

# Insurance Requirements in Contracts A Procedure Manual

## VERSION 4.0

**driver**♦**alliant** | INSURANCE SERVICES

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## FOREWORD

The purpose of this manual is to serve as a guide in developing proper insurance requirements in contracts. This manual explains how to establish insurance requirements for contracts with contractors, tenants, vendors and users of public property, and how to monitor their compliance with those requirements during the term of the contract.

It should be noted however, that Risk Management is more of an art than a science, and therefore, although this manual will provide guidance in 90% of the cases encountered by the user, there will also be exceptions to the rules contained herein. If the user encounters situations that fall outside of the manual's recommendations, the user should call their insurance advisor.

All forms contained within this manual are updated and include comments on the changes with our recommendations on which forms to use. It is, therefore, important that the user check the edition date of the form supplied by the contractors, tenants, vendors and users of public property, and/or their agents and brokers. The edition date will be found in the lower left-hand corner of the forms, in parentheses following the form number.

Non-insurance sections of the contract are also very important to the risk management process. It is not your entity's problem if the contractor's insurance does not cover all of their indemnity exposures with you; that is their problem to solve.

- There should always be a section in the contract that states that the lack of insurance does not negate the contractor's obligations under the contract.
- Driver Alliant is not a law firm, and therefore recommends that the manual user consult with their entity's attorney for specific language for this section's wording.

Always remember that insurance is only one way that the contractor can indemnify your entity. Make sure your indemnity language is strong, and if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, make certain they do have the assets to indemnify those uninsured or underinsured areas.

Finally, we have included a section containing the most commonly asked questions from manual users over the years. We have included this section as a resource for the user as a way of illustrating that risk management is not a cookbook-type process and to encourage the user to contact their insurance advisor when they encounter an "outside the box" situation.

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## FREQUENTLY ASKED QUESTIONS

The following questions represent those most often asked by users of this manual. If you have questions that are not answered by this section, please do not hesitate to contact your Driver Alliant Account Representative. As you can see by reviewing the following section, we all learn through the process of thoughtfully examining the risk management process.

**1. *If a lessee or contractor is a large one, do I still need to insist on the Insurance Requirements?***

*Yes; you would have no way of verifying that their assets were available for losses that might occur, whereas you could be confident in an insurance carrier with a quality Best's Rating.*

**2. *Is it all right if the contractor alters the Indemnification language?***

*No; the Indemnification language has been carefully worded to afford your entity as much protection as legally possible, and it has been tested in court. Altering the language would weaken your entity's protection.*

**3. *Can we require a Best Rating for a company that is "Admitted" in California, or is this against the law?***

*Yes; unless the company is a Surety company. The law you refer to requires construction owners to accept Surety Bonds from any Surety company, in an effort to improve minority contractors' chances in successfully bidding a job. If it is a federally approved Surety, you are obligated to accept the Surety. This can be seen on the Internet <http://www.fms.treas.gov/c570/index.htm>.*

*Remember, just because an insurance company is "Admitted" does not assure you that they have the assets required by your contract.*

**4. *Why should we ask for property insurance on Tenants Improvements and Betterments, instead of just adding them to our Property Insurance policy?***

*Because unless the lease specifically states that your entity gains ownership of these improvements as soon as they are installed, your entity has no insurable interest in them; and, therefore, you cannot insure them under your policy.*

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## FREQUENTLY ASKED QUESTIONS

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- 5. *If the contractor's insurance does not meet the criteria in the Insurance Requirements in Contracts specifications, should we alter the requirements to fit the contractor's insurance?***

*No; the insurance requirements language has been carefully worded to afford your entity as much protection as legally possible, and it has been tested in court. Altering the language would weaken your entity's protection. It is not the responsibility of your entity to tailor your requirements to fit; rather, you are doing the contractor a favor in showing them the proper coverage needed by them in order to protect their business.*

- 6. *Does the "edition date" on the suggested ISO endorsements matter?***

*Yes; there have been significant reductions in the coverage afforded to additional insureds by "updated" versions of these endorsements. A further discussion regarding these changes is contained in the section of the manual describing endorsements.*

- 7. *If the agent or broker changes the word "endeavor" to "will provide" in the Notification section of the Certificate of Insurance, are we OK?***

*No; always remember that Certificates of Insurance DO NOT alter the insurance coverage, and any changes that are necessary need to be endorsed onto the policy with a copy of the endorsement provided to your entity. Agents and brokers will sometimes try to convince you that endorsements are unnecessary when the Certificate has its wording changed; if so, you need to point out the box in the upper right hand corner of the Certificate, which states that it DOES NOT amend or alter the insurance.*

*To ensure that the onus is on the insurance company to notify you of a change in status of coverage, you must receive an endorsement to this effect. Being named as an "additional insured" obligates the insurer to inform you of any status change in the policy.*

- 8. *Can lower limits be permitted when we are dealing with small contractors or artisans, and we are only using them for small jobs?***

**Yes;** There are some very small vendors or artisans that may provide a service to your entity and the cost of obtain standard limits may not be possible. You should always evaluate the potential of loss, potential benefit to the organization for the service provided and finally the vendors financial capacity to purchase coverage at reasonable rates. The dollar amount of an agreement would never be the sole determining factor on the insurance.

