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**STATE OF NEW MEXICO PROPERTY CERTIFICATE OF COVERAGE**

Certificate of Coverage – Effective 07-01-2021

**SECTION 1**

**I. PURPOSE AND NATURE OF THIS CERTIFICATE**

This Certificate of Coverage (“Certificate”) does not provide insurance, but instead provides an understanding among the **Governmental Entities** of the State of New Mexico about the intent of the use of funds from the **Public Property Reserve Fund** established under NMSA 1978, Section 13-5-1. The **Public Property Reserve Fund** is not an insurer but rather is a fund established by the legislature of the State of New Mexico to provide reimbursement for **loss** to public property, as defined by this Certificate, where not otherwise insured as provided by law.

**II. PROPERTY COVERED**

Except as otherwise excluded or limited herein, the **Public Property Reserve Fund** covers all property of an insurable nature, including money, securities, and **vehicles**, now existing or hereafter acquired, owned by the Governmental Entity or business personal property in the care, custody or control of the **Governmental Entity** for which the **Governmental Entity** is legally liable, or for which the **Governmental Entity** has assumed liability prior to **loss**, wherever situated, not otherwise excluded.

**III. PERILS COVERED AGAINST**

The **Public Property Reserve Fund** covers against all risks of direct physical **loss** or damage not otherwise excluded occurring during the period of this Certificate to covered property, including the expense of removal of debris of covered property damaged by a covered peril.

**IV. COVERAGE LIMITS AND DEDUCTIBLES**

A. Subject to specific exclusions, modifications, and conditions hereinafter provided, the liability of the **Public Property Reserve Fund** in any one **loss** regardless of whether one or more of the coverages of this Certificate are involved and regardless of the number of certificates issued to **Governmental Entities** shall not exceed the Limit of Liability stated on declarations for each occurrence regardless of the number of **Governmental Entities** and/or coverages involved.

- B. **The Risk Management Division Director** may establish a deductible for each **Governmental Entity** that shall apply to any one **loss** by notifying the **Governmental Entity** in writing. However, in no event shall the deductible apply to occurrences that commenced prior to the establishment of such deductible.
- C. Notwithstanding the duty of the General Services Department, Risk Management Division (“GSD/RMD”), through the **Public Property Reserve Fund**, to pay claims under this Certificate, the General Services Department may withhold payment in any one fiscal year upon a belief by the **Risk Management Division Director** that the **Public Property Reserve Fund** would be exhausted by payment of all claims allowed during that fiscal year.

## V. EXTENSIONS OF COVERAGE

### A. PROPERTY IN COURSE OF CONSTRUCTION

1. In regards to course of construction of a new building or of a new construction project not previously covered by existing property coverage, the Certificate will provide automatic property coverage for the **Governmental Entity** subject to the following conditions:
  - a. Project involves only real property on existing locations (excluding dams, piers, roads, tunnels, and bridges); and
  - b. Value of the project at the location does not exceed an amount stated on the declarations. Projects that exceed this amount may be covered by the endorsement.
2. In regards to course of construction to, and remodeling of, existing and currently covered projects, this Certificate will provide automatic coverage for the **Governmental Entity** subject to the following conditions:
  - a. Project involves only real property on existing locations (excluding dams, piers, roads, tunnels, paved surfaces, and bridges); and
  - b. Value of the project at the location does not exceed an amount stated on the declarations. Projects that exceed this amount may be covered by the endorsement.
3. Prior written notification must be delivered to the **Risk Management Division Director** identifying the project by name and specific location, the total project cost, and the anticipated date of completion.
4. Coverage under “Property in Course of Construction” is not considered builders risk coverage and does not indemnify any private sector contractor, entity, business, person, or organization. Thus, if any construction contract that contains a provision whereby a **Governmental Entity** agrees to indemnify or provide a contractor with builder’s risk insurance coverage it does not modify the Certificate of Coverage.

### B. OFF PREMISES SERVICES – Utilities

The coverage provided by the **Public Property Reserve Fund** is extended to include physical damage, business interruption **loss** and/or extra expense incurred and/or sustained by the **Governmental Entity** as a result of damage to, or destruction of, covered property damaged by a covered cause of loss affecting any suppliers furnishing heat, light, power, gas, water, telephone or similar services to a **Governmental Entity’s** premises. This coverage is limited to the liability limits stated on the declarations.

#### C. EXPEDITING EXPENSES

In the event of physical **loss** or damage covered hereunder, the coverage under this Certificate includes the reasonable extra cost of temporary repair and of the expediting the repair of such damaged property of the **Governmental Entity**, including overtime and the extra cost of express or other rapid means of transportation. This extension does not reimburse for administrative overhead and/or project costs incurred by the **Governmental Entity**. This coverage is subject to a sublimit per the Declarations.

