

**Central West End SouthEast  
Special Business District**

c/o Park Central Development Corporation  
4512 Manchester Avenue, Suite 100  
Saint Louis, Missouri 63110-2100  
O: 314.535.5311  
cwesoutheastssbd.com

**BOARD OF COMMISSIONERS MONTHLY MEETING  
TO BE HELD**

**December 15<sup>th</sup>, 2020 at 5:00 p.m.  
at 4512 Manchester Ave #100  
St. Louis, MO 63110**

***Please Note: Due to COVID-19, physical access to the Board of Commissioners meeting will be closed and replaced by Zoom Conference.***

***Please sign in at <https://zoom.us/j/92397854241?from=addon> (Meeting ID: 923 9785 4241) or call by phone at 1-312-626-6799.***

**NOTICE & PROPOSED AGENDA**

**TAKE NOTICE** that on December 15<sup>th</sup>, 2020 at 5:00 p.m. via Zoom Conference, the Central West End Southeast Special Business District (the "District") will hold its public Monthly Meeting to consider and act upon the matters on the following tentative agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

1. Call to Order
2. Chair's Report & Announcement of the Order of Business
3. Public Comments & Questions (5-minute limit per speaker)
4. Approve Previous Meeting Minutes
  
5. Public Safety
  - a. Neighborhood Security Initiative, Jim Whyte
  - b. The City's Finest, Rob Betts
6. Neighborhood Improvement
  - a. City of St. Louis, Ron Coleman
7. Project Reports
  - a. Financial Reports
    - i. MOPERM Insurance Renewal- vote
  - b. Trailnet Parklet
  - c. Pedestrian Lighting
    - i. Proposals for Engineering Services
  
8. Other Business

**This meeting is open to the public;** provided, however, that a portion of the meeting may be closed to discuss legal, real estate and/or personnel matters as provided by Sections 610.021(1), (2) and/or (3), RSMo.

Representatives of the news media may obtain copies of this notice, and persons with disabilities wishing to attend can contact: Park Central Development, 4512 Manchester #100, St. Louis, 63110, (314) 535-5311.

**DATE POSTED: 12/11/2020**

**Time: 5:00 PM**

**• Central West End Southeast Special Business District •**

4512 Manchester #100 Saint Louis, MO 63110 (314) 535-5311

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Central West End Southeast Board of Commissioners Meeting  
November 17th, 2020 at 5:00pm  
**At 4512 Manchester, St. Louis, MO 63110**

**Board Members in Attendance:** Yusef Scoggin, Jeff Miner, Rick Kissel, Doug Anderson, Marshall Michener

**Board members not in Attendance:** N/A

**Others in attendance:** Alayna Graham (Park Central Development), Ron Coleman (City of St. Louis), Jim Whyte (NSI), Rob Betts (The City's Finest), Jeff Hood (Washington University), Gerry Connolly & Karen Buckley (Members of the Public)

1. **Call to order**
  - a. Y. Scoggin called the meeting to order at 5:01 pm.
2. **Chair's Report & Announcement of the Order of Business:**
  - a. Y. Scoggin asked if there were any members of the public. G. Connolly was listening in and said he did not need introductions to the group.
3. **Public Comments:** No public comment.
4. **Approval of September Meeting Minutes**
  - a. J. Miner motioned to approve the October 20<sup>th</sup>, 2020 meeting minutes. Seconded by D. Anderson. All in favor—Motion approved.
5. **Public Safety**
  - a. **NSI Update-** J. Whyte presented the crime report. Crime is up 33.33% this year.
    - i. Catalytic converter theft and car jackings are problem areas.
    - ii. The annual contribution should stay the same- the contract was sent to the Board.
    - iii. There will be more mental health and homeless outreach in the coming year.
    - iv. M. Michener made a motion to approve the 2021 contract from the NSI. R. Kissel seconded the motion. All in favor—motion approved.
  - b. **TCF Update-** R. Betts updated the Board about the camera project at 4451 Forest Park. R. Betts went over the budget for CWE Southeast SBD. There is a surplus due to COVID-19 and civil unrest.
    - i. TCF is working with a developer to create an app that will allow for better response time and better communication with the NSI and Board members. This app should be deployed by the 2<sup>nd</sup> or 3<sup>rd</sup> quarter of 2021.
6. **Neighborhood Stabilization (Ron Coleman):**
  - a. The spigots in the neighborhood have been turned off by the Parks Department.

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- b. There are spigots on Forest Park and Laclede that have damage- R. Coleman is working with BPS to roll these repairs into the project with the planters on Forest Park Avenue. The alderman will be paying for all of that. They are bidding out for a contractor currently.

**7. Project Reports:**

- a. **Financial Reports-** A. Graham presented the Financial reports.
- b. **Trailnet Parklet-** A. Graham presented an update on the parklet.
  - i. A. Graham inquired with the SBD's current insurance company about insurance for the parklet- It will cost \$500 per year. J. Miner motioned to approve taking on the insurance for the parklet for \$500 per year. M. Michener seconded the motion. All in favor—motion approved.
  - ii. Y. Scoggin asked about the maintenance. R. Coleman clarified that the surrounding businesses would clean and maintain the parklet. The SBD is required sign the maintenance agreement.
- c. **Pedestrian Lighting**
  - i. **RFP for engineering-** A. Graham updated the Board on responses. There were no responses. The suggestion from PCD is to extend the deadline. The Commissioners agree to extend the deadline another month.
- d. **Park Central Development Contract**
  - i. A. Graham presented the new PCD contract. There was a cost increase from the contract in 2018. This contract renewal will be for 3 years, so there will not be an increase during that time. J. Miner motioned to approve the PCD contract. D. Anderson seconded the motion. Y. Scoggin abstained from voting due to being a PCD Board member. Majority in favor- motion approved.

**8. Other:**

- a. Meeting adjourned at 6:04 pm.

**CWE Southeast SBD**  
**Balance Sheet**  
As of November 30, 2020

	Nov 30, 20
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1072-1 · Bill.com Clearing	5,015.63
<b>40900 · Cash</b>	
10150 · Reliance Bank checking #2...	20,739.99
10155 · Reliance MMkt #8362	324,582.05
10160 · GSB - CWESE 8810	250,000.00
<b>Total 40900 · Cash</b>	595,322.04
<b>Total Checking/Savings</b>	600,337.67
<b>Total Current Assets</b>	600,337.67
<b>TOTAL ASSETS</b>	<b>600,337.67</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	4,281.25
<b>Total Accounts Payable</b>	4,281.25
<b>Total Current Liabilities</b>	4,281.25
<b>Total Liabilities</b>	4,281.25
<b>Equity</b>	
Opening Bal Equity	250,000.00
Retained Earnings	191,513.86
Net Income	154,542.56
<b>Total Equity</b>	596,056.42
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>600,337.67</b>

**CWE Southeast SBD**  
**Profit & Loss Budget Performance**  
 November 2020

	<u>Nov 20</u>	<u>Budget</u>	<u>Jan - Nov 20</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
<b>Income</b>					
41000 · Tax Revenue	0.00	0.00	599,621.26	537,557.00	537,557.00
42800 · Interest Income	95.13		961.06		
<b>Total Income</b>	<u>95.13</u>	<u>0.00</u>	<u>600,582.32</u>	<u>537,557.00</u>	<u>537,557.00</u>
<b>Gross Profit</b>	95.13	0.00	600,582.32	537,557.00	537,557.00
<b>Expense</b>					
Miscellaneous Expense	0.00		259,250.00		
<b>61000 · Administration</b>					
61050 · Annual Award	0.00	4.16	0.00	45.84	50.00
61100 · Administration (PCDC)	0.00	0.00	15,868.00	15,868.00	15,868.00
61200 · Bank Charge	0.00	3.33	0.00	36.67	40.00
61300 · Insurance, Liability & D&O	0.00	1,300.00	1,280.00	1,300.00	1,300.00
61400 · Legal Fees	0.00	166.66	623.00	1,833.34	2,000.00
61600 · Postage and Shipping Expense	0.00	8.33	0.00	91.67	100.00
61750 · Kindness Meals	0.00		5,070.00		
61800 · Web Site	0.00	8.33	161.57	91.67	100.00
<b>Total 61000 · Administration</b>	<u>0.00</u>	<u>1,490.81</u>	<u>23,002.57</u>	<u>19,267.19</u>	<u>19,458.00</u>
<b>68000 · Public Safety</b>					
68200 · CWE Neighborhood Safety Ini.	0.00	0.00	47,367.00	36,425.00	36,425.00
68400 · National Night Out	0.00	0.00	0.00	1,000.00	1,000.00
68500 · Patrol	4,281.25	11,666.67	108,578.19	128,333.33	140,000.00
68600 · Security Camera	0.00	1,295.00	7,842.00	14,245.00	15,540.00
68700 · Security Signs	0.00	116.66	0.00	1,283.34	1,400.00
68900 · Lighting	0.00	53,833.33	0.00	269,166.67	323,000.00
<b>Total 68000 · Public Safety</b>	<u>4,281.25</u>	<u>66,911.66</u>	<u>163,787.19</u>	<u>450,453.34</u>	<u>517,365.00</u>
<b>Total Expense</b>	<u>4,281.25</u>	<u>68,402.47</u>	<u>446,039.76</u>	<u>469,720.53</u>	<u>536,823.00</u>
<b>Net Income</b>	<u><u>-4,186.12</u></u>	<u><u>-68,402.47</u></u>	<u><u>154,542.56</u></u>	<u><u>67,836.47</u></u>	<u><u>734.00</u></u>

**CWE Southeast SBD**  
**Transaction List by Vendor**  
November 2020

	<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Memo</u>	<u>Split</u>	<u>Amount</u>
The City's Finest LLC	Bill	11/15/2020	INV-2860	Patrols	68500 · Patrol	-4,281.25



<h1>INVOICE</h1>
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MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND

3425 Constitution Court, 3rd Floor  
P.O. Box 7110  
Jefferson City MO 65102  
(888) 566-7376 Fax (573) 751-8276

Date 11-30-2020	Invoice Number 140366
Account Number 4338	Policy Number LP-4338-202101

Invoice To:

CWE SOUTHEAST SPECIAL BUSINESS  
DISTRICT  
C/O PARK CENTRAL DEVELOPMENT  
4512 MANCHESTER AVE STE 100  
ST LOUIS MO 63110

Policy Term: January 1, 2021 to January 1, 2022

TERMS DUE UPON RECEIPT  
PLEASE REMIT PAYMENT TO:  
MOPERM  
3425 Constitution Court, 3rd Floor  
P.O. Box 7110  
Jefferson City MO 65102

	Description	Amount
	Cyber & Information Breach Coverage	\$96.00
	Liability	\$1,200.00
	TOTAL AMOUNT DUE	\$1,296.00

## MOPERM INFORMATION REQUEST

This is the information we have on file for your entity. Please review it, make any necessary changes and return this form to us at your earliest convenience. **If no changes have been made, do not return this form.**

The form may be returned by email to [renewals@moperm.com](mailto:renewals@moperm.com). It may also be faxed to 573-751-8276 (we do not need the original) or sent by regular mail to PO Box 7110, Jefferson City, MO 65102.

Thank you.

Entity Name:	CWE SOUTHEAST SPECIAL BUSINESS DISTRICT	Policy No.:	LP-4338-202101
Primary Contact Person:	ASHLEY JOHNSON	Title:	PROJECT MANAGER
Physical Address:	<i>C/O PARK CENTRAL DEVELOPMENT ST LOUIS, MO 63110</i>		
Mailing Address:	<i>C/O PARK CENTRAL DEVELOPMENT ST LOUIS, MO 63110</i>		
County:	St. Louis County	Contact Email:	ashley@pcd-stl.org
Phone:	(314) 535-5311	Fax:	(314) 531-1894

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Signature

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Date





## LIABILITY MEMORANDUM OF COVERAGE DECLARATIONS

MEMBER NAME AND MAILING ADDRESS CWE SOUTHEAST SPECIAL BUSINESS DISTRICT C/O PARK CENTRAL DEVELOPMENT 4512 MANCHESTER AVE STE 100 ST LOUIS MO 63110	AGENCY NAME AND MAILING ADDRESS
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**ALL COVERAGES LISTED BELOW ARE SUBJECT TO ALL TERMS, CONDITIONS, EXCLUSIONS AND APPLICABLE REDUCTIONS DESCRIBED IN THE LIABILITY MEMORANDUM OF COVERAGE AND ARE SUBJECT TO PAYMENT OF THE CONTRIBUTION FOR THIS COVERAGE. NOTHING CONTAINED HEREIN IS INTENDED TO NOR SHALL BE CONSTRUED TO BROADEN THE LIABILITY OF THE MEMBER AGENCY BEYOND THE PROVISIONS OF SECTIONS 537.600 TO 537.610 RSMO NOR ABOLISH OR WAIVE ANY DEFENSE AT LAW WHICH MIGHT OTHERWISE BE AVAILABLE TO THE MEMBER AGENCY OR ITS OFFICERS AND EMPLOYEES.**

Memorandum Number: 4338	Coverage Period: 12:01 a.m. 1-1-2021 to 12:01 a.m. 1-1-2022
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Policy Number: LP-4338-202101
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COVERAGE	DEDUCTIBLE	RETROACTIVE DATE
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**The limit for the coverages listed below shall not exceed the maximum amount provided for by RSMo.537.610 (Sovereign Immunity Limits) or \$2,000,000 per occurrence as set forth in Section II of the Liability Memorandum of Coverage.**

Cyber & Information Breach Coverage Liability	\$2,500 *	1-1-2017
Employment Practices Liability	\$500	
Errors & Omissions Liability	\$500	
General Liability	\$500	
Hired and Non-Owned Vehicles	\$500	

\*Deductible applies to Loss and Loss Adjustment Expense combined if indicated on the Liability Memorandum of Coverage Declarations M100 (Ed. 1-19). Loss Adjustment Expense is defined as all costs of investigating, adjusting, and defending a claim.

ADDITIONAL COVERAGES	DEDUCTIBLE	LIMIT
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<b>Forms and endorsements contained in this Liability Memorandum of Coverage at inception:</b>		
Markel/Evanston Insurance Company Member Certificate		MCCY 5000-MOPERM 01 21
Deductible Liability Coverage		M300 (Ed. 1-19)
Liability Memorandum of Coverage		M900 (Ed. 7-20)

Issued by Missouri Public Entity Risk Management Fund (MOPERM), P.O. Box 7110, Jefferson City, MO 65102

By: 

Date: 12-1-2020



MEMBER CERTIFICATE

IMPORTANT NOTICE: THIS MEMBER CERTIFICATE IS SUBJECT TO MASTER POLICY AGGREGATE LIMITS OF INSURANCE. ONCE THE APPLICABLE MASTER POLICY AGGREGATE LIMITS OF INSURANCE ARE EXHAUSTED, THE COMPANY SHALL HAVE NO OBLIGATION TO PAY ANY POLICY PAYMENTS OR DEFEND OR CONTINUE TO DEFEND ANY CLAIMS. PLEASE READ THE POLICY CAREFULLY.

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, BUT NO LATER THAN 60 DAYS AFTER THE DATE OF EXPIRATION OF THE POLICY PERIOD OR DURING THE EXTENDED REPORTING PERIOD, IF APPLICABLE. PLEASE READ THE POLICY CAREFULLY.

PLEASE NOTE THAT AMOUNTS INCURRED AS CLAIM EXPENSES WILL REDUCE THE LIMIT OF INSURANCE AVAILABLE AND WILL BE FIRST APPLIED AGAINST THE RETENTION AMOUNT.

CERTIFICATE NUMBER: LP-4338-202101

THIS CERTIFICATE REPRESENTS INSURANCE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:
MASTER POLICY NUMBER: MKLV1PCY000002

MASTER POLICY HOLDER:
Missouri Public Entity Risk Management Fund

IN RETURN FOR THE PAYMENT OF THE PREMIUM AND SUBJECT TO ALL THE TERMS OF THE POLICY, THE COMPANY AGREES TO PROVIDE THE INSURANCE AS STATED IN THIS CERTIFICATE.

NAMED INSURED (PRIMARY CERTIFICATE HOLDER)
Named Insured's (Primary Certificate Holder) Name and Mailing Address (No., Street, Town or City, County, State, Zip Code):
CWE SOUTHEAST SPECIAL BUSINESS DISTRICT
C/O PARK CENTRAL DEVELOPMENT
ST LOUIS MO 63110
Phone Number:(314) 535-5311
Policy Period Effective Date: January 1, 2021 Expiration Date: January 1, 2022
at 12:01 a.m. Standard Time at the mailing address shown above.

Plan Administered By
MOPERM
P.O. Box 7110
Jefferson City, MO 65109
Contact Information
Name: Brenda Gibson
Email: policyservices@moperm.com

Insurer
Evanston Insurance Company
10275 West Higgins Road, Suite 750
Rosemont, IL 60018
Producer Name And Mailing Address
Victor Insurance Managers Inc.
3100 Wilcrest Drive, Suite 200
Houston, TX 77042

<b>To Report A Claim</b>	
By Phone:	800-362-7535 (800) 3MARKEL
By Fax:	855-662-7535 (855) 6MARKEL
By E-mail:	newclaims@markel.com
By Mail:	Markel Claims P.O. Box 2009 Glen Allen, VA 23058-2009

<b>Coverage Agreements, Limits Of Insurance, Retentions, And Retroactive Dates</b>		
<b>Coverage Agreement</b>	<b>Coverage Agreement Aggregate Limit Of Insurance</b>	<b>Retention Amount/ Retention Period</b>
Cyber And Privacy Liability	\$100,000	\$2,500 Each Claim
Regulatory Fines	\$100,000	\$2,500 Each Claim
Media Offense Liability	\$100,000	\$2,500 Each Claim
System And Data Rectification Costs And Financial Loss	\$100,000	\$2,500 Each Policy Event
Extortion Loss	\$25,000	\$2,500 Each Policy Event
Security Business Interruption Loss	\$100,000	8 Hours Each Event
Privacy Breach Notification And Mitigation Costs	\$100,000	\$2,500 Each Policy Event
PCI DSS Assessments	\$100,000	\$2,500 Each Policy Event
Social Engineering Loss	\$10,000	\$2,500 Each Policy Event
<b>CERTIFICATE COMBINED AGGREGATE LIMIT OF INSURANCE: \$100,000</b>		

<b>Endorsements</b>
Forms and endorsements applying to this Member Certificate are made part of this policy at time of issue: See <b>MDIL 1001</b> Forms Schedule in the Master Policy

**This Member Certificate, together with the Declarations, Policy and any Endorsement(s) attached to the Policy, complete the above numbered certificate. Coverage is subject to all terms, conditions, limitations, exclusions, and other provisions contained therein.**

**To review the Master Policy: Call 888-389-8198 x1127**

Countersigned: 12-1-2020  
Date

By:   
AUTHORIZED REPRESENTATIVE

## DEDUCTIBLE LIABILITY COVERAGE

1. **MOPERM's** obligation to pay damages on behalf of the **Covered Party** because of damages sustained by one or more persons or organizations as a result of any one **occurrence**, applies only to the amount of damages payable in excess of the deductible stated on the Declarations Page.
2. **MOPERM** may pay part or all of the deductible amount to effect settlement of any claim and, upon notification of the action taken, the **Member Agency** shall promptly reimburse **MOPERM** for such part of the deductible amount as has been paid by **MOPERM**.
3. The terms of the Liability Memorandum of Coverage of which this endorsement forms a part including those with respect to (a) **MOPERM's** rights and duty to defend any claim or suit seeking such damages, and (b) the **Covered Party's** duties in the event of an **occurrence**, claim or suit, apply regardless of the application of the deductible amount.

(Deductible does not apply to Uninsured Motorist and Automobile Medical Payments coverages.)

Issued by Missouri Public Entity Risk Management Fund (MOPERM), P. O. Box 7110, Jefferson City, MO 65102.

By:

A handwritten signature in black ink, appearing to be a stylized name, located below the 'By:' label.

MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND

LIABILITY MEMORANDUM OF COVERAGE

I. WHAT MOPERM PAYS

A. COVERAGE

1. **Coverage for the Member Agency for claims on causes of action established by Missouri Law, as described in subparagraphs a. and b. below to this paragraph 1.** For claims on causes of action established by Missouri Law described in subparagraphs a. and b. below to this paragraph 1, **MOPERM** will pay on behalf of the **Member Agency** the **ultimate net loss** which the **Member Agency** shall become legally obligated to pay by reason of liability arising out of:
  - a. Injuries directly resulting from the negligent acts or omissions by public **employees** arising out of the operation of motorized vehicles within the course of their employment;
  - b. Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an **employee** of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition, as more fully set forth in Section 537.600.1(2), RSMo.
2. **Coverage for Member Agency for claims on causes of action other than those established by Missouri Law described in subparagraphs a. and b. to paragraph 1 of this Section A; and coverage for public officials and employees.** For claims against the **Member Agency** on causes of action other than those established by Missouri Law described in subparagraphs a. and b. to paragraph 1 of this Section A, and for claims against public officials and employees, **MOPERM** will pay the **ultimate net loss** which the **Covered Party** shall become legally obligated to pay by reason of liability for damages because of **Automobile Liability, General Liability, Employment Practices Liability, Law Enforcement Liability, Public Officials Errors and Omissions Liability, and Healthcare Malpractice Liability**, to which this Liability Memorandum of Coverage applies, caused by or arising out of an **occurrence**.

B. DEFENSE

On matters covered by this Liability Memorandum of Coverage, **MOPERM** shall have the right and duty to defend any suit against the **Covered Party**, even if any allegations are groundless, false or fraudulent. **MOPERM** may make such investigation, negotiation or settlement of any claim or suit as it deems expedient. **MOPERM** shall not be obligated to pay any claim or judgment or to defend any suit after **MOPERM's** limit of liability has been exhausted.

Nothing contained in this section, or the balance of this document, shall be construed to broaden the liability of the **Member Agency** beyond the provisions of Sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense at law which might otherwise be available to the **Member Agency** or its officers and **employees**.

II. MOPERM'S LIMIT OF LIABILITY

Regardless of the number of (1) **covered parties** under the Liability Memorandum of Coverage, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought, **MOPERM's** liability for the **ultimate net loss**:

1. Under Section 1.A.1. shall not exceed the maximum amount provided for by Section 537.610, RSMo; and,
2. Under Section 1.A.2. shall not exceed \$2,000,000 for any one **occurrence** arising out of **bodily injury, property damage, public officials errors and omissions**, or any combination thereof.

While a covered **automobile** is away from the state where it is licensed, **MOPERM** will provide the minimum amounts and types of other coverages, such as "No-Fault," required of out-of-state vehicles by the jurisdiction where the **automobile** is being used. **MOPERM** will not pay anyone more than once for the same elements of loss because of this extension but in no event to exceed the maximum amount provided for in Section 537.610, RSMo, for any one **occurrence**.

Issued by Missouri Public Entity Risk Management Fund (MOPERM), P. O. Box 7110, Jefferson City, MO 65102.

By:



### III. WHO IS A COVERED PARTY?

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

- A. The **Member Agency** named in the Liability Memorandum of Coverage Declarations.
- B. Any elected or appointed official of the **Member Agency** while acting (1) within the course and scope of their duties, and (2) in furtherance of the official pursuits of the **Member Agency**.
- C. Any member of Boards or Commissions of the **Member Agency** while acting (1) within the course and scope of their duties, and (2) in furtherance of the official pursuits of the **Member Agency**.
- D. Any **employee** or **authorized volunteer** of the **Member Agency** while acting (1) within the course and scope of their duties, and (2) in furtherance of the official pursuits of the **Member Agency**.
- E. Any person while **using an owned, non-owned or hired automobile** and any person legally responsible for the **use** thereof, provided the actual **use** of the **automobile** is (1) within the course of employment, and (2) in furtherance of the official pursuits of the **Member Agency**. The coverage extended by this Section E shall not apply:
  - 1. To any person or organization, or to any agent or employee thereof, engaged in selling, repairing, servicing, delivering, testing, road testing, parking or storing **automobiles**, with respect to any **occurrence** arising out of any such occupation; or
  - 2. With respect to any **hired automobiles**, to the owner or a lessee thereof other than the **Member Agency**, or to any agent or employee of such owner or lessee.
- F. Any person or organization to whom or to which the **Member Agency** is obligated by virtue of a written contract to provide coverage such as is afforded by this agreement but only with respect to operations performed by or on behalf of the **Member Agency** or facilities owned or used by the **Member Agency**. Notwithstanding the foregoing, no person or organization shall become a **Covered Party** pursuant to this section by virtue of (1) any contract to transfer liability to the **Member Agency** for which the **Member Agency** would not otherwise have liability; or (2) any contract whereby the **Member Agency** agrees to indemnify or hold harmless the person or organization from liability.

### IV. WHAT MOPERM WILL NOT COVER (EXCLUSIONS)

This Liability Memorandum of Coverage does **not** apply:

- A. To liability due to war, whether or not declared, or any act or condition incident to war. As used in this exclusion, **War** includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.
- B. To liability arising out of the ownership, maintenance, use or operation of any airfield or similar aviation facility.
- C. To liability arising out of the ownership, maintenance, loading, unloading, use, or entrustment to others of owned, non-owned or hired **aircraft**.
- D. To liability arising out of the ownership, maintenance, loading, unloading, use, or entrustment to others of owned, non-owned or hired **watercraft**.
  - 1. Any **watercraft** owned or operated by or rented or loaned to any **Covered Party**;
  - 2. Any other **watercraft** operated by any person in the course of his employment by any **Covered Party**;but this exclusion does not apply to **watercraft** while ashore on premises owned by, rented to or controlled by the **Covered Party** nor to **watercraft** under 26 feet in length.
- E. To any obligation for which the **Covered Party**, or any carrier as insurer therefor, may be held liable under any workers' compensation, unemployment compensation or disability benefits law or under any similar law.
- F. To liability for **bodily injury** to any **employee**, elected or appointed official, members of any Boards or Commissions, or **authorized volunteer** of the **Covered Party** in connection with his or her duties for the **Covered Party**, except with respect to liability of others assumed by the **Covered Party** under contract.

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G. To liability of any **employee**, elected or appointed official, members of any Boards or Commissions, or **authorized volunteer** with respect to **bodily injury** of another **employee**, elected or appointed official, members of any Boards or Commissions, or **authorized volunteer**.

H. To liability for **property damage** to:

1. Property owned or operated by the **Covered Party**;
2. Property rented to or leased to the **Covered Party** where the **Covered Party** has assumed liability under contract for damage to or destruction of such property, unless the **Covered Party** would have been liable in the absence of such contract;
3. **Aircraft** in the care, custody or control of the **Covered Party**; and
4. Property of others in the care, custody or control of the **Covered Party**.

I. To any liability arising out of **pollution**, including but not limited to:

1. Investigation, settlement or defense of any threatened, actual or alleged claim, suit, damage or injury of any kind arising out of the actual, alleged or threatened discharge, exposure to, release or escape of pollutants anywhere in the world.
2. Loss, cost or expense arising out of any governmental direction or request that the **Covered Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
3. Any loss, cost or expense incurred by a governmental entity or other third party including the cost of investigation, monitoring and attorneys' fees, relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize pollutants.

Pollutants means any solid, liquid, gaseous or thermal contaminants, irritants or toxic substances including smoke, vapor, soot, fumes, acids, alkalis, air contaminants, minerals, metals, chemicals, waste and particulates including asbestos. Waste includes materials to be recycled, reconditioned or reclaimed.

J. To liability arising out of or in connection with:

1. The rendering of or failure to render:
  - a. Medical, surgical, dental, x-ray, nursing service or treatment.
  - b. Any treatment or service conducive to health or of a medical nature.
  - c. Any cosmetic or tonsorial service or treatment delivered in connection with health or medical care or treatment.
2. The furnishing of or dispensing of drugs or medical, dental or surgical supplies or appliances.

This exclusion shall not apply to ambulance service personnel or to registered nurses, licensed practical nurses, nurses' aides, emergency medical technicians, or paramedics directly employed by the **Member Agency** in connection with the operation of a hospital, clinic, nursing home, or established health care facility owned or operated by a **Member Agency** as specifically designated in the declarations and while acting (1) within the course and scope of their professional registration, licensure or certification; (2) within the course and scope of their duties for the **Member Agency**; and (3) in furtherance of the official pursuits of the **Member Agency**.

K. To claims against those who are independent contractors of the **Member Agency**, its officers or employees. However, this exclusion shall not apply to **Member Agencies** acting as independent contractors.

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- L. To claims for loss or damage arising out of or in connection with:
1. The principles of eminent domain, proceedings to condemn property or inverse condemnation by whatever name regardless of whether such claims are made directly against the **Covered Party** or by virtue of any agreement entered into by or on behalf of the **Covered Party**.
  2. Any action, claim, or proceeding arising out of or involving zoning or land use, whether:
    - a. an administrative proceeding;
    - b. judicial review of an administrative decision including but not limited to a challenge to a statute, ordinance, regulation, procedure or decision on any grounds; or
    - c. an action seeking damages or any monetary recovery of any sort, including but not limited to attorney's fees, court costs and expenses, regardless of the legal theory or cause of action asserted.
- M. To backpay, past salary or wages, or any compensation or benefits, whether current or deferred, and whether based on services that have been or would have been rendered, including retirement contributions, accrual of leave or retirement benefits, due to any elected or appointed official, officer, **Employee**, or Board or Commission member, of a **Member Agency**.
- N. To punitive and exemplary damages, damages for aggravating circumstances, and fines or penalties threatened or imposed for violation of any civil or criminal statute, administrative regulation or county or municipal ordinance.
- O. To liability for which any **Member Agency** may be held liable by reason of:
1. Causing or contributing to the intoxication of any person;
  2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  3. Any statute, order, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
- This exclusion applies only if the **Member Agency** is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.
- P. To all losses, including penalties, fines, attorneys' fees and expenses assessed and/or incurred, resulting from or arising out of violations of the statutes or Constitution of the State of Missouri or county or municipal ordinances.
- Q. To all claims or losses, including fines, forfeitures, penalties, attorneys' fees and expenses incurred and/or assessed, resulting or arising from charges brought by information or indictment alleging violations of
1. State or Federal criminal law; or
  2. county or municipal ordinance defining, or imposing a penalty for, a felony, misdemeanor or infraction.
- R. To claims for penalties, fines, attorneys' fees and costs arising out of the enforcement provisions of Chapter 610, RSMo.
- S. To proceedings for removal or impeachment from office or any Board or Commission; or for the determination of qualifications for office or of election contests; or for professional disciplinary action brought by a person, board, commission or other person or entity empowered by law to do so.
- T. To claims against any **Member Agency**, officer, **employee**, Board or Commission member of a **Member Agency** which were brought by or rendered in favor of that same **Member Agency** or officers, **employees**, Board or Commission members of that same **Member Agency**, acting in an official capacity.
- U. To actions or claims for injunctive relief, mandamus, prohibition, declaratory judgment, or relief other than monetary damages.

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- V. To claims for attorneys' fees, costs, expenses, or nominal damages arising from actions or claims that otherwise seek injunctive relief, mandamus, prohibition, declaratory judgment, or relief other than monetary damages.
- W. To claims or suits arising out of failure to effect or maintain proper insurance or bonds or to comply with the provisions of insurance contracts, policies or bonds.
- X. To all losses, including penalties, fines, attorneys' fees and expenses, resulting from or arising out of violations or claimed violations of the Fair Labor Standards Act or similar state statutes or local ordinances.
- Y. To damages resulting from the refunding, levying, collecting or disbursement of taxes, fees or assessments or the failure to refund, levy, collect or disburse any tax, fee or assessment.
- Z. To liability for which the **Member Agency** 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 for bodily injury and property damages:
  1. Assumed in a contract or agreement that is a **Covered Contract**, provided the loss arises from an occurrence that is subsequent to the execution of the contract or agreement; or
  2. That the **Member Agency** would have in the absence of the contract or agreement.

For purposes of this Exclusion, **Covered Contract** means:

- a. A lease of premises;
- b. A railroad sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by an order or ordinance, to indemnify a public entity, except in connection with work for a public entity;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement under which the **Member Agency** assumes the tort liability of another party to pay for **bodily injury** or **property damage** 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.

A **Covered Contract** does not include that part of any contract or agreement:

- a. 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 specifications; or
  - 2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- b. Under which a **Covered Party**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Covered Party's** rendering or failure to render professional services, including those listed in clause a of this paragraph, and supervisory, inspection or engineering services; or
- c. That indemnifies any person or organization for damage by fire to premises rented or loaned to the **Member Agency**.

AA. To liability of a **Covered Party**

1. arising in whole or in part out of a **Covered Party's** obtaining remuneration or financial gain to which the **Covered Party** was not legally entitled or
2. arising out of the willful violation of the penal code or ordinance committed by or with the knowledge or consent of any **Covered Party**.

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- BB. To liability arising out of any bidding process, estimates of probable cost or cost estimates being exceeded or faulty preparation of bid specifications or plans including engineering or architectural plans.
- CC. To failure to perform, breach of or arising out of any breach of a contractual obligation whether oral or in writing.
- DD. To liability imposed under the Employee Retirement Income Security Act of 1974 or any law mandatory thereof or any similar law or liability arising out of fiduciary activities as respects employee benefit plans.
- EE. To claims resulting from or arising out of the proposed or actual charges for, application of, increase in utility rates.
- FF. To liability:

1. With respect to which a **Covered Party** under the Liability Memorandum of Coverage is also a **Covered Party** under a nuclear energy liability policy issued by Mutual Atomic Energy Liability Underwriters, American Nuclear Insurers, Nuclear Insurance Association of Canada or any successor organizations, or would be a **Covered Party** 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 **Covered Party** is, or had this Liability Memorandum of Coverage 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; or
3. Resulting from hazardous properties of nuclear material, if:
  - a. The nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of a **Covered Party** or (ii) has been discharged or dispersed therefrom; or
  - 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 a **Covered Party**; or
  - c. The **bodily injury** or **property damage** arises out of the furnishing by a **Covered Party** of services, materials, parts of 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.

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 meaning 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 by-product 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 (f) (i) or (ii) hereof;
- f. "Nuclear facility" means: (i) any nuclear reactor; (ii) any equipment or device designed or used for (aa) separating the isotopes of uranium or plutonium, (bb) processing or utilizing spent fuel or (cc) handling, processing 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 the custody of the **Covered Party** at the premises where such equipment or device is located consists of or contains more than 25 grams of uranium m235; (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and (v) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operation;

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- 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" includes all forms of radioactive contamination of property.
- GG. To liability caused directly or indirectly by, arising out of or resulting from oral or written publication of material, if done by or at the direction of the **Member Agency** with knowledge of its falsity.
- HH. To liability caused directly or indirectly by, arising out of or resulting from **fungi** or bacteria of any type regardless of the cause of the growth, proliferation or accretion.
- II. To liability arising out of the ownership, maintenance, use or operation of any railroad yard, track, facility or equipment, other than trolley, streetcar, and similar "street railroad" (as the term "street railroad" is defined by Section 386.020, RSMo) equipment and facilities for public use in the providing of local public transportation service upon the roads, streets, highways and public places in or adjacent to a **Member Agency**.
- JJ. To liability arising out of the ownership, maintenance, use or operation of, loading, unloading, or entrustment to others of owned, non-owned, or hired trains or other railroad equipment.
- KK. To liability for **Bodily Injury** or **Property Damage** resulting from an act which is a violation of State or Federal criminal law, or county or municipal ordinance defining, or imposing a penalty for, a felony, misdemeanor or infraction, committed by any **Covered Party**. This exclusion applies even if:
1. such **Covered Party** lacks the mental capacity to form intent;
  2. such **Bodily Injury** or **Property Damage** is of a different kind or degree than expected or intended; or
  3. such **Bodily Injury** or **Property Damage** is sustained by a different person, or persons, other than expected or intended.
- This exclusion applies whether or not the **Covered Party** is charged or convicted of a violation of State or Federal criminal law, County or Municipal Ordinance.
- LL. To liability of any Law Enforcement officer or school protection officer of the **Member Agency** with arrest or detention authority who has not completed all applicable training, licensure and other requirements determined applicable to that Law Enforcement officer or school protection officer by the Peace Officer Standards & Training Commission, established pursuant to Section 590.120, RSMo.
- MM. To liability resulting from or arising out of the activities of any law enforcement officers making use of a canine in connection with the execution of the officer's official duties that has not completed appropriate training relating to use of service dogs in law enforcement.
- NN. To liability resulting from or arising out of daycare operations that are required, but fail, to be appropriately licensed.
- OO. To liability resulting from or arising out of a fireworks display not directly supervised by a qualified pyrotechnician.
- PP. To liability resulting from or arising out of the activities of any wrongful act or omission by a **Covered Party**, which results in **Bodily Injury** or **Property Damage** which is reasonably expected or intended by the **Covered Party**.
- QQ. To liability for **Bodily Injury** to any passenger in an **owned, non-owned, or hired automobile** whose presence in such **owned, non-owned, or hired automobile** is not in furtherance of the official pursuits of the **Member Agency**.
- RR. To liability for any claim, including damages and **defense costs**, alleging copyright infringement, patent infringement, trademark or service mark infringement, or piracy of intellectual property or protected works, whether by unauthorized use, reproduction, preparation of derivative works, distribution of copies by sale or rental, or public performance or display.
- SS. To liability for any claim, including damages and **defense costs**, brought by suit in any court or other tribunal of any country, territory or jurisdiction outside of the United States, its territories and possessions. This exclusion shall apply whether liability is asserted resulting from an act that occurred within or outside of the United States; and whether the court or tribunal of the jurisdiction outside of the United States has exclusive jurisdiction to hear and decide the claim, or whether a court or tribunal within the United States has concurrent jurisdiction to hear and decide the claim. In event of a claim brought by suit in any court or other tribunal of any country, territory or jurisdiction outside of the United States, its territories and possessions,

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**MOPERM** will have no obligation to take any action, interpose any defenses, or in any way seek removal of the claim from the court or tribunal outside the United States to a court or tribunal within the United States. This exclusion shall not apply to **Automobile Liability** claims brought by suit in any court or tribunal within the country of Canada.

TT. To liability for any claim resulting from or arising out of:

1. any actual, alleged or threatened infectious, pathogenic, toxic or other harmful properties of any **organic pathogen**, including exposure to any **organic pathogen**; and
2. any loss, cost or expense arising out of any
  1. request, demand, order, statutory or regulatory requirement that any **Covered Party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of any **organic pathogen**,
  2. claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any **organic pathogen**, or
3. any actual or alleged failure by a **Covered Party** to properly quarantine those affected by an **organic pathogen**.

## V. WORDS AND PHRASES WITH SPECIAL MEANING

As used in this Liability Memorandum of Coverage, the Liability Memorandum of Coverage Declarations and all Forms and Endorsements annexed to the Liability Memorandum of Coverage, the following words and phrases shall mean:

**Aircraft** means a vehicle designed for the transport of persons or property primarily in the air; provided, however, that an unmanned aircraft of a total weight of 55 pounds or less operated by a **Member Agency** or by a **Covered Party** on behalf of a **Member Agency** (1) in furtherance of the official pursuits of the **Member Agency**; and (2) within the course and scope of the **Covered Party's** duties; and (3) in compliance with all applicable federal, state and local statutes, rules, regulations and ordinances; shall not be construed to be an "aircraft" for purposes of this Liability Memorandum of Coverage.

**Automobile** means a land motor vehicle or trailer licensed for highway use.

**Automobile Liability** means liability for **bodily injury** or **property damage** that results from the negligent acts or omissions by a **Covered Party** arising out of the operation of an **automobile** within the course and scope of the **Covered Party's** duties.

**Authorized Volunteer** means an individual who renders any service at the direction of and directly for the benefit of the **Member Agency** (as designated in the Liability Memorandum of Coverage Declarations) without expectation of receiving a wage or salary, and shall include unpaid officers and Board or Commission members of any **Member Agency**.

**Bodily injury** means physical injury, sickness, disease, disability or death sustained by a person and includes any resulting mental injury, emotional distress, shock or loss of services.

**Covered Party** means any person or entity set forth in Section III of this Liability Memorandum of Coverage.

**Defense costs** means all fees and expense caused by and relating to the adjustment, investigation, defense or litigation of a claim including attorneys' fees, court costs and interest on judgments accruing after entry of judgment. **Defense costs** shall not include the office expenses of the **Covered Party** or the salaries of **employees** or officials of any **Covered Party**.

**Employee** means an individual who receives wages or salary directly from the **Member Agency** (as designated in the Liability Memorandum of Coverage Declarations) for work performed at the direction of and directly for the benefit of the **Member Agency**.

**Employment Practices Liability** means liability claimed by or on behalf of an **Employee** or former **Employee** of a **Member Agency** or an applicant for employment by a **Member Agency** resulting from violation of the **Employee's**, former **Employee's**, or applicant's legal right(s) as an **Employee** or former **Employee** of, or applicant for employment by, the **Member Agency**.

**Fungi** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by **fungi**.

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**General Liability** means liability that results from any claim or cause of action described in Section I.A.2 of this Liability Memorandum of Coverage, INCLUDING claims or causes of action not subject to the foregoing Exclusions for (1) libel, slander or defamation of character; (2) invasion of privacy; (3) wrongful entry or eviction, or other invasion of the right of private occupancy; (4) assault and battery; and (5) discrimination prohibited by law or violation of federal civil rights laws; but which are not claims or causes of action for liability specifically defined by this Liability Memorandum of Coverage as **Automobile Liability, Employment Practices Liability, Law Enforcement Liability, Healthcare Malpractice Liability, or Public Officials Errors and Omissions Liability**.

**Healthcare Malpractice Liability** means liability of a registered nurse, licensed practical nurse, nurses' aide, emergency medical technician, paramedic or ambulance service personnel, but not liability of the **Member Agency**, for **bodily injury or property damage** resulting from the improper, unskilled, or negligent care or treatment of a patient by the registered nurse, licensed practical nurse, nurses' aide, emergency medical technician, paramedic or ambulance service personnel, directly employed by the **Member Agency** as specifically designated in the Liability Memorandum of Coverage Declarations and while acting (1) within the course and scope of their duties for said designated **Member Agency**, and (2) in furtherance of the official pursuits of the **Member Agency**.

**Hired automobile** means an **automobile** used under contract on behalf of or loaned to the **Member Agency** provided such **automobile** is not owned by or registered in the name of (1) the **Member Agency** or (2) an **employee** or servant of the **Member Agency**.

**Law Enforcement Liability** means liability that results from an act while conducting any official activity or operation(s) of (1) a **Member Agency's** police department, sheriff agency or other public safety organization that enforces the law and protects persons and/or property from breaches of the law; or (2) a **Member Agency** that has employed one or more law enforcement officers with the power of arrest for a violation of the criminal code, or declared or deemed to be a peace officer by state statute; or (3) a **Member Agency** that is a county that has employed and compensates one or more juvenile officers or deputy juvenile officers exercising authority pursuant to Section 211.401, RSMo; or (4) a **Member Agency** that employs one or more court marshals with the power of arrest granted by state law or local order or ordinance; or (5) a **Member Agency** that employs one or more jailers, detention officers, custodial officers, or persons exercising duties and authority to detain and maintain detention of any person arrested or confined by a law enforcement officer, including jailers exercising authority pursuant to Chapter 221, RSMo; or (6) a **Member Agency** that is a school district that has designated one or more school protection officers or school attendance officers, while acting pursuant to the requirements of Sections 160.665 or 167.071, RSMo.

**Member Agency** means the local public agency designated in the Liability Memorandum of Coverage Declarations and shall not include any other entity or agency under which said designated **Member Agency** may do business unless specifically included in the Liability Memorandum of Coverage Declarations.

**MOPERM** means the Missouri Public Entity Risk Management Fund.

**Non-owned automobile** means an **automobile** not owned by or registered in the name of, hired by, leased or rented by, or loaned to the **Member Agency**.

**Occurrence** means an accident during the coverage period, or an event that first occurs during the coverage period, or continuous, intermittent or repeated exposure to conditions that commence during the coverage period, any of which accidents, events or exposures causes **Bodily Injury or Property Damage** neither expected nor intended by the **Covered Party**. All **bodily injuries or property damages** arising out of continuous or repeated exposure to substantially the same general condition shall be considered as arising out of one **Occurrence**. Any claim, cause of action, injury or loss, or number of claims, causes of action, injuries or losses that are attributable directly or indirectly to the same or a continuous or repeated event, condition, cause, defect or hazard, or failure to warn of such, or arising from the same set of operative facts, circumstances, situations, events, transactions or series of facts, circumstances, situations, events or transactions, shall be treated as one **Occurrence** regardless of the time period or area over which the claims, causes of action, injuries or losses occur or the number of such time periods or areas. **Bodily Injury or Property Damage** that results from an act that is intended by the **Covered Party** to cause **Bodily Injury or Property Damage** is not an injury or damage that is neither expected nor intended.

**Organic pathogen** means any (1) bacteria; mildew, mold or other **fungi**; other microorganisms; or mycotoxins, spores or other by-products of any of the foregoing; (2) viruses or other pathogens (whether or not a microorganism); or (3) colony or group of any of the foregoing.

**Owned Automobile** means an **automobile** owned by or under a lease of 30 days or more to the **Member Agency**.

**Property Damage** means (1) physical injury to or destruction of tangible property, including the loss of use thereof at any time, or (2) loss of use of tangible property which has not been physically injured or destroyed.

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**Public Officials Errors and Omissions Liability** means liability that occurs as a result of a breach of duty by the **Covered Party** resulting from the **Covered Party's** actual or perceived negligent action or inaction, mistake, misstatement, error, neglect, inadvertence or omission by the **Covered Party** in the course and scope of the **Covered Party's** duties with the **Member Agency**; but does not include (1) **Bodily Injury or Property Damage** that results from an act that is intended by the **Covered Party** to cause **Bodily Injury or Property Damage**; or (2) claim by a **Member Agency** against a **Covered Party** who is an official or an **employee** of the **Member Agency**.

**Ultimate Net Loss** means the sum actually paid or payable in cash in the settlement or satisfaction of losses, for which the **Covered Party** is liable either by (1) adjudication or (2) compromise with the written consent of **MOPERM**, after making proper deduction for all recoveries and salvages collectible. **Ultimate Net Loss** does not include **Defense Costs**. **MOPERM's** obligation to pay any **Ultimate Net Loss** shall under no circumstances exceed the amount of **MOPERM's** Limit of Liability.

**Use of an automobile** includes the loading and unloading thereof.

**Watercraft** means a vehicle designed for the transport of persons or property primarily in or on water.

## VI. CONDITIONS

- A. **Coverage Dependent on Application/Payment for, and Extension of, Coverage.** Coverage for any liability provided by this Liability Memorandum of Coverage shall be subject to and conditioned upon (1) application by the **Member Agency** for coverage of that particular liability; (2) agreement by **MOPERM** to extend coverage for that specific liability to the **Member Agency**; and (3) payment by or on behalf of the **Member Agency** (or entry by the **Member Agency** and **MOPERM** into a payment agreement prior to the **Occurrence**) for coverage of that specific liability of the full contribution assessed by **MOPERM** for that coverage.
- B. **Deposit/Adjustment.** All deposits and retrospective adjustments in connection with this Liability Memorandum of Coverage shall be computed in accordance with the rating plans developed by **MOPERM**.
- C. **Inspection and Audit.** **MOPERM** shall be permitted but not obligated to inspect the **Member Agency's** property and operations at any time. **MOPERM** may examine and audit the **Member Agency's** books and records at any time prior to cessation of the **Member Agency's** financial obligations under these conditions or the terms and conditions of the Liability Memorandum of Coverage.
- D. **Covered 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 **Covered 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 **Covered Party** to **MOPERM** or any of its authorized agents as soon as practicable.
  2. If claim is made or suit brought against the **Covered Party**, the **Covered Party** shall immediately forward to **MOPERM** every demand, notice, summons or process received.
  3. The **Covered Party** shall cooperate with **MOPERM** and, upon **MOPERM's** request, assist in making 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 **Covered Party** because of injury or damage with respect to which coverage is afforded under this Liability Memorandum of Coverage; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at the **Covered Party's** cost, voluntarily make payment, assume any obligation or incur any expense other than for first aid or damage mitigation.
  4. If any **Covered Party** refuses to accept a reasonable settlement **MOPERM** negotiates that is acceptable to the plaintiff(s) or claimant(s) and wishes to contest or continue to contest any claim, suit or judgment or continue any legal proceedings in connection with any matter, then **MOPERM** may withdraw from its obligation to provide further defense of the claim, suit or judgment and allow the **Covered Party** refusing to accept the settlement to assume further defense of the claim, suit or judgment, and in such event, **MOPERM's** liability with respect to that claim, matter, judgment or proceeding shall not exceed the amount for which it could have been settled including, if applicable, **defense costs** incurred by **MOPERM** or with **MOPERM's** consent up to the date of such refusal.
  5. **MOPERM** shall not be liable for **occurrences**, suits or claims in which the **Member Agency** fails to comply with this Subsection.

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- E. **Action Against MOPERM.** No action shall lie against **MOPERM** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Liability Memorandum of Coverage, nor until the amount of the **Covered Party's** obligation to pay shall have been finally determined either by judgment against the **Covered Party** after actual trial or by written agreement of the **Covered Party**, the claimant and **MOPERM**.

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 Liability Memorandum of Coverage to the extent of the coverage afforded by this Liability Memorandum of Coverage. No person or organization shall have any right under this Liability Memorandum of Coverage to join **MOPERM** as a party to any action against **Covered Party** to determine the **Covered Party's** liability, nor shall **MOPERM** be impleaded by the **Covered Party** or the **Covered Party's** legal representative. Bankruptcy or insolvency of the **Covered Party** or of the **Covered Party's** estate shall not relieve **MOPERM** of any of its obligations hereunder.

- F. **Other Coverage.** The coverage afforded in this Liability Memorandum of Coverage shall be excess of and not contribute with any other valid and collectible coverage, other than any excess or umbrella coverage procured by **MOPERM** or the **Member Agency**.
- G. **Multiple Coverage Periods.** An **occurrence** with a duration of more than one coverage period shall be treated as a single **occurrence** arising during the coverage period when the **occurrence** begins. Any claim, cause of action, injury or loss that occurred or accrued during more than one coverage period, whether brought or presented by one or more persons or parties individually or as members of a class against a **Covered Party**, and whether brought or presented as separate claims by multiple persons or parties or as a single claim by a class of claimants, shall be deemed to have occurred during the coverage period when the claim, cause of action, injury or loss first occurred or accrued.
- H. **Subrogation.** In the event of any payment under this Liability Memorandum of Coverage, **MOPERM** shall be subrogated to all the **Covered Party's** rights of recovering therefor against any person or organization and the **Covered Party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Covered Party** shall do nothing to prejudice such rights.
- I. **Withdrawal/Cancellation.** **MOPERM** may cancel the **Member Agency's** participation in **MOPERM** for non-payment of any contribution, assessment, deposit, retrospective adjustment or any other receivable, whether in whole or part, with 10 days' advance written notice.
- J. **Changes.** This Liability Memorandum of Coverage shall not be changed except by written endorsement hereto.
- K. **Increase in Hazard.** Unless otherwise provided in writing added hereto, **MOPERM** shall not be liable for loss occurring while hazards are increased by any means within the control or knowledge of the **Member Agency**.
- L. **Assessments.** If contributions received by **MOPERM** in any year do not produce sufficient funds to pay claims which are due for that year, the **Member Agency** shall be subject to an assessment. This condition shall also apply to any **Member Agency** who has withdrawn from **MOPERM** but was a **Member Agency** during any portion of the year for which the assessment is required.
- M. **Refunds.** If contributions received by **MOPERM** in any fiscal year produce an ending balance exceeding projected needs and adequate reserves, the **Member Agency** may, at the discretion of the Board of Trustees, be paid a refund.

Issued by Missouri Public Entity Risk Management Fund (MOPERM), P. O. Box 7110, Jefferson City, MO 65102.

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