



ARIZONA MUNICIPAL RISK RETENTION POOL MUNICIPAL EXCESS LIABILITY COVERAGE FORM

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

Throughout this Coverage Part:

1. "Pool" refers to the Arizona Municipal Risk Retention Pool;
2. "Member" refers to the Member(s) shown in the Municipal Excess Liability Declarations; and
3. "Covered Entity" refers to any person or organization qualifying as such under Section B. – Who Is Covered.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

A. COVERAGE

1. Excess Liability

- a. The Pool will pay those sums in excess of the "underlying limit" that a Covered Entity becomes legally obligated to pay as "damages" because of a covered "wrongful act".

The Pool will have the right and duty to defend the Covered Entity against any "suit" seeking those "damages" when the limits of "underlying coverage" have been exhausted. When the Pool has no duty to defend, the Pool will have the right to defend, or to participate in the defense of, the Covered Entity against any other "suit" seeking "damages" to which this coverage may apply. However, the Pool will have no duty to defend the Covered Entity against any "suit" seeking "damages" for a "wrongful act" to which this coverage does not apply. The Pool may, at the Pool's discretion, investigate any "wrongful act" and settle any "claim" or "suit" that may result. But:

- (1) The amount the Pool will pay for "damages" is limited as described in Section C. – Limits Of Coverage; and

- (2) The Pool's right and duty to defend ends when the Limit Of Coverage has been used up in payments of judgments, settlements, and Limited Supplementary Payments.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This coverage applies to "damages" only if:

- (1) The "damages" are the result of a "wrongful act" that occurs in the "coverage territory"; and

- (2) With respect to "damages" with "underlying coverage" provided on a claims-made basis:

- (a) The "wrongful act" did not occur before the Municipal Excess Liability Coverage Retroactive Date, if any, shown in the Municipal Excess Liability Declarations or after the end of the "rating period"; and

- (b) A "claim" for "damages" because of the "wrongful act" is first made against any Covered Entity, in accordance with Paragraph c. below, before the end of the "rating period" or any Extended Reporting Period the Pool provides under Section E. – Extended Reporting Periods; or

- (3) With respect to "damages" with "underlying coverage" provided on other than a claims-made basis, the "wrongful act" occurred during the "rating period".

- c. A "claim" by a person or organization seeking "damages" will be deemed to have been made when notice of such "claim" is received and recorded by any Covered Entity or by the Pool, whichever comes first.

All "claims" for "damages" arising from a covered "wrongful act" will be deemed to have been made at the time the first of those "claims" is made against any Covered Entity.

- d. Exclusions

The Exclusions applicable to the "underlying coverage" apply to this Coverage Part.



This coverage also does not apply to:

(1) Auto Coverages

- (a) "Damages" arising out of the ownership, maintenance or use of any "auto" which is not a "covered auto"; or
- (b) Any loss, cost or expense payable under or resulting from any first party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorists law.

(2) Municipal Liability Coverages

Any loss, cost or expense payable under or resulting from any medical payments coverage, back wages coverage, fire damage coverage, land use liability coverage, organic pathogen coverage, or pollution liability coverage.

(3) Molestation Of A Minor

"Damages" arising out of:

- (a) The actual or threatened abuse or molestation by anyone of any minor, or
- (b) The negligent:
 - (i) Employment;
 - (ii) Training;
 - (iii) Investigation;
 - (iv) Supervision;
 - (v) Reporting to the proper authorities, or failure to so report; or
 - (vi) Retention;of a person for whom any Covered Entity is or ever was legally responsible and whose conduct would be excluded by Paragraph (a) above.

(4) Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

2. Supplementary Payments

With respect to any "claim" the Pool investigates or settles or any "suit" against a Covered Entity the Pool defends, the Pool will pay expenses as described below:

- a. When the duty to defend exists, the Pool will pay expenses the Pool incurs.
- b. When the Pool has the right but not the duty to defend the Covered Entity and elects to participate in the defense, the Pool will pay the Pool's own expenses but will not contribute to the expenses of the Covered Entity or the "underlying carrier".
- c. The cost of bonds to appeal a judgment or award in any "suit" the Pool defends. The Pool does not have to furnish these bonds.
- d. Up to \$250 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" the Pool covers. The Pool does not have to furnish these bonds.
- e. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit Of Coverage. The Pool does not have to furnish these bonds.
- f. All reasonable expenses incurred by a Covered Entity at the Pool's request to assist in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
- g. All costs taxed against the Covered Entity in the "suit".
- h. Prejudgment interest awarded against the Covered Entity on that part of the judgment the Pool pays. If the Pool makes an offer to pay the applicable Limit Of Coverage, the Pool will not pay any prejudgment interest based on that period of time after the offer.
- i. All interest on the full amount of any judgment that accrues after entry of the judgment and before the Pool has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of coverage.