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**9. *The contractor's agent says that we cannot get the endorsements as required by the Insurance Requirements in Contracts specifications; what can we do?***

*In many instances, if not all, the agent or broker has not even approached the insurance company with your request - they are merely trying to discourage you from asking so that they will not have to bother. We recommend contacting the broker or agent directly. By informing them of the needs and requirements of your organization, they will typically provide you with the necessary endorsements required by your agency. If this tactic does not work, please call insurance advisor for confirmation of the unavailability of endorsements from the contractor's company.*

**10. *How do we determine the proper limits of liability for any given job?***

*Ask yourself how much damage the contractor could cause if they totally botched their work. Include in your estimate lost time, wages, extra expense incurred for repairing or replacing the work, and any future impacts. If this amount is more than the suggested amounts shown in the specifications in this manual, use the greater amount.*

**11. *Can we accept an insurer with less than an A.M. Best Rating A VII or Standard and Poors BBB?***

*Yes; but keep in mind that the rating gives your entity some confidence in that insurer's ability to cover all of its claim liabilities, including your potential claim. By accepting lower Best's or Standard and Poors Ratings, you are exposing your entity to the possibility that the insurer will be unable to pay any claim you or a third party may present. As an aside, major insurance brokers and agents also insist on placing clients in companies with high Best's and Standard and Poors Ratings, as a way of protecting themselves against potential E&O claims from their clients.*

**12. *How do we discover what the rating of an insurer is?***

*You can subscribe to the A.M. Best service, which is fairly expensive unless you have a regular need to consult the ratings; otherwise; call your Driver Account Representative, and they will look it up for you. As of Version 3.0, the ratings can also be accessed over the Internet for no cost at [www.ambest.com](http://www.ambest.com).*

*You also can go to the following website to obtain the Standard and Poors rating of a specific insurance company.*

[www.standardandpoors.com/ratingsaction/ratingslists/insurance/index.htm](http://www.standardandpoors.com/ratingsaction/ratingslists/insurance/index.htm)

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## FREQUENTLY ASKED QUESTIONS

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### ***13. What do the Standard and Poors' or Best's Ratings mean?***

*Please see Chapter 3, page 12, for a discussion of this question. Simply, the Standard and Poors' or Best's Ratings give your entity a picture in time of the financial strength of the insurance company that is guaranteeing the contractor's ability to reimburse and/or protect your entity in case of a loss where they are at fault.*

### ***14. Does a contractor need Professional Liability coverage?***

*Only if the contractor is expected under their contract with your entity to provide your entity with "professional" services. The simplest way to decide is to determine whether the nature of the services provided entail brain work or physical work. If it is only physical work, then a liability policy, general and/or automobile will most likely cover all your exposures to loss. However, if the work or a portion of the work is expected to involve primarily thinking, Professional Liability insurance is required. As an example, if a contractor is merely following blueprints in constructing a building, it would involve only physical work and a general liability policy will work. However, if that contractor decides that they know a better way to construct part of the building, and they alter the blueprints, then they have crossed the line over into "professional" services, and they would then need Professional Liability coverage to cover a subsequent loss due to that change in the blueprints.*

### ***15. How long of a period of time do we require the claims-made professional liability to be carried after completion of the project?***

*For as long as possible; Remember that "claims-made" coverage will only respond to a claim that is presented while the policy is in force. Therefore, it is imperative that your entity be protected as long as possible after the completion of the project, so that any claims caused by faulty design or other professional services (see question 14) will be covered by the responsible party. Keep in mind that your regular liability policy may not cover professional liability losses, and therefore your entity may be bare in the event of a claim arising out of professional services rendered on the project. Normally, professional policies can be purchased with a three year "tail," which will allow claims to be presented up to three years after the professional liability policy expires. If you can get more in your contract, do so.*

### ***16. Does a contractor need proof of automobile liability when they are hired to work on the premises?***

**Yes;** for the very simple reason that the contractor has to use some means of transportation to reach your premises, and to transport tools, supplies and materials. If the contractor is determined to be engaged in business on your entity's behalf when they are involved in an automobile accident, then your entity may be held liable as the respondent superior. In that case, the contractor's automobile insurance would respond if your entity has been properly named as an additional insured.

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## FREQUENTLY ASKED QUESTIONS

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**17. Should we ask to be named as an additional insured on the contractor's professional liability policy?**

*No; the contractor's professional liability insurer would not do so, nor would any professional liability carrier. The reason is that the insurer would not want to pick up your Entity's professional liability hazards, which it could do if you were an additional insured. Professional liability policies are written to specifically cover individuals who are individually underwritten based on their professional history. The insurer is not able to do this careful underwriting on your Entity's professionals, and therefore will not add your entity.*

**18. What can be done if we don't have the proof of insurance when it is time to start the work?**

*There is very little that can be done at this point in the process, and that is why we recommend that the insurance specifications contained in this manual be sent out with the pre-bid package. There are no good choices when this situation occurs; either you must delay the work while you wait for the proof (which has a way of really setting off your construction people), or you must in effect "self-insure" the contractor until the proof is received and accepted, and hope that the contractor's insurance meets your specifications.*

**19. Why can't we accept a Certificate of Insurance as proof of the entity being named as an additional insured?**

*It is really rather simple; In the upper right-hand corner of the ACCORD Certificate of Insurance are the following words:*