#### D. DEBRIS REMOVAL

This Certificate also covers expenses incurred in the removal of debris of the covered property from the premises of the **Governmental Entity** that may be destroyed or damaged by a covered cause of loss. This debris removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore, or replace polluted land or water. *Note: Tree removal is subject to a \$5000.00 per occurrence limit.*

#### E. DEMOLITION COST

In the event of physical damage to covered property by a covered cause of loss, this Certificate is extended to cover the cost of demolishing any undamaged portion of the covered property, including the cost of clearing the site thereof, caused by a covered cause of loss under this Certificate, and resulting from enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of buildings or structures, and in force at the time of **loss** which necessitates such demolition.

#### F. INCREASED COST OF CONSTRUCTION – Building Laws/Code Requirements

In the event of physical damage to covered property by a covered cause of loss, this Certificate is extended to cover the increased cost of repair or replacement occasioned by the enforcement of any state or local ordinance or law regulating the construction, repair, or demolition of real property, which is in force at the time such a **loss** occurs or which comes into force within (12) twelve months after such a **loss** occurs, which necessitates in repairing or replacing the building covered hereunder which has suffered damage or destruction by the covered peril(s), or which has undergone demolition, limited, however, to the minimum requirements of such ordinance or law. The maximum amount of additional **loss** covered by this Certificate which results from the above referenced (12) twelve month period is not to exceed 20% of the amount of the physical damage **loss** from which this additional **loss** results.

#### G. ANIMALS

This coverage is extended to cover police dogs, horses, other specially trained animals, livestock, or research animals maintained in the normal course of business of the **Governmental Entity** subject to perils, exclusions, and valuation sections herein. Coverage includes re-training expenses.

## H. TRANSIT

This Certificate is extended to cover personal business property of the **Governmental Entity** or property held by the **Governmental Entity** in trust while in due course of transit transferred by a licensed, bonded company specializing in transporting valuable goods, worldwide or a non-combat related military transport, against all risks of direct physical **loss** or damage not excluded by this Certificate to covered property occurring during the term of this Certificate.

## I. VEHICLES

### 1. Governmental Entity Vehicles

This Certificate is extended to cover owned **vehicles**, included rented/leased autos, of the **Governmental Entity** against physical **loss** or damage by a covered peril during the term of this Certificate subject to the applicable deductible per occurrence.

### 2. Employee Vehicles

This Certificate is extended to cover **vehicles** owned and operated by a public employee acting within the course and scope of their duties under the direction of the **Governmental Entity**. As a condition that must be satisfied prior to extending coverage, the **Governmental Entity** must certify in writing that the employee was acting within the scope of their duties and that the claim was first tendered to the employee's personal **vehicle** insurance carrier. Only upon certification by the **Governmental Entity** can they submit an Employee **Vehicle Loss** claim. Coverage is extended but is reduced in an amount commensurate with the degree of negligence attributable to the employee as determined by the **Risk Management Division Director**. The claim will be subject to the applicable deductible per occurrence to be paid by the **Governmental Entity**.

## J. EMPLOYEE PROPERTY

### 1. Property of Others Owned by Public Employees

This Certificate is extended to cover personal **Property of Others** owned by a public employee acting within the scope of their duties that enhances their job performance, subject to the applicable deductible per occurrence to be paid by the **Governmental Entity**.

## K. MITIGATION

In the event of physical damage of covered property as a result of the lack of maintenance, this certificate is extended to mitigate those items shown to have caused the ensuing loss to the structure owned by the **Government Entity**. This coverage shall only apply when conditions necessitate the immediate repair to roofs, windows, etc. to prevent future losses. Mitigation expenses covered by this extension will be subject to a \$20,000.00 annual aggregate limit.

## VI. PROPERTY EXCLUDED

This Certificate does not provide coverage for any of the following:

- A. Property not identified in the RMD Annual Exposure Survey;
- B. Standing timber, bodies of water, growing crops (not including experimental crops maintained in the normal course of business by a **Governmental Entity**);
- C. Land and land improvements such as athletic fields, golf courses (including land on which covered property is located), site prep, and land values (except building landscaping);
- D. Dams, tunnels, levies, paved/concrete surfaces, sidewalks, guard rails, cable/concrete barriers, bridges, swales, traffic signs/signals including electronic, markers, and curbing;
- E. Property in due course of ocean marine transit;
- F. Mail or other parcels after delivery to the custody of the United States Post Office, or other commercial mail or parcel carriers;
- G. Valuable papers, data including recovery, electronic records, subscriptions, software, electronic funds, and wire transfers;
- H. Offshore property, oil rigs, underground mines, caverns, and their contents;
- I. Road, street equipment and/or attached apparatus owned, rented or controlled by the **Governmental Entity** or any other types of heavy mobile equipment used for road or other types of construction;
- J. A **Governmental Entity's** personal property located outside the United States, unless the **Governmental Entity** has, prior to the **loss**, advised the Risk Management Division that such property will be located outside the United States;
- K. Personal property of students, volunteers, and non-employees occupying or storing property in **Governmental Entity** buildings or vehicles.
- L. Fine Arts (Risk Management Division purchases a standalone policy with separate terms and conditions).

## VII. PERILS EXCLUDED

This Certificate does not provide coverage for:

- A. **Loss** or damage caused by, or resulting from, lack of maintenance, moths, vermin, termites or other insects, domestic animals or livestock, subterranean water intrusion, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, contamination, pollution, pathogen, rust, corrosion, wet or dry rot, mold, spores, and fungus unless physical **loss** or damage not otherwise excluded herein ensues, and then only for such ensuing **loss**;
- B. Physical **losses** or damage by normal settling, shrinkage, or expansion in building or foundation;
- C. Delay or **loss** of markets (this exclusion shall be inapplicable to the extent inconsistent with any time element coverage provided elsewhere herein);
- D. **Loss** or damage to real or business personal property caused by, or resulting from, data breach, ransomware, cyber, misappropriation, conversion, inventory shortage, unexplained disappearance, theft/infidelity or any dishonest act on the part of the **Governmental Entity**, its employees, agents, or others to whom the property may be entrusted (bailees and carriers for hire excepted) or other party of interest;
- E. **Loss** or damage to real or business personal property resulting from shrinkage, evaporation, **loss** of weight, leakage, breakage of fragile articles, marring, scratching, exposure to light, or change in color, texture or flavor unless such **loss** is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot or civil commotion, aircraft, **vehicles**, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, theft, attempted theft;
- F. **Loss** or shortage disclosed upon taking inventory or mysterious disappearance of property (except property in the custody of carriers or bailees for hire);
- G. **Loss** or damage caused by rain, sleet, or snow to business personal property in the open (except in the custody of carriers or bailees for hire);
- H. **Loss** caused directly, or indirectly, by:
  - 1. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack by:
    - a. any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval, or air forces; or
    - b. military, naval or air forces; or
    - c. an agent of any such government, power, authority, or forces;
  - 2. any weapon of war employing atomic fission or radioactive force whether in time of peace or war; or insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority or hindering, combating or defending against such an

occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

- I. **Loss** by nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such **loss** be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the covered peril(s) in this Certificate; however, subject to the foregoing and all provisions of this Certificate, direct **loss** by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered by this Certificate;
- J. Failure of borrowers or renters of books, library materials, or other **valuable papers and records** to return them to the **Governmental Entity**;
- K. In regards to course of construction to already existing and covered property, the following exclusions shall apply:
  - 1. The cost of making goods, faulty or defective workmanship, material, construction or design, but this exclusion shall not apply to damage by a peril not excluded resulting from such faulty or defective workmanship, material, construction or design;
  - 2. The cost of non-compliance of, or delay in, completion of contract;
  - 3. The cost of non-compliance with contract conditions; and
  - 4. Equipment or tools not owned by a **Governmental Entity** and not a part, or destined to become a part, of the installation.
- L. The following additional exclusions apply to **loss** or damage to animals covered under this Certificate:
  - 1. Death of any animal(s) from natural causes;
  - 2. Death of any animal(s) that dies from an unknown cause, unless:
    - a. upon the death of such an animal a post-mortem examination is made of such animal by a licensed veterinarian, and
    - b. the veterinarian's post-mortem report shows the cause of death to clearly fall within the coverages afforded by this Certificate.
  - 3. Death of any animal(s) as a result of surgical operation, including inoculation, unless the necessity for such arises from an event covered by this Certificate; or
  - 4. The death or destruction of any animal(s) caused by, resulting from, or made necessary by physical injury caused by, or resulting from, the activities of the injured animal or other animals unless such death or destruction is the result of an event otherwise covered by this Certificate.

- M. The death of any animal(s) caused directly or indirectly by the neglect or abuse of the **Governmental Entity**, its agents, employees, or bailees (carriers for hire accepted) unless such **loss** is a result of an event otherwise covered by this Certificate;
- N. The **loss** by death of any animal(s) as a result of parturition or abortion;
- O. **Loss** resulting from depreciation in value caused by any animal(s) covered hereunder becoming unfit for or incapable of filling the function or duties for which it is kept, employed or intended, unless such **loss** is the result of an event otherwise covered by this Certificate;
- P. **Loss** by destruction of any animal(s) on the order of the federal or any state government, or otherwise as a result of having contracted or been exposed to any contagious or communicable disease;
- Q. The removal or disposal of the remains of any animal(s) or the expense thereof, unless such **loss** is the result of an event otherwise covered by this Certificate except this exclusion does not apply to the safe disposal of those animals infected with highly communicable disease;
- R. The **loss** of any animal(s) that has been unnerved (the term “unnerved” to be considered as meaning the operation of neurotomy for lameness);
- S. Any claim consequent upon delay, deterioration, or **loss** of use or **loss** of market arising from an event covered by this Certificate; or
- T. Cosmetic damage to real property caused by wind/hail resulting in marring or pitting of the exterior surface affecting the appearance but not the functionality or integrity of the materials.

### VIII. VALUATION

- A. In case of **loss** to property of a **Governmental Entity** covered hereunder, the basis of adjustment shall be as of the time and place of **loss** as follows, subject to applicable deductibles:
  - 1. On all real and business personal property, including business personal **Property of Others** in the care of or control of the **Governmental Entity**, at the replacement value (as defined below) at the time of the **loss** without deduction for depreciation. If property is not replaced, or construction procurement begun, within (12) twelve months, then the actual cash value shall apply. No payment shall be provided if the **Governmental Entity** has no intention of replacement or repair of the damaged property *or* if repairs have not commenced within 18 months from the date of loss. Repairs completed directly by the **Governmental Entity** shall be only be reimbursed for materials only.
  - 2. On **improvements and betterments** at the replacement value at the time of **loss** without deduction for depreciation. If property is not repaired or replaced, or construction procurement begun, within (12) twelve months, then the actual cash value shall apply.



3. On antique, restored or historical buildings, the cost of acquisition, relocation to the site and renovation or reconstruction. If property is not replaced, or construction procurement begun, within (24) twenty-four months, then the actual cash value shall apply. In the event of a partial **loss**, normal replacement cost coverage, as set forth in Section 1. Article VIII, Paragraph A (1) above, would apply.
  4. On **Property of Others** for which the **Governmental Entity** is liable under a lease agreement. The **Public Property Reserve Fund's** liability on the event of **loss** is limited to the **Governmental Entity's** obligation as defined in said lease agreement, but not to exceed the replacement cost.
  5. In regards to covered **vehicles**, and/or mobile equipment/unlicensed **vehicles** on or off premises, the **Public Property Reserve Fund** shall not be liable for more than the actual cash value of the property at the time any **loss** or damage occurs, and the **loss** or damage shall be ascertained or estimated according to such actual cash value as determined utilizing NADA clean retail value as a base price minus 10% for salvage, if vehicle is retained. However, in no event shall the **loss** exceed what it would then cost to repair or replace, whichever is less, with materials of like, kind and quality, nor the amount for which the **Governmental Entity** may be liable. No payment will be provided if **Governmental Entity** has no intention of replacement or repair of damaged **vehicles**. Repairs completed directly by the **Governmental Entity** shall be reimbursed for materials only.
  6. Unmanned Aerial System (Drones): In regards to covered **unmanned aerial systems** and attached apparatus the **Public Property Reserve Fund** shall not be liable for more than the actual cash value of the property at the time any **loss** or damage occurs, and the **loss** or damage shall be ascertained or estimated according to such actual cash value as determined by an independent appraiser as selected by Risk Management **Director**. *Note: physical damage is subject to a \$10,000.00 per occurrence limit. Additional limits are available via market placement.*
  7. Animals: replacement cost with like kind.
  8. Landscape: the actual replacement cost of sod, trees, shrubs, and plants; however, the **Public Property Reserve Fund's** liability for replacement of plants and shrubs will be limited to the actual size of the destroyed tree, plant or shrub at the time of **loss**, up to maximum size of 15 gallons per item. The term "landscape" does not include golf course greens, fairways, and bunkers.
- B. Wherever the term "actual cash value" is used in regards to real property or **improvements and betterments** in this clause, or else where herein, it shall mean replacement value less depreciation;
- C. "Replacement cost" shall mean the cost of repairing, replacing, constructing, or reconstructing (whichever is the least) the property at the time of **loss** on the same site, using new materials of like kind and quality and for like occupancy without the deduction for depreciation, subject to the following:

1. Until the property is actually repaired, replaced or reconstructed, the maximum amount recoverable shall be the actual cash value of the lost or damaged property;
  2. Replacement shall be effected by the **Governmental Entity** with due diligence and dispatch; and
  3. Replacement need not be on same site or of same or similar construction or occupancy provided that the **Public Property Reserve Fund** shall not be liable for any additional costs that are directly attributable to the inclusion of this provision.
- D. In the event that the **Governmental Entity** should fail to comply with any of the foregoing provisions, settlement shall be made at actual cash value.

#### **IX. PAYMENTS TO LOSS PAYEE**

It is agreed that if a **loss** payee is added to this Certificate, if ever, then in the event of a covered **loss** hereunder the **Public Property Reserve Fund** will, at the request of such **loss** payee, pay the covered **loss** to the **loss** payee to the extent of its interest in the covered **loss**.

#### **X. DUTIES OF THE GOVERNMENTAL ENTITY AFTER A LOSS**

In case of **loss**, the **Governmental Entity** shall:

- A. give *immediate* notice after the **loss** to the GSD/RMD via electronic notice. Notification over 30 days after the date of loss is subject to denial. Additional property (in the event of a multiple loss) including both real property and vehicles is to be submitted within 15 days of the initial report date. Additional property submitted after 15 days will be rejected and a new claim will be set up subject to the applicable deductible.
- B. protect the covered property from further damage, make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures for reimbursement;
- C. prepare an inventory of damaged personal property showing in detail, quantity, description, replacement value, and amount of **loss** and attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory. A lightning affidavit is required for the peril of lightning.
- D. provide administrative oversight and project management as needed at your expense. Obtain multiple quotes/estimates as requested by RMD.
- E. retain and exhibit the remains of the damaged property as often as may be reasonably required by the fund and submit to examination under oath;
- F. submit to the fund within (60) sixty days after requested a signed, sworn statement of **loss** that sets forth to the best of the **Governmental Entity's** knowledge and belief:

1. the time and cause of **loss**;
  2. interest of the **Governmental Entity** and all others in the property involved and all encumbrances on the property;
  3. other policies of insurance that may cover the **loss**;
  4. changes in title or occupancy of the property during the term of the Certificate;
  5. specifications of any damage to the building or other covered property and detail estimates/invoices for repair of the damage; and
  6. an inventory of damaged personal property described in Section 1, Article X, Paragraph C, above.
- G. give immediate notice of such **loss** to the proper police authority if the **loss** is due to a violation of law;
- H. provide **loss** details and documentation that validates the cause of **loss**; and
- I. provide complete vendor information as requested by RMD to include name, address, and current substitute W-9 with all final invoice(s) submitted for payment.

## XI. **COVERAGE DISPUTE**

- A. The **Risk Management Division Director** shall make a determination if this Certificate applies to a disputed claim. The decision of the **Risk Management Division Director** may only be appealed through arbitration. Such arbitration shall be requested by the **Governmental Entity** written request to the **Risk Management Division Director** within (30) thirty days of receipt of the written decision of the **Risk Management Director**.
- B. If such arbitration is requested, the **Governmental Entity** and the **Risk Management Division Director**, on behalf of the **Public Property Reserve Fund**, shall, within (15) fifteen days, select one arbitrator and submit his or her name in writing to the other side. Within (10) ten days after their selection, these two arbitrators shall select a third independent arbitrator. If the two sides cannot agree on the selection of the third arbitrator within (10) ten days, either side may petition the First Judicial District Court in the county of Santa Fe for the appointment of the third arbitrator. The third arbitrator shall be an attorney and preside as the chairperson of the arbitration panel. No arbitrator shall be employed by or affiliated with the **Governmental Entity** or the GSD/RMD.
- C. The arbitration hearing shall commence within (45) forty-five days from the date of the selection of the chairperson, unless both sides agree to an extension. The **Governmental Entity** and the **Public Property Reserve Fund** shall pay the cost of its selected arbitrator and one-half of the cost of the third selected arbitrator. In addition, each side shall be responsible for its own cost and expense of arbitration.

- D. The panel will endeavor to confine the length of the hearing in (2) two days. A decision of the panel shall be reported in writing. The written decision of the panel shall be given to both sides within (30) thirty days of the closing of the hearing.
- E. All decisions of the arbitration panel shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

## **XII. VALUATION DISPUTE**

- A. In case the **Governmental Entity** and the **Risk Management Division Director** shall fail to agree as to the amount of **loss**, then, on the written demand of either, each shall select a competent and neutral appraiser and notify the other of the appraiser selected. The appraisers shall proffer their reports to Risk Management Advisory Board for consideration and final determination, which shall be made by at least a majority of the Board.

## **XIII. OTHER COVERAGES**

To the extent there is other coverage available, coverage under this Certificate will not contribute with any other coverage collectible by the **Governmental Entity** or **loss** payee. Coverage under this Certificate shall be excess of such other coverage and the limits of liability under this Certificate shall be reduced to the extent other coverage is collectible.

## **XIV. SUBROGATION**

- A. In the event of any payment under this Certificate, the **Public Property Reserve Fund** shall be subrogated to all the **Governmental Entity's** or **loss** payee's rights of recovery against any person or organization and the **Governmental Entity** or **loss** payee shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Governmental Entity** or **loss** payee shall assist and do nothing after **loss** to prejudice such rights.
- B. The **Public Property Reserve Fund** shall not be bound to pay any **loss** if the **Governmental Entity** or **loss** payee has impaired any right of recovery of **loss**; however, it is agreed that the **Governmental Entity** may, as respects **Governmental Entity's** personal property in transit, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.
- C. RMD shall retain all recovery rights and proceeds including deductibles, if applicable.

## **XV. OTHER CONDITIONS**

### **A. PROTECTION AND PRESERVATION OF PROPERTY**

In case of actual or imminent physical **loss** or damage of the type covered against this Certificate, the reasonable expenses incurred by the **Governmental Entity** in taking reasonable and necessary actions for the temporary protection and preservation of property

covered hereunder shall be added to the total physical **loss** or damage otherwise recoverable under the Certificate and be subject to the applicable deductible and without increase in the limit provisions contained in the Certificate.

## B. BREACH OF CONDITIONS

If any breach of a clause, condition, or warranty of this Certificate shall occur prior to a **loss** affected thereby under this Certificate, such breach shall not void the coverage nor avail the **Governmental Entity** to avoid liability unless such breach shall exist at the time of such **loss** under this Certificate, and be a contributing factor to the **loss** for which claim is presented hereunder, it being understood that such breach of clause or condition is applicable only to the property affected thereby. Notwithstanding the foregoing, if the **Governmental Entity** establishes that the breach, whether contributory or not, occurred without its knowledge or permission or beyond its control, such breach shall not prevent the **Governmental Entity** from recovering under this Certificate.

## C. PERMITS AND PRIVILEGES

1. Anything in the conditions of this Certificate to the contrary notwithstanding, permission is hereby granted:
  - a. to make additions, alterations, extensions, improvements and repairs, to delete or demolish, construct and reconstruct, and also to include all materials, equipment and supplies incidental to the foregoing operations of the property covered hereunder, while in, on and/or about the premises or adjacent thereto;
  - b. for such use of the premises as usual and/or incidental to the business as conducted therein, and to keep and use all articles and material usual and/or incidental to said business in such quantities as the exigencies of the business require; or
  - c. to be or become vacant or unoccupied with limit of time.
2. Nor shall this coverage be prejudiced by:
  - a. Any act or neglect of the owner of the building, if the **Governmental Entity** hereunder is not the owner, or of any occupant of the within described premises other than the **Governmental Entity**, when such act or neglect is not within the control of the **Governmental Entity**, named herein; or
  - b. By failure of the **Governmental Entity** to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the **Governmental Entity** has no control.

## D. PROTECTIVE SAFEGUARDS

The **Governmental Entity** shall exercise due diligence in maintaining in complete working order all protective safeguard equipment and services.

## E. ASSIGNMENT, TRANSFER OR MODIFICATION

Assignment, transfer or modification of this Certificate shall not be valid without prior written consent of the **Risk Management Division Director**.

#### F. SALVAGE

When, in connection with any **loss** hereunder, any salvage is received prior or subsequent to the payment of such **loss**, the **loss** shall be figured on the basis on which it would have been settled had the amount of salvage been known at the time the **loss** was originally determined. RMD shall retain 100% of salvage rights and recovery proceeds.

#### G. RIGHT TO REVIEW RECORDS FOLLOWING A CLAIM

The **Governmental Entity**, as often as may be reasonably required, shall submit, and so far as within their power, cause all other persons interested in the property or employees to submit to examination under oath by any person named by the GSD/RMD relative to any and all matters in connection with a claim, and produce for examination all books of account, bills invoiced and other vouchers, or certified copies thereof if originals be lost at such reasonable time and place as may be designated by the GSD/RMD or their representatives and shall permit extracts and copies thereof to be made.

### XVI. DEFINITIONS

#### A. Loss

Each **loss** is defined as an incident or series of incidents not otherwise excluded by this Certificate and arising out of a single event or originating cause and includes all resultant or concomitant covered **losses**. When the term applies to **loss** or **losses** from earthquake shock, flood, hail and/or windstorm, the following provisions shall apply:

##### 1. Windstorm/Hail

- a. Each **loss** by windstorm or hail shall constitute a single claim hereunder; provided, if more than one windstorm shall occur within any period of seventy-two (72) hours, such windstorm shall be deemed to be a single windstorm within the meaning thereof. The GSD/RMD may elect the moment from which each of the aforesaid periods of seventy-two (72) hour periods shall overlap.

##### 2. Flood

- a. Each **loss** by flood shall constitute a single **loss** hereunder if any flood occurs within a period of the continued rising or overflow of any river(s) or stream(s) and the subsidence of same within the banks of such river(s) or stream(s) such flood shall be deemed to a single occurrence within the meaning of this Certificate.
- b. Flood shall mean a general condition of partial or complete inundation of normally dry land area from:
  - i. overflow of inland or tidal water,

- ii. unusual and rapid accumulation or runoff of surface waters from any source.
- c. Flood shall also mean mudslide or mudflow, which is a river or flow of liquid mud caused by flooding as defined in Section 1, Article XVI, Paragraphs A (2) (b) (i) or (ii), above.

### 3. Earthquake Shock

- a. With respect to the peril of earthquake shock, any and all **losses** from this cause within a one hundred sixty-eight (168) hour period shall be deemed to be one **loss**. The GSD/RMD may elect the moment from which each of the aforesaid periods of one hundred sixty-eight (168) hours shall be deemed to have commenced but no two such one hundred sixty-eight (168) hour period shall overlap.
- b. The term earthquake shock is defined as: earth movement, meaning natural faulting of land masses, but not including subsidence, landslide, rock slide, earth rising, earth sinking, earth shifting or settling unless as direct result of such earth movement. The definition of earthquake shock does not include ensuing **loss** or damage not otherwise excluded. Further, "Earthquake Sprinkler Leakage" is covered outside of the "Earthquake Shock" definition and subject to the basic peril deductible.

B. **Property of Others** means any business personal property belonging to others for which a **Governmental Entity** has assumed care, custody, control, or bailment.

C. **Improvements and betterments** means additions or changes made by a **Governmental Entity**/lessee at their own expense to a building they are occupying that enhance the building's value.

D. **Valuable papers and records** means written, printed, electronic or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts, but does not mean money or securities.

- 1. "Money" means currency, coins, bank notes, bullion, traveler's checks, register checks and money orders held for sale to public. The term "Money" does not mean electronic funds.
- 2. "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property, and includes revenue, food stamps and other stamps in current use, tokens, and tickets, but does not include money.

E. **Vehicle** means a land, water, or air motorized **vehicle**, trailer or semi-trailer, including any machinery or apparatus attached thereto.

F. **Governmental Entity** means a department, agency, or institution of higher learning of the State of New Mexico.

G. **Risk Management Division Director** means the **Director** of the Risk Management Division, General Services Department of the State of New Mexico.

H. **Public Property Reserve Fund** means the fund established pursuant to NMSA 1978, Section 13-5-1 as may be amended from time to time.

## SECTION 2

### COMBINED BUSINESS INTERRUPTION, EXTRA EXPENSE, AND TUITION FEES

- A. This Certificate is extended to cover against **loss** caused by the perils covered by this Certificate, resulting directly from:
1. Necessary interruption of the **Governmental Entity's** business and the consequent reduction in gross earnings, and **loss** of tuition, caused by covered cause of loss resulting in physical damage to or destruction of real or personal property, except finished stock, at any covered location; or
  2. Necessary extra expense, as hereinafter defined, incurred by the **Governmental Entity** in order to continue as nearly as practicable the normal operation and normal gross earnings of the **Governmental Entity's** business following a covered cause of loss resulting in physical damage to or destruction of real or personal property.
- B. In the event of a **loss**, the fund shall be liable for additional expenses which occur after 72 hours following the **loss**, including:
1. The actual **loss** sustained by the **Governmental Entity** resulting directly from such interruption of business, but not exceeding the reduction in gross earnings and tuition less charges and expenses which do not necessarily continue during the interruption of business (hereinafter referred to as "**loss of earnings**"), at any covered location; or
  2. Such necessary extra expense incurred by the **Governmental Entity** for only such length of time (hereinafter referred to as the "period of restoration") as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction.
- C. Resumption of operations is:
1. Applicable to **loss** of earnings and tuition; if the **Governmental Entity** could reduce the **loss** by:
    - a. complete or partial resumption of operation at the location herein described, whether damaged or not, or elsewhere;
    - b. making use of merchandise or other property at the location described herein or elsewhere; or
    - c. making use of stock (raw, in process, or finished) at the location herein described or elsewhere, such reduction shall be taken into account in arriving at the amount of **loss** hereunder.
  2. Applicable only to extra expense: as soon as practicable, the **Governmental Entity** shall resume normal operations of the business and shall dispense with such extra expense.



- D. For the purpose of this coverage, “gross earnings” are defined as the sum of:
1. Total net sales value of production;
  2. Total net sales of merchandise;
  3. Total net value of permit and license fees; and
  4. Other earnings derived from operations of the business, less the cost of:
    - a. Raw stock from which such production is derived,
    - b. Supplies consisting of materials consumed directly in the conversion of such raw stock into finished stock or in supplying the services sold by the **Governmental Entity**,
    - c. Merchandise sold, including packaging materials therefore, and
    - d. Services purchased from outsiders (not employees of the **Governmental Entity**) for resale which do not continue under contract.
  5. Note:
    - a. No other costs shall be deducted in determining gross earnings.
    - b. In determining gross earnings, due consideration shall be given to the experience of the business before the date of damage or destruction and the probable experience thereafter had no **loss** occurred.
- E. Extra expense: The term “extra expense”, wherever used in this coverage, is defined as the excess, if any, of the costs incurred during the period of restoration, chargeable to the operation of the **Governmental Entity’s** business, over and above the costs that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any **loss** hereunder. Administrative project costs are not considered extra expense.
- F. Tuition: For the purpose of this coverage, “tuition” is defined as that portion of “gross earnings” as defined in Section 2 (Business Interruption), Article IV “Gross earnings”, above, which is tuition, fees, and other earnings from students of the **Governmental Entity**. Any claim for reduction in gross earnings shall be reduced by the amount of any claim for **loss** of tuition based on the same damage or destruction of real or personal property, except for that portion of any claim for **loss** of tuition which relates to the extension of the length of time applicable to **loss** of tuition beyond the period of restoration applicable to gross earnings as provided in Section 2, Article III, Paragraph B of this coverage.
- G. Finished stock: The fund shall not be liable for any **loss** of earnings resulting from damage or destruction of finished stock nor for the time required to reproduce said finished stock; however, this Certificate covers such expense, in excess of normal, as would necessarily be incurred in replacing any finished stock used by the **Governmental Entity** to reduce **loss** of earnings under this Certificate.

H. Extension of coverage interruption by civil authority, this Certificate is extended to include:

1. The actual **loss** sustained by the **Governmental Entity**, resulting directly from **loss** of earnings as covered hereunder; or
2. Necessary extra expense incurred by the **Governmental Entity** as covered hereunder, during the length of time, not exceeding (4) four consecutive weeks, when access to premises covered by this Certificate is specifically prohibited by order of civil authority:
  - a. As a direct result of damage to or destruction of adjacent property by perils covered against; or
  - b. As a direct result of a bomb threat to covered premises.

I. Additional exclusions and limitations:

1. Applicable to **loss** of earnings and tuition resulting from damage to or destruction of media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data thereon, by the perils covered against: The length of time for which the **Public Property Reserve Fund** shall be liable hereunder is for the lesser of:
  - a. thirty (30) consecutive calendar days; or
  - b. the length of time that would be required to rebuild, repair, replace or restore such property herein described as has been damaged or destroyed.
2. Applicable to **loss** of earnings and tuition, the **Public Property Reserve Fund** shall not be liable for any increase of **loss** resulting from the suspension, lapse, or cancellation of any lease, license, contract or order unless such suspension, lapse, or cancellation results directly from the interruption of business, and then the fund shall be liable for only such as affects the **Governmental Entity's** earnings during, and limited to, the period of indemnity covered under this Certificate.
3. Applicable only to any extra expense, the **Public Property Reserve Fund** shall not be liable for the cost of repairing or replacing any of the real or personal property herein described, nor for the cost of research or other expense necessary to replace or restore damaged or destroyed records, including media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data thereon, that have been damaged or destroyed by the covered perils, except cost in excess of normal cost of such repair, replacement, or restoration necessarily incurred for the purpose of reducing **loss** under this Certificate. In no event shall such excess cost exceed the amount by which the total extra expense **loss** otherwise payable under this Certificate so thereby reduced.
4. The **Public Property Reserve Fund** shall not be liable for any increase of **loss** of earnings, tuition, nor for any extra expense resulting from interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing the property or with the resumption or continuation of business, nor shall the fund be liable for any other consequential or remote **loss**.

J. Definitions:

1. "Raw stock" means material in the state in which the **Governmental Entity** receives it for conversion by the **Governmental Entity** into finished stock.
  2. "Stock in process" means raw stock which has undergone any aging, seasoning, mechanical, or other process of manufacturing at the location herein described but which has not become finished stock.
  3. "Finished stock" means stock manufactured or processed by the **Governmental Entity** which in the ordinary course of the **Governmental Entity's** business is ready for packaging, shipment or sale.
  4. "Merchandise" means goods kept for sale by the **Governmental Entity** which are not the product of manufacturing operations conducted by the **Governmental Entity**.
  5. "Normal" means the condition that would have existed had no **loss** occurred.
- K. Requirements in case **loss** occurs: The **Governmental Entity** shall render to the **Risk Management Division Director** a proof of **loss**, signed and sworn to by an authorized official of the **Governmental Entity** as soon as practicable after the **loss** becomes known, stating the knowledge and belief of the **Governmental Entity** as to the following:
1. The time and origin of the property damage or destruction causing the **loss** of earnings, **loss** of tuition, or extra expense;
  2. The interest of the **Governmental Entity** and of all others in the business;
  3. All other contracts of insurance, whether valid or not, covering in any manner the **loss** covered by this Certificate;
  4. Any change in the title, nature, location, encumbrance or possession of said business since the issuing of this Certificate; and
  5. By whom and for what purpose any building herein described and the several parts thereof were occupied at the time of damage or destruction, and shall furnish a copy of all the descriptions and schedules in all policies, the actual amount of business interruption value, and **loss** of earnings, **loss** of tuition, or extra expense claimed, accompanied by detail exhibits of all values, costs and estimates upon which such amounts are based.
- L. The **Governmental Entity**, as often as may be reasonably required, shall exhibit to any person designated by the **Risk Management Division Director** all that remains of any property herein described, and submit to examination under oath by any person named by the **Risk Management Division Director**, and subscribe the same; and, as often as may be required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals are lost, at such reasonable time and place as may be designated by the **Risk Management Division Director** or their representative, and shall permit extracts and copies thereof to be made.