“Loss adjustment expense” included in **a.** and **b.** above and the expenses described in Paragraphs **c.** through **i.** above are Limited Supplementary Payments. The amount the Pool will pay for Limited Supplementary Payments is limited as described in Section **C.** – Limits Of Coverage.

B. WHO IS COVERED

Any person or organization qualifying as a Covered Entity or an insured in the “underlying coverage” is a Covered Entity with respect to the applicable coverage in this Coverage Part.

C. LIMITS OF COVERAGE

1. The Limits Of Coverage shown in the Municipal Excess Liability Declarations and the rules below fix the most the Pool will pay regardless of the number of:
 - a. Covered Entities;
 - b. “Claims” made, “suits” brought, or number of vehicles involved; or
 - c. Persons or organizations making “claims” or bringing “suits”.
2. The Aggregate Limit is the most the Pool will pay for the sum of all “damages” and Limited Supplementary Payments.
3. Subject to **2.** above, the Each Wrongful Act Limit is the most the Pool will pay for the sum of all “damages” arising out of any one “wrongful act”.

The Limits Of Coverage of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the “rating period” shown in the Declarations, unless the “rating period” is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Coverage.

D. CONDITIONS

1. Appeals

If the “underlying carrier” or Covered Entity elects not to appeal a judgment in excess of the “underlying limit”, the Pool may do so at the Pool’s own expense. The Pool will be liable for taxable costs associated with the appeal and postjudgment interest and disbursements.

Payments under this Condition do not reduce the Limits Of Coverage.

2. Bankruptcy

a. Bankruptcy Of Covered Entity

Bankruptcy or insolvency of the Covered Entity or of the Covered Entity’s estate shall not relieve the Pool of any of its obligations hereunder.

b. Bankruptcy Of Underlying Carrier

Bankruptcy of the “underlying carrier” will not relieve the Pool of the Pool’s obligations under this Coverage Part.

However, this coverage will not replace the “underlying coverage” in the event of bankruptcy or insolvency of the “underlying carrier”. This coverage will apply as if the “underlying coverage” were in full effect.

3. Duties In The Event Of Wrongful Act, Claim or Suit

a. The Member must see to it that the Pool is notified as soon as practicable of a “wrongful act” which may result in a “claim” or “suit”. To the extent possible, notice should include:

- (1) Details sufficient to identify the Covered Entity involved;
- (2) How, when, and where the “wrongful act” took place;
- (3) The names and addresses of any injured persons and witnesses; and
- (4) The nature and location of any injury or damage arising out of the “wrongful act”.

Notice of a “wrongful act” is not notice of a “claim”.

b. If a “claim” or notice of a “suit” is received by any Covered Entity, the Member must:

- (1) Immediately record the specifics of the “claim” or “suit” and the date received; and
- (2) Notify the Pool as soon as practicable.

c. The Member must see to it that written notice of any “wrongful act”, “claim” or “suit” is given to the Pool or any of its authorized agents as soon as practicable, but not later than the termination of the “rating period” or any applicable Extended Reporting Period.



d. The Member and any other involved Covered Entity must:

- (1) Immediately send the Pool copies of any demands, notices, summonses or legal papers received in connection with the “claim” or “suit”;
- (2) Authorize the Pool to obtain records and other information;
- (3) Cooperate with the Pool in the investigation or settlement of the “claim” or defense against the “suit”; and
- (4) Assist the Pool, upon the Pool’s request, in the enforcement of any right against any person or organization which may be liable to the Member because of injury or damage to which this coverage may also apply.

e. No Covered Entity will, except at that Covered Entity’s own cost, voluntarily make a payment, assume any legal obligation, or incur any expense, other than for first aid, without the Pool’s consent.

4. Legal Action Against The Pool

No person or organization has a right under this Coverage Part:

- a. To join the Pool as a party or otherwise bring the Pool into a “suit” asking for “damages” from a Covered Entity;
- b. To determine any Covered Entity’s liability; or
- c. To sue the Pool under this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue the Pool to recover on an agreed settlement or on a final judgment against a Covered Entity; but the Pool will not be liable for “damages” that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit Of Coverage. An agreed settlement means a settlement and release of liability signed by the Pool, the Covered Entity and the claimant or the claimant’s legal representative.

Any legal action by a Member against the Pool for breach of this Coverage Part must be filed within one year of the date of the alleged breach.

5. Representations

By accepting this Coverage Part, the Member agrees:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations the Member made to the Pool;
- c. The Pool has issued this Coverage Agreement in reliance upon the Member’s representations; and
- d. The Member does not waive any statutory or common law immunity from or limitation on liability.