*"This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below."*

*If any agent or broker tries to convince you that the certificate truly does confer rights or coverages, and that you therefore do not need the endorsements you are requesting (and some will) you can read this to them out loud.*

**20. Why do we need an indemnity clause when we are added as an additional insured on the liability policy?**

*Always remember that insurance is only one way that the contractor can indemnify your entity, and if you have an indemnity provision in your contract with the contractor, that contractor is obligated to indemnify your entity whether their insurance covers the loss or not. This puts the onus on the contractor rather than your entity to make certain that their coverage is sufficient and current. So make sure your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, they do have the assets to indemnify those uninsured or underinsured exposures.*

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## FREQUENTLY ASKED QUESTIONS

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### ***21. Should we ask for a Waiver of Subrogation from the contractor's insurer?***

*Yes; in the case of Workers' Compensation and Property insurers; if your entity does not do so, the contractor's insurance company can look to your entity to reimburse any claims cost that they have incurred defending or indemnifying their insured on your project. Subrogation is the transfer to the insurance company of the contractor's right to collect for damages from another party, in this case, your entity. Although you may have protected your entity from the contractor looking to your entity's indemnification, you have not protected your entity from the contractor's insurance company ability to do so unless you also get a Waiver of Subrogation from the contractor.*

*No; in the case of Liability insurers; this is true only if your Entity is not named as an additional insured on the contractor's liability policy. Current case law holds that it is against public policy to allow an insurer to subrogate against its own insured, even an "additional insured." As long as your Entity is diligent in securing and confirming its additional insured status (by insisting on receiving a copy of the additional insured endorsement), there is no reason to require a Waiver of Subrogation.*

### ***22. If a hold-harmless agreement is not necessarily legally binding, why do we need to include it?***

*A hold-harmless agreement usually does not relieve your entity of legal liability for your entity's own negligence, but it does relieve your entity of legal obligations arising out of the contractor's negligence. Without the hold-harmless agreement, your entity's ability to be protected by your additional insured status is weakened.*

### ***23. Should our organization require bonds in contracts that are not construction related?***

*Yes; There are a number of situations when your organization may want to require bonds. For example, some vendors that provide personalized products such as customized information systems, specific equipment designed and built for your organization or specific services provided for your organization. Although these may not be required on all vendor agreements, it is important to understand how these bonds may save your organization in the event the vendor fails to deliver or lacks the funding to finalize their product.*

### ***24. Should our organization require that contractors provide proof of terrorism coverage in their insurance programs?***

*Maybe; The federal government has mandated that all insurers offer coverage for terrorist acts for an additional premium. This coverage is currently available however, many insureds are declining this coverage. It is unclear to what extent a contractor could be responsible for any act of terrorism that occurs while performing tasks for your organization. You may consider the coverage on construction projects which may be impacted as a result of a terrorist attack. As*

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## FREQUENTLY ASKED QUESTIONS

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*with any exposure, you must identify the potential for risk, if the project is politically sensitive or considered highly visible, the inclusion of terrorist coverage may be necessary.*

**25. My contractor states that they are self-insured for liability, auto, and worker's compensation, and they cannot provide a certificate of insurance?**

*In the State of California, organizations that are self-insured for workers' compensation must have a certificate of consent to self-insure issued by the State of California. They must also have authorization from the state to self insure their auto exposure. First obtain copies of all of their documents granting them the authority to self-insure. Secondly, obtain a letter from the organization that clearly spells out all of the requirements in your agreement such as an equivalent to additional insured, waiver of subrogation, primary etc. Next, you will need to confirm that the organization has assets available to cover any losses in the event they occur. This may include the review of audited financial statements, balance sheets etc. Finally, you may require the contractor to issue a bond or a letter of credit to your organization in an amount necessary to cover any losses.*

**26. The contractor states that he is a sole proprietor and does not carry worker's compensation insurance, is this acceptable?**

*Yes; many contractors are either sole-proprietors or are partnerships. Partners or proprietors are not required to purchase worker's compensation for their operations. You should receive a letter from the contractor stating they are either the owner of the organization or a partner and exempt from the worker's compensation requirement.*

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## INTRODUCTION

In the practice of good risk management, your Entity often will attempt to transfer the risk of accidental loss through contracts. Usually, your Entity requires the other party to a contract (contractor) to assume some of your Entity's liability arising out of the activity described in the contract. This transfer generally is appropriate, as the contractor is most often the party in the best position to control loss.

This intended transfer of risk is achieved by requiring suppliers, contractors, tenants and users of public facilities (i.e. the other party to most Entity contracts) to protect themselves and your Entity against claims or judgments arising from their products, activities or use of your facilities. Usually the best way to assure that the transfer actually takes place (i.e. that the loss will be paid by someone other than your Entity) is to require insurance. The insurance should also protect the Entity, its officers, officials, employees and volunteers.

**Your Entity's standard requests for proposal, bid specifications and contracts should contain a description of the required insurance.** In addition, they should contain appropriate hold harmless and indemnification clauses. Hold harmless and indemnification clauses are agreements by which one party assumes the liability of another and agrees to defend them in the event of a claim. These are the legal instruments of the risk transfer, while the insurance is the financial guarantee. The hold harmless and indemnification clauses should be written to take effect immediately upon execution of the contract. They should contain provisions that the Entity be held harmless, defended and indemnified, and should describe the extent of such indemnification.

The insurance policy which financially supports the hold harmless and indemnification clauses does not automatically become effective upon execution of the contract. Coverage applies only when the other party's insurance company issues the required insurance policies or endorses existing policies to conform to your Entity's requirements. **As the insurance coverage does not become effective automatically, your Entity should require proof that the insurance is in effect before the contract is accepted.**

As proof of coverage, most insurance agents and brokers will provide a document called a certificate of insurance. Issuance of a certificate serves as evidence that the contractor has a policy of insurance. **However, the certificate does not modify the insurance policy itself.** It does not guarantee that the required policy provisions are in place. Nor does the certificate tell the reader what exclusions or limitations may be found in the contractor's insurance policy. Therefore, your Entity must receive and review a copy of the policy or an endorsement amending the coverage to make sure that the actual coverage required is in effect. You should make every effort to obtain and review the endorsement or actual policy before work begins pursuant to the contract.

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### CERTIFICATES OF INSURANCE GUIDELINES

You should receive certificates of insurance from various sources - from tenants, vendors and from contractors hired for activities such as tenant improvements, alterations and additions work. Consequently, it is essential that you be able to read these certificates and compare the information provided to the applicable insurance requirement in a lease or other contract.

This guideline is designed to assist you with this process.

#### GENERAL INFORMATION

##### *What is a certificate?*

A certificate of insurance is a document that gives evidence of the insured's financial ability (via a insurance policy) to respond to a claim. Under most circumstances, no coverage benefits are afforded to the certificate holder; the certificate merely confirms that the subject company carries insurance.

##### *Why are certificates needed?*

Certificates give evidence that the other party has appropriate insurance to cover the claims for which they are responsible.

##### *When are certificates needed?*

Certificates are needed when another party (such as a contractor janitorial service, security service, etc.) performs services on your behalf or has property in their care, custody and control (e.g. leasing your premises or your equipment).

##### *Who should provide the certificate?*

The other party's insurance agent, broker or risk management department should provide the certificate to you.

##### *What should a certificate include?*

1. Name of insurance company issuing each policy;
2. Named Insured;
3. Address of Named Insured;

*(continued)...*

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4. Description of Coverage;
5. Policy Numbers;
6. Policy Periods; and
7. Coverage Type (Occurrence form vs. Claims-Made form).

If coverage is claims-made, the certificates will also include the following:

1. Retroactive date;
2. Length of time allowed as extended reporting period.
3. Limits of Liability;
4. Deductibles (or SIRs);
5. Description and location of operations;
6. Name and address of certificate holder;
7. Notice of cancellation provisions; and
8. Authorized signature and date of issuance.

## CHAPTER ONE

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### Checklist for Evidence of Insurance

- Coverage is as specified in the contract (e.g., only “Commercial General Liability” insurance should be accepted for compliance with the general liability insurance requirements. Other forms, such as Owners Landlords and Tenants forms (OL&T) are not acceptable.)
- Names correct on policy/endorsement/certificate
- General Liability is on an “occurrence” basis, not “claims-made.”
- Policies are current and will be suspended (tickler filed) for renewal follow-up if the contract period runs beyond the policy expiration date.
- Limits are at least as high as the minimum required in the contract.
- The insurer’s Best rating meets or exceeds the Entity’s minimum requirements.
- The insurer is admitted in California.
- Primary and excess liability policies have concurrent coverage periods.
- No self-insured retention on liability policies.
- The entity has received evidence for each type of insurance required.
- Evidence provides for 30-day notification to entity of charges or cancellation.
- Evidence is of proper form, i.e. certificates, endorsements or policies as appropriate.
- Correct evidence forms, e.g., Form CG 2010 with edition date prior to 1993 for endorsements and certificate with appropriately modified wording.
- The entity has been added to the appropriate policies as an additional insured. A certificate does not accomplish this.
- Liability insurance layers have concurrent policy dates.
- Auto liability covers “any auto” (or non-owned if the contractor has no autos).
- Required waivers of subrogation provided.
- Documents include proper signatures.
- Descriptions of operations, locations, etc. are correct.

## CHAPTER ONE

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**(Sample Follow-up Letter)**

**City of XYZ**

Date of Letter

ABC Construction Company

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Re: Compliance with Insurance Requirements

The documents you have submitted in compliance with contract \_\_\_\_\_ are being returned to you for the following reasons:

- Need original (or certified copy) of (certificate) / (endorsement) / (policy)
- Need original signature
- Additional insured incorrect, should read: \_\_\_\_\_
- Description of (operation) / (location) incorrect
- Insufficient limits
- (Deductible) / (SIR) not approved
- Wrong coverages, i.e., \_\_\_\_\_
- Wrong forms, i.e., \_\_\_\_\_
- Insurer does not meet minimum requirements
- Policy has expired or is about to expire
- Required waiver of subrogation not included
- Primary language required
- Thirty (30) day notice of cancellation or coverage change required
- Other information:

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Please make the necessary changes and return the correct documentation to the entity. No order to proceed will be issued until the correct forms have been submitted.

