease Acts, including but not limited to tort or contract actions against the covered party.
3. An occurrence means any claim, action, request, demand or suit for benefits of any nature under the Workers Compensation Act or Occupational Disease Act originating during such period as this policy may be in effect.

### **Section B: Exclusions**

This policy DOES NOT apply to the following unless these employments are specifically described in the Coverage Declarations of this policy or in a written endorsement to this policy:

1. Persons performing services in return for aid or sustenance only;
2. Volunteer workers (except air search and rescue volunteers employed by the Montana Department of Commerce (Section 67-2-105, MCA)), volunteer or auxiliary officers providing services to a local law enforcement agency (Section 7-32-203, MCA) and volunteer fire fighters providing service to the covered party;
3. Elected board, commission or council members.

### **Section C: Employers Liability Insurance**

**How This Insurance Applies.** This employers liability insurance applies to bodily injury by accident or bodily injury by disease to employees of the member, unless otherwise excluded. Bodily injury includes resulting death. Bodily injury does not include mental or emotional injuries, conditions or diseases.

1. The bodily injury must arise out of and in the course of the injured employee's employment by the Covered Party.
2. The employment must be necessary or incidental to the Covered Party's work in Montana, or while working temporarily outside the state of Montana.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of the injured employee's employment by the Covered Party. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If the Covered Party is sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

**Authority Will Pay.** Authority will pay all sums the Covered Party legally must pay as damages because of bodily injury to the Covered Party's employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages Authority will pay, where recovery is permitted by law, include damages:

1. For which the Covered Party is liable to a third party by reason of a claim or suit against the Covered Party by that third party to recover the damages claimed

against such third party as a result of bodily injury to the Covered Party's employee;

2. For care and loss of services;

3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury as defined in this policy that arises out of and in the course of the injured employee's employment by the Covered Party; and

4. Because of bodily injury to the Covered Party's employee that arises out of and in the course of employment, claimed against the Covered Party in a capacity other than as employer.

**Exclusions.** This Employers Liability Insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that the Covered Party's work will be done in a workmanlike manner;

2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law.

3. bodily injury to an employee while employed in violation of law with the Covered Party's actual knowledge or the actual knowledge of any of the Covered Party's executive officers;

4. any obligation imposed by a workers' compensation, occupational disease, unemployment compensation or disability benefits law, or any similar law;

5. bodily injury intentionally caused or aggravated by the Covered Party;

6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;

7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, black listing, discrimination against, discharge or termination of any employee, or any personnel practices, policies, acts or omissions;

8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workers' compensation law or other federal occupational disease law, or any amendments to these laws;

9. bodily injury to any person in work subject to the Federal Employers' Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to any employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws

10. fines or penalties imposed for violation of federal or state law; and

11. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

**Authority Will Defend.** Authority has the right and duty to defend, at the Authority's expense, any claim, proceeding or suit against the Covered Party for damages payable by this insurance. Authority has the right to investigate and settle these claims, proceedings and suits.

Authority has not duty to defend a claim, proceeding or suit that is not covered by this insurance. Authority has not duty to defend or continue to defend after Authority has paid Authority's applicable limit of liability under this insurance.

**Authority Will Also Pay.** Authority will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit Authority defends:

1. reasonable expenses incurred at Authority's request, but not loss of earnings;

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of Authority's liability under this insurance;

3. litigation costs taxed against the Covered Party;

4. interest on a judgment as required by law until Authority offers the amount due under this insurance; and

5. expenses Authority incurs.

**Other Insurance.** Authority will not pay more than Authority's share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

**Limits of Liability.** The Authority's liability to pay for damages is limited. The Authority's limits of liability are shown and explained below:

1. Bodily injury by Accident. The limit shown for “bodily injury by accident – each accident” is the most Authority will pay for all damages covered by this insurance because of bodily injury to one or more employees in one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily injury by Disease. The limit shown for “bodily injury by disease – policy limit” is the most Authority will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for “bodily injury by disease – each employee” is the most Authority will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. Authority will not pay any claims for damages after Authority has paid the applicable limit of Authority’s liability under this insurance.

**Recovery From Others.** Authority has the Covered Party’s rights to recover Authority’s payment from anyone liable for any injury covered by this insurance. The Covered Party will do everything necessary to protect those rights for Authority and to help Authority enforce them.

**Actions Against Authority.** There will be no right of action against Authority under this insurance unless:

1. The Covered Party has complied with all the terms of this policy; and
2. The amount the Covered Party owes has been determined with Authority’s consent or by actual trial and final judgment.

This insurance does not give anyone the right to add Authority as a defendant in an action against the Covered Party to determine the Covered Party’s liability. The bankruptcy or insolvency of the Covered Party or the Covered Party’s estate will not relieve Authority of its obligations under this Part.

## **Section D: Conditions**

**The Contract.** All of the provisions of the workers’ compensation and occupational disease laws and regulations of Montana, as amended, or as may be amended, shall be a part of this policy as fully and completely as if written herein.

This policy, including the Coverage Declarations, Classification and Code Schedules and endorsements, and the application are part of the contract of insurance. By

acceptance of this policy, the covered party agrees that the statements in the Coverage Declarations and endorsements are his agreements and representations. Any material misrepresentations by the covered party in the application or appearing on the Coverage Declarations or endorsements may render the contract void.

**Changes.** No provision of this policy shall be waived or altered without written endorsement signed by a duly authorized representative of the Workers' Compensation Risk Retention Program of the Authority, EXCEPT; (1) those changes specifically authorized in the Assessment subsection, below; and (2) changes in this policy necessitated by any change in the laws of Montana, in which case thirty (30) days notice shall be given the covered party of such a change.

**Deposit.** The covered party may be required to pay an initial deposit on the inception of its policy, which may be retained by the Workers' Compensation Risk Retention Program of the Authority to be applied to any final billing upon termination of this policy. The Authority in the operation of the Workers' Compensation Risk Retention Program may, from time to time, adjust the amount of deposit required as deemed necessary to cover assessments. Additional deposits with the Workers' Compensation Risk Retention Program become due upon billing and the covered party is subject to cancellation of this policy after default in the event of non-payment.

**Payroll Information.** The covered party shall keep complete and accurate records of the remuneration earned by all officials and employees, classified according to the assigned codes described in the Classification and Code Schedules issued as a part of the coverage policy. At the request of the Authority, the covered party shall furnish records of all earnings of every kind of all employees and officials during any period in which this policy is in effect. Forms for the reporting of payroll will be supplied by the Workers' Compensation Risk Retention Program of the Authority at the close of each period specified as "report basis" in the Coverage Declarations. All remuneration of employees shall be included for computation of the assessment.

**Assessment.** This policy is accepted by the covered party subject to the classifications found in the manuals in use by the State Compensation Insurance Fund. Classifications described in the Classification and Code Schedules attached to the original policy are based on information supplied to the Workers' Compensation Risk Retention Program of the Authority by the covered party. A new set of schedules will be issued, upon addition or deletion of classification codes, to replace all previously issued schedules. If any employees at any time commence doing work properly falling within another classification, or if at any time the Workers' Compensation Risk Retention Program of the Authority discovers that any employee is or has been doing work other than that reported, the proper classification shall become effective on the date the said work commenced. Otherwise, changes in the rates and classifications shall become binding on the covered party after thirty (30) days notice.

**Audit and Adjustment of Assessment.** Any authorized representative of the Workers' Compensation Risk Retention Program of the Authority shall have the right and opportunity during the effective dates of this policy and at reasonable times thereafter to

examine and audit the covered party's records so far as they relate to remuneration earned by employees. If it shall be ascertained by the Workers' Compensation Risk Retention Program of the Authority at any time that the total assessment paid by the covered party is less than is properly chargeable to the covered party under the terms of this policy, the covered party shall promptly pay to the Workers' Compensation Risk Retention Program of the Authority the difference between the total assessment paid and the ascertained assessment. If the total assessment paid by the covered party is in excess of the ascertained assessment, the Workers' Compensation Risk Retention Program of the Authority shall, at the option of the covered party, immediately credit the account of, or pay the amount of such excess assessment to the covered party.

**Subcontractors.** If the covered party shall contract or subcontract any work to contractors or subcontractors, the Workers' Compensation Risk Retention Program of the Authority may, at its option, require remuneration of all employees of any such contractor or subcontractor to be included in the remuneration on which assessment is paid by the covered party, provided such contractor or subcontractor has not secured compensation insurance for its employees as required by the workers' compensation law.

**Cooperation of the covered party.** The covered party shall cooperate with the Authority by: (1) permitting the Authority or the Authority's representative to inspect at any reasonable time the workplace and operations covered by this policy; (2) permitting the Authority to examine and audit payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records of any and every kind at any reasonable time during the policy period, and within a reasonable time thereafter, as far as said documents relate to the subject matters of this coverage, (3) give the Authority or its authorized representative written notice within six (6) days of discovery of any injury, including reasonable description of the particulars of said injury; (4) forward to the Authority or its authorized representative any legal process received by the covered party relating to any injury; and (5) attend hearings and trials and assist in securing and giving evidence at the Authority's request. The covered party shall not voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are necessary, or make any services at the time of injury as are necessary, or make any negotiation or settlement, except with the express consent of the Workers' Compensation Risk Retention Program of the Authority.

**Effective Date.** This policy becomes effective upon the date shown in the Coverage Declarations and remains in effect until cancellation by the covered party or the Authority as provided in Section 6 of the Workers' Compensation Risk Retention Program Agreement executed by the covered party and the Workers' Compensation Risk Retention Program of the Authority.

**Subrogation.** In the case of any payment for compensation or medical services under this policy or assumption therefore, the Workers' Compensation Risk Retention Program of the Authority shall be subrogated to all rights of the covered party against any person to the fullest amount of such payment or liability as provided by the workers'

compensation laws of Montana.

**Dividends.** The covered party shall be entitled to participate in the distribution of dividends to the extent and upon conditions fixed by and stated in the Workers' Compensation Risk Retention Program Agreement of the Authority.

**Extraterritorial Coverage.** The covered party agrees to notify the Workers' Compensation Risk Retention Program of the Authority in advance of any Montana employees it intends to employ temporarily outside of the state of Montana.

Written approval must be obtained from the Division of Workers' Compensation for waiver of Montana jurisdiction for out-of-state workers employed temporarily in Montana.

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