6. Loss Payable

Liability under this Coverage Part shall not apply unless and until the Covered Entity or Covered Entity’s “underlying carrier” has become obligated to pay the “underlying limit”.

Such obligation by the Covered Entity to pay “damages” shall have been previously determined by a final settlement or judgment after an actual trial or written agreement between the Covered Entity, claimant, and the Pool.

7. Transfer Of Defense

- a. When the underlying Limits Of Coverage have been used up in the payment of judgments or settlements, the duty to defend will be transferred to the Pool. The Pool will cooperate in the transfer of control to the Pool of any outstanding “claims” or “suits” seeking “damages” to which this coverage applies which would have been covered by the “underlying coverage” had the applicable limit not been used up.
- b. When the Pool controls the investigation or defense of a “claim” or “suit” under this Coverage Part and by mutual agreement or court order the Member assumes control before the applicable Limit Of Coverage is exhausted, the Pool will reimburse the Member for reasonable “loss adjustment expense”. Payments made under this Condition will reduce the applicable Limit Of Coverage.
- c. As soon as practicable after the Pool becomes aware that a Limit Of Coverage is exhausted:



- (1) The Pool will notify the Member of any outstanding “claims” and “suits” subject to that limit; and
 - (2) The Member will arrange to assume control of the defense of all “claims” and “suits” against Covered Entities when the Pool’s right or duty to defend them ends.
- d. The Pool will assist the Member in the transfer of control of the defense of “claims” or “suits” under **b.** or **c.** above. Until such arrangements are completed, the Pool will take on behalf of any Covered Entity those steps which the Pool deems appropriate:
- (1) To avoid a default in any “claim” or “suit”; or
 - (2) To the continued defense of a “claim” or suit.

If the Pool takes such steps:

- (1) The Pool does not waive or give up any of the Pool’s rights under this Coverage Part; and
- (2) The Member will reimburse the Pool for any “loss adjustment expense” that arises out of such steps if the applicable Limit Of Coverage has been exhausted.

8. Maintenance Of Underlying Coverage

The “underlying coverage” listed in the schedule of “underlying coverage” in the Municipal Excess Liability Declarations shall remain in full effect throughout the “rating period” except for reduction of the aggregate limit due to payment of settlements or judgments.

Failure to maintain “underlying coverage” will not invalidate this coverage. However, this coverage will apply as if the “underlying coverage” were in full effect.

The Member must notify the Pool as soon as practicable, but in any case within thirty days of when:

- a. Any “underlying coverage” is replaced with another coverage agreement or insurance policy;
- b. The coverage provided by any “underlying coverage” changes. The Pool may adjust the membership fee for this Coverage Part as of the effective date of the change to the “underlying coverage”;

- c. Any “underlying coverage” is non-renewed or cancelled and not replaced. The Pool may cancel the portion of this coverage that applies to the cancelled or non-renewed “underlying coverage” as of the date of the termination of that “underlying coverage”. If the Pool cancels, and the “underlying coverage” is on a claims-made basis, the Pool will:

- (1) Provide a Basic Extended Reporting Period; and
- (2) Offer a Supplemental Extended Reporting Period Endorsement, but only if the Member obtains a Supplemental Extended Reporting Period for the “underlying coverage”; or

- d. The Retroactive Date of any “underlying coverage” is changed. The Pool may:

- (1) Cancel the coverage as of the effective date of the change in the Retroactive Date; and
- (2) Offer to renew or rewrite this coverage with the same Retroactive Date as the “underlying coverage”.

E. EXTENDED REPORTING PERIODS

1. The Pool will provide one or more Extended Reporting Periods, as described below, if:
 - a. This Coverage Part is canceled; or
 - b. The Pool renews or replaces this Coverage Part with coverage that:
 - (1) Has a Retroactive Date later than the date shown in the Municipal Excess Liability Declarations; or
 - (2) Does not apply on a claims-made basis.
2. Extended Reporting Periods do not extend the “rating period” or change the scope of coverage provided. They apply only if the date of the “wrongful act” giving rise to the “claim” for “damages” under coverage provided on a claims-made basis occurs before the end of the “rating period” but not before the Retroactive Date, if any, shown in the Declarations.



Once in effect, Extended Reporting Periods may not be canceled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the “rating period” and lasts for sixty days.
4. A Supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra membership fee. This supplemental period starts when the Basic Extended Reporting Period, set forth in Paragraph 3. above, ends.

The Member must give the Pool a written request for the endorsement within 60 days after the end of the “rating period”. The Supplemental Extended Reporting Period will not go into effect unless the Member pays the additional membership fee on or before the ninety-first day after the end of the “rating period”.

The Pool will determine the additional charge as a percentage of the expiring annual membership fee for this Coverage Part as follows:

<i>Number of years since retroactive date shown on Declarations page</i>	<i>Additional Membership Fee</i>
1	50%
2	70%
3	80%
4	90%
5 or more	100%

The Supplemental Extended Reporting Period endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

5. The Extended Reporting Periods do not reinstate or increase the Limits Of Coverage.

F. DEFINITIONS

1. “Auto” means:
 - a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads; or
 - b. An all-terrain vehicle licensed for road use; including any attached machinery or equipment. But “auto” does not include “mobile equipment”.

2. “Claim” means a demand for “damages” arising from an alleged “wrongful act”.

3. “Coverage territory” means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada.
 - b. Except for liability arising out of the ownership, maintenance or use of “covered autos”, “coverage territory” also includes:
 - (1) International waters or airspace, but only if the “wrongful act” occurs in the course of travel or transportation between any places included in a. above; or
 - (2) All other parts of the world if the “claim” for “damages” arises out of:
 - (a) Goods or products made or sold by the Member in the territory described in a. above; or
 - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on the Member’s business;

provided a Covered Entity’s responsibility to pay “damages” is determined in a “suit” on the merits, in the territory described in a. above or in a settlement the Pool agrees to.

- c. The Pool also covers accidents involving a “covered auto” while being transported between any of the places described in a. above.

4. “Covered auto” means only those “autos” to which “underlying coverage” applies.

5. “Damages” means money damages. “Damages” does not include:

- a. Exemplary “damages” or punitive “damages”;
- b. Injunctive or equitable relief, or quasi-judicial or administrative orders;
- c. Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law;
- d. Repayment of any tax or assessment that was wrongfully obtained, or any interest on such tax or assessment; or



- e. Amounts paid or payable for the purchase or permanent acquisition of property or property rights, or for the right to permanently enforce an ordinance, regulation, or restriction on the use of property.
6. "Employee" means any natural person:
- While in the Member's service;
 - Who the Member compensates directly by salary, wages or commissions; and
 - Who the Member has the right to direct and control while performing services for the Member.
- "Employee" does not mean or include:
- Any agent, independent contractor or representative acting in the same general capacity; or
 - Any "leased worker".
7. "Loss adjustment expense" means expenses incurred and allocated to any "claim" or "suit" for investigation, defense, and administration.
- "Loss adjustment expense" does not include:
- Salaries and expenses of employees of the Pool or the Pool's Administrator, other than that portion of the Pool's employed attorney's fees, salary and expenses allocated to a specific claim or suit; or
 - Salaries of the Member's "employees" or the Member's office expenses.
8. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- Bulldozers, farm machinery, forklifts, all-terrain vehicles not licensed for road use, and other vehicles designed for use principally off public roads;
 - Street cleaning equipment not licensed for road use;
 - Vehicles that travel on crawler treads;
 - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - Power cranes, shovels, loaders, diggers or drills; or
 - Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraphs a., b. c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - Cherry pickers and similar devices used to raise or lower workers.
- f. Vehicles not described in Paragraphs a., b. c., d. or e. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- Street cleaning equipment, if licensed for road use;
 - Equipment designed primarily for:
 - Snow removal; or
 - Road maintenance, but not construction or resurfacing;
 - Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
9. "Rating period" means the Rating Period shown in the Declarations.
10. "Suit" means a civil proceeding in which "damages" to which this coverage applies are alleged. "Suit" includes:
- An arbitration proceeding in which such "damages" are claimed and to which the Member must submit or does submit with the Pool's consent; or
 - Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the Member submits with the Pool's consent.



“Suit” does not mean any criminal proceeding against any Covered Entity or any open meeting law proceeding.

11. “Underlying carrier” means any risk retention pool, state fund, or insurer which provides “underlying coverage”.
12. “Underlying coverage” means the coverage provided by any coverage agreements or policies of insurance listed in the Municipal Excess Liability Declarations under the Schedule Of Underlying Coverage and any Extended Reporting Periods that apply to those coverage agreements or policies.
- 13 “Underlying limit” means the available limits of “underlying coverage”.
14. “Wrongful act” means:
 - a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions; or

- b. Any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect, or breach of duty by a Covered Entity.

However, “wrongful act” shall not mean any act:

- a. Which is criminal, wanton or reckless;
- b. Which constitutes:
 - (1) Malfeasance in office;
 - (2) Willful neglect of duty;
 - (3) Bad faith;
 - (4) Dishonesty on the part of a Covered Entity; or
 - (5) The willful violation of a statute or ordinance by any Covered Entity; or
- c. For which the Member is not authorized to indemnify any person by law or public policy.

Any series of related “wrongful acts” shall be considered one “wrongful act” deemed to have occurred when the first “wrongful act” in the series occurred.