Sincerely,

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City of XYZ

## CHAPTER ONE

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### **Additional Insured (Liability Policies)**

If you are named as an Additional Insured, the certificate should clearly state you are an Additional Insured and for what purpose. Contractors who work on numerous projects should issue certificates for “Any and all work performed” also known as “blanket certificates of insurance,” to ensure that certificates are not missed on an individual contract. Typically, the language of a certificate of insurance provided by the other party does not control the terms of an insurance policy. In an appropriate case, it may be desirable to specify that the other party’s insurance policy is primary and noncontributing and that your policy is excess.

You should strongly consider being named as an Additional Insured on the other party’s policy when:

1. They are contractor or vendor working on your behalf.
2. They are directing or controlling the work of any of your employees in a situation where injury might result.
3. They are leasing space in a building or on property you own.
4. They are conducting a special event, i.e. wedding, parade, etc., and utilizing your agency’s facilities.

### **Primary Language**

All policies for General Liability should state that the insurance is primary and that any insurance policy owned by your agency will be considered as excess and non-contributory to the underlying policy.

## **PROPERTY INSURANCE CERTIFICATES**

### **Certificate of Property Insurance**

This certificate is needed when another party has been made responsible for providing insurance on property you own or for which you are responsible. Or, in the case of tenants, where it is specifically required contractually.

A certificate of property insurance should show:

**Property Covered** - The certificate should provide an appropriate description of all property for which insurance is required;

**Limits** - The certificate should evidence appropriate amounts of coverage for the property and applicable deductibles;

**Coverages** - The certificate should provide appropriate coverages for the risk of loss to which the property is subject. Most often, this is expressed as all risks or special form;

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**Interests** - The certificate should indicate the nature of your interest, i.e. owner, lender or landlord in the insured property and your status under the property; and

**Loss Payee** - If you are named as a Loss Payee, the certificate should clearly state you are a Loss Payee and for what purpose. By being named as a Loss Payee, you will have the right under the policy to be reimbursed for a loss to your property directly by the insurance carrier. Usually, in the event of a covered loss, the carrier will issue a payment jointly to the Loss Payee and the Insured.

### LIABILITY INSURANCE CERTIFICATES

#### Certificate of General Liability Insurance

**Basis** - The certificate should indicate whether coverage is being provided on an occurrence basis or on a claims-made basis. Most General Liability insurance policies are written on an occurrence basis.

**Limits** - The certificate should specify amounts of coverage conforming to the requirements of your contract.

**Coverages** - The certificate should specify whether coverage is provided by a Comprehensive General Liability policy or a Commercial General Liability policy. It should also indicate whether special coverages required by the contract have been included.

#### Certificate of Excess Liability

**Limits** - If the other party's General Liability, Automobile and Employer's Liability, etc. policies provide less than the limits required by you, the certificate of insurance may (and should) give evidence of an excess policy to provide the additional limits.

**Coverages** - The certificate should indicate whether the Excess Liability coverage is provided on an excess form or an umbrella form.

### WORKERS' COMPENSATION CERTIFICATES

Most often, you should require evidence of Workers' Compensation coverage from your vendors and subcontractors. Please note you cannot be added as an Additional Insured to a Workers' Compensation policy.

**Limits** - The certificate should specify that the policy provides the statutorily required benefits of Workers' Compensation and the minimum amount of Employer's Liability coverage required by your contract.

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***Waiver of Subrogation*** – The policy of insurance should be endorsed with a waiver of subrogation in favor of your agency. This language protects your agency from claims for contribution resulting from injuries sustained by contractor employees.

### **AUTOMOBILE LIABILITY CERTIFICATES**

Again, this coverage is important from vendors and contractors.

***Limits*** - The certificate should indicate amounts of Automobile Liability insurance consistent with the contract requirements.

***Coverages*** - The certificate should identify the categories of automobile to which the coverage applies and any additional coverage endorsed to the Automobile Liability policy, for example - owned, hired or borrowed vehicles.

### **POLLUTION LEGAL LIABILITY (ENVIRONMENTAL)**

The vendors and contractors should be carefully reviewed to determine from when it is prudent to request this coverage.

***Limits*** - The limits should be clearly stated. Many policies of this type have a significant deductible or SIR which should also be clearly stated.

***Coverages*** - This type of insurance policy is not as standard as Automobile or Workers' Compensation so the types of coverage provided by the policy should be clearly stated.

***Additional Insured*** - Most often, only the carrier will issue endorsements naming other parties as an Additional Insured, so any certificate issued by the agent/broker or Insured's Risk Management department should be carefully reviewed to determine that they have the appropriate authority to grant this status.

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#### ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS: AN OVERVIEW

##### SUMMARY

*This chapter describes the basic steps in administering insurance clauses in contracts where the other party is required to provide insurance to protect your Entity, its officials, employees and volunteers. The five basic steps are:*

- 1. Develop correct insurance specifications.*
- 2. Inform bidders of the insurance requirements early in the bid process and distribute forms promptly.*
- 3. Review the completed insurance documentation promptly. Notify the other party immediately if paperwork is not correct.*
- 4. Save the signed forms indefinitely.*
- 5. Inform the other party's insurer immediately, in writing, of incidents or claims that may be covered by the insurance.*

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### **Step 1: Develop Correct Insurance Specifications**

The first step is to develop a clear set of specifications describing the insurance to be provided by the other party. These specifications should be included in the contract between your Entity and the other party. Chapter 3 explains the fundamentals of drafting insurance specifications. Sample sets of insurance specifications that have been developed for the most commonly encountered situations appear in Chapters 5 and 6 as exhibits.

The glossary (Appendix D) contains insurance terms that you may encounter in administering insurance requirements in contracts, including a discussion of claims-made coverage.

### **Step 2: Inform Contractors Of The Insurance Requirements Early In The Negotiation Process And Distribute Forms Promptly**

The sample specifications in Chapter 5 require the contractor's insurance agent or insurer to fill out and return Entity-supplied forms. In bid situations, specifications and forms should be required as appendices in the request-for-bid package. This accomplishes two goals. First, it eliminates any questions that the bidder may have about the nature of the required forms. Second, the bidder has the opportunity to forward the forms to the insurer or agent for approval before the bid is submitted, thus eliminating delay after the bid is awarded. A sample certificate form is shown as Exhibit 4 in Chapter 4.

### **Step 3: Review The Completed Forms Promptly**

Your Entity's forms allow quick review. Review the forms to be sure they are completed fully, that they have been signed by an appropriate party and that no items have been crossed out or altered. Note the expiration date of the policies. If any policies will expire during the term of the contract or project, you should set up a suspense file for 45 days before the expiration of the insurance. At that time, if you have not received proof of renewal or replacement of coverage, you should send a letter to the other party stating that your Entity requires receipt of a new set of forms before expiration of the existing coverage. Include the forms with your letter. In general, your Entity should require its own forms whenever possible.

Your agency should develop a one-page checklist that would be completed for each contract (see exhibit). This checklist would be used to compare the agency's specific requirements to the actual insurance and endorsements provided. You would then be able to contact the contractor's representative to obtain the necessary certificates and endorsements. Your agency should always enlist the assistance of your Risk Manager/Risk Advisor to contact insurance brokers/carriers to obtain all documents required to comply with your contract provisions.

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### **Step 4: Save The Signed Forms**

Save the forms **indefinitely**, as claims may be presented many years after work is completed. The forms may be your Entity's only proof of coverage.

### **Step 5: Inform The Other Party's Insurer Immediately, In Writing, Of Any Incidents Or Claims Arising Out Of The Work**

Some liability insurance policies require reporting of accidents or other covered losses as soon as it is practical to do so and do not impose any specific deadline. Others require reporting of accidents immediately, but again leave that term undefined. Some policies written on **claims-made** forms impose strict deadlines on claim reporting. The sample forms in this manual include an address for reporting claims. As you may not have immediate access to the policy's notice-of-claim requirement clause, you should assume the worst case version and report incidents or claims to the other party's insurer immediately. If you have a copy of the policy, follow the reporting procedures explicitly.

Usually, the insurance agent fills out the certificate form and includes the name, address and telephone number of the agency. If the Entity's endorsement forms are used, the insurance company's name, address, and phone number will be included. Insurance industry standard endorsement forms usually do not include this information.

Most insurance policies require reporting of incidents or claims to the insurer. However, it is customary with most insurance buyers to report such events to the insurance agent, and to allow the agent to pass the information along to the insurer. While convenient, this practice does not fulfill the insured's contractual responsibility to report events to the insurer. Therefore, the safest practice is to report the event to the insurer, with secondary notification to the agent. If you report by telephone, make a note of it, including the date and person spoken to. Follow up in writing as soon as possible.

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### DRAFTING INSURANCE SPECIFICATIONS FOR CONTRACTS

#### SUMMARY

*This chapter describes basic considerations in drafting insurance specifications. Sample specifications are included as exhibits in Chapters 5 and 6.*

#### **Evaluate the risk.**

Before determining the types of insurance to be required, you must have some idea of the types of harms that could arise from the activities contemplated under the contract.

Every organization should implement a system that establishes procedures for developing and approving contracts. We recommend that your organization create a template for all contracts that may be used by departments within your organization. This template would not only include the terms and conditions but would also include boiler-plate language for hold harmless and indemnification clauses. These two sections within your agreements are key ingredients for your organization to effectively control its exposure to risk and will provide the foundation necessary to transfer risk in the event of a loss. We understand that boiler-plate language will not be applicable to each and every contract/agreement created by your agency, but it will make the process for entertaining exceptions a manageable task.

You should determine such issues as:

- What type of activities will take place during the term of the contract?
- Who could be harmed by these activities?
- What property could be damaged, and how severely?
- What is the maximum likely loss for each activity?
- Is there a possible pollution exposure?
- Are crowds likely to be involved?
- Will inherently dangerous activities, such as blasting, be a part of this project?
- Is the risk sufficient to reject bids not meeting specifications exactly?
- How likely is it that my Entity would be a defendant in the event of a loss?
- Should we agree to a Waiver of Subrogation?

To obtain answers to some of these questions, you may need to confer with your Entity's legal counsel or risk management advisor. The identification of risks involved in the contemplated activity is possibly the most important part of the process of managing risks in contract situations. It requires time and thought.

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**Be as specific as possible in describing types of insurance required. Create Hold Harmless/Indemnification Language for your agreements.**

The action that transfers the risk from one organization to another is commonly referred to as the hold harmless clauses within contracts. This language should specifically spell out the responsibilities of your organization and the contractor. The language will identify which types of losses the parties to the agreement will be responsible for. Often times, the hold harmless/indemnification language will be a mutual hold harmless which is a frequent practice when two or more public agencies are signature to agreements. This practice is not highly recommended when you are contracting with private organizations. These agreements should require the contractor to assume all of the liability imposed by the actions of the agreement. This type of action will be recognized in the legal system as long as the inherent risk transferred is commensurate with the compensation to the contractor. We strongly recommend that legal, risk management and other disciplines within your organization collaborate to create hold harmless agreements that are acceptable to your organization.

### **Insurance Requirements**

Insurance requirements in a contract guarantees that the organization you are contracting with will have adequate assets available in the event of a loss arising out of the work performed for your agency. The use of insurance is not the only means of guaranteeing that an organization will have adequate resources. Some very large organizations may choose to self-insure their liabilities. In that event, you may need to examine the organization's balance sheet, financial records or receive a letter of credit from a banking organization to guarantee the adequacy of their assets. For the basis of discussion in this manual, we will focus on insurance and bonds as the means for effective risk transfer.

Avoid using phrases which do not have a specific meaning. For example, the term public liability does not have a definite meaning in common usage or in the insurance industry. Therefore, it is ambiguous, as your Entity may intend that a relatively broad coverage be purchased, yet a limited coverage form would still comply with the written requirement. This ambiguity could be removed by stating the titles or exact types of coverage forms to be maintained. Chapter 6 describes specific types of insurance that may be needed for special situations.

**In particular, your Entity should require that liability insurance be written on an occurrence basis. Claims-made coverage should be accepted only on an exception basis after verifying that occurrence coverage is not available.** Professional liability insurance is usually available only as claims-made. See the glossary for a discussion of claims-made coverage.

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**Describe maximum deductibles or self-insured retentions that the other party may maintain.**

If the other party maintains substantial deductibles or self-insured retentions (SIRs), your Entity must seek reimbursement directly from the other party in accordance with the indemnity or hold harmless clause of the contract. If the other party is financially unable to reimburse your Entity or if the indemnification clause in the contract is set aside by a court, your Entity would bear the amount of the deductible (or retention). Also, some policies with SIRs do not require the insurer to provide legal defense. In such cases, your Entity might have to pay its own defense or seek reimbursement from the contractor. Therefore, you should require disclosure and approval of deductibles or SIRs. If deductibles or SIRs are substantial, you can request the other party to post a bond guaranteeing payment of losses and defense costs within the deductible layer. As an alternative, the other party's insurer may be willing to reduce the deductible as respects your Entity's interests. You should review the contractor's use of deductibles or SIRs and discuss them with your risk management advisor if necessary.

**Require the addition of your Entity, its officials, employees and volunteers as insureds to all required liability coverage.**

Standard contract conditions should specify that your Entity, its officials, employees and volunteers should be added by endorsement as insureds to all liability policies, except workers' compensation or professional (errors and omissions) liability policies. In projects involving the use of subcontractors, you should require that the contractor include all subcontractors as insureds under the contractor's policies. In the alternative, the contractor must furnish your Entity with the required endorsements or insurance policies from each subcontractor which name the Entity, its officials, employees and volunteers as insureds.

**Require that the other party's insurance be primary.**

To simplify loss adjustment and to eliminate the possibility that the other party's insurer will seek contribution from your Entity, your Entity's standard requirements should state that the other party's insurance is to be primary protection, and that your Entity's self-insurance program will not be called upon to contribute to a loss that should otherwise be paid by the other party's insurer. Make sure that this condition is endorsed on the contractor's insurance policy. If the agreement on primary insurance is merely stated in your contract with the other party and is not endorsed on the policy, the agreement is not binding on the insurer.

**Require that policies be endorsed to give your Entity at least 30 days' notice of cancellation of insurance coverage.**

Your Entity's standard insurance requirements should state that the policies are to be endorsed to require the insurer to provide at least thirty days' written notice of cancellation. Sixty days' notice is better.

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Statements made on a certificate regarding cancellation notice do not have the same effect as the same statement made in an insurance policy or endorsement. Insurance industry-supplied certificates of insurance usually only state that the insurer or its agent will “endeavor to” provide the required number of days’ notice of cancellation. Sometimes the words “endeavor to” may be crossed out on the certificate form. However, this change has no practical effect since generally, if notice is not sent, the coverage still terminates. You should presume that the certificate does not grant any conditions not contained in the policy. Your Entity’s standard form should provide for at least 30 days’ written notice of cancellation.

**Specify that the insurance is to be placed with insurers that meet a certain minimum rating.**

The ratings given by A.M. Best & Co. and Standard and Poors are widely used as a standard for measurement of insurer acceptability. Best’s rating is a two-part ranking, separated by a colon. The first portion is Best’s assessment of the quality of overall management. The second, given as a Roman numeral ranging up to XV, indicates financial size by policyholders’ surplus. Standard and Poors uses a single rating scheme measuring the companies overall financial strength

The management rankings currently used by Best and the rankings used by Standard and Poors are:

<b>Best Ratings</b>		<b>Standard and Poors</b>	
A++, A+	Superior	AAA	Extremely Strong
A, A-	Excellent	AA +/-	Very Strong
B++, B+	Very Good	A +/-	Strong
B, B-	Good	BBB +/-	Adequate
C++, C+	Fair	BB +/-	Less Vulnerable
C, C-	Marginal	B +/-	More Vulnerable
D	Below Minimum Standards	CCC +/-	Currently Vulnerable
E	Under State Supervision	CC +/-	Currently Highly Vulnerable
F	In Liquidation	R	Under Regulatory Supervision

+, - These signs following the letter rating indicate the relative position within the class

The above analogy between Best ratings and Standard and Poors is not an exact analogy. Each rating system has its differences and the ratings are based on slightly different criteria and/or weighting. The use of both rating systems provides a better understanding of the strength or weakness of the company.

Best also rates insurance companies by their policyholders surplus. Class I is the lowest Financial Size category, indicating a policyholders’ surplus of under \$1,000,000. Class XV, indicate policy holders surplus of over \$2,000,000,000 billion. In the middle, Class VII surplus ranges from \$50,000,000 to \$100,000,000.

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Your Entity should require that insurance be placed with companies that have a minimum Best's rating of at least A:VII and a Standard and Poors Rating (if rated) of at least BBB unless specific approval for a lower rating has been granted by your Entity. This requirement does not guarantee that the insurer will be solvent when called upon to pay a loss, but it does reduce the possibility of coverage being placed with a clearly unqualified insurer.

In some cases, Best or Standard and Poors does not assign a rating. Best categories for insurers for which no rating is assigned are:

NA-1	Special Data Filing
NA-2	Less than Minimum Size
NA-3	Insufficient Operating Experience
NA-4	Rating Procedure Inapplicable
NA-5	Significant Change
NA-6	Reinsured by an Unrated Reinsurer
NA-8	Incomplete Financial Information
NA-9	Company Request
NA-11	Rating Suspended

Companies with ratings of NA-11 should be considered unqualified. The fact that Best has suspended the insurer's rating is a trouble sign. Likewise, NA-9 can be an indication of problems, as the insurer has probably requested no rating, as an alternative to a low rating. However, some of the NA classifications deserve further investigation. Although Best does not rate very small companies or recently formed companies, these insurers may be otherwise satisfactory if no other good alternatives are available.

For the classes NA-2 and NA-3, Best does provide a financial performance index (FPI) rating. Those categories are:

8 or 9	Strong
6 or 7	Above Average
4 or 5	Average
2 or 3	Below Average
1	Not assigned

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Standard and Poors uses an NR to indicate companies not rated.

In some cases, the contractor may be unable to obtain coverage from a company that meets the rating requirements of your Entity. In such cases, your Entity may wish to review the financial history of the available insurer, determine how long the insurer has been providing the coverage and establish whether or not the insurer is admitted in the State of California. An admitted insurer is licensed to write insurance policies and issue them directly to insureds within the admitting state. An admitted insurer is required to contribute to the state guaranty fund, which provides some protection for claimants in the event an *admitted* insurer becomes insolvent. *Best's Key Rating Guide* lists each state in which a rated insurer is admitted.

Your Entity should only accept a nonadmitted or lower-rated insurer if no other insurer will provide the coverage. **Be aware**, however, that there may be a significant risk that the insurer will not be able to pay a claim for which your Entity may then become responsible. Contact the JPA Program Director or your broker prior to approving the forms.

### **Fit the insurance limits to the situation.**

This is the most difficult principle of all to apply effectively. Judgment and experience are required to effectively set required insurance limits. Precedent also plays a significant role. It becomes difficult to require \$5,000,000 limits from one contractor if the Entity has previously required only \$1,000,000 for similar projects. Nevertheless, it is a common practice among businesses to underinsure. If most contractors carry limits less than you think are appropriate, it is possible that most contractors are underinsuring their risks.

The \$1,000,000 limit stipulated in the sample insurance requirements is generally a minimum practical limit to require, although it is really too low for any business. However, attempts to require higher limits will often meet stiff resistance. Nevertheless, higher limits should be required for any hazardous activity, such as blasting, or where the activity has a severe loss potential, such as construction close to highways, utility lines or high-valued property. You should consider the loss exposure, not the value of the contract, in determining appropriate limits. Some jobs, such as spraying of pesticides or backhoe operation near utilities, involve substantial potential liabilities even though the contract may involve only a small expense. A checklist at the end of this chapter will help identify hazardous exposures.

### ***Aggregate Limits***

Many liability insurance forms in use today impose aggregate (total of all claims) limits on all losses paid by the policy for the policy period (usually one year). There are usually three types of aggregates: a products and completed operations aggregate; a personal injury and advertising injury liability aggregate; and a general aggregate for all other types of losses. If the contractor purchases a Commercial General Liability policy, any losses arising out of projects for that contractor's other clients would also reduce the aggregate limit available for losses arising out of its work for your Entity. Therefore you may wish to require:

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- A higher aggregate limit which is a multiple of the occurrence limit; for example, a \$1,000,000 per-occurrence limit with a \$2,000,000 aggregate, or
- A separate aggregate limit for your project or lease, or
- A policy dedicated to your project.

Neither of these solutions is a perfect answer. Even a higher aggregate limit may be insufficient if the contractor experiences a large number of substantial claims during the coverage period. A possible solution is to require that the contractor provide higher limits through a combination of excess and primary policies. In this case, evidence of excess coverage should be required on the same certificate form. On large projects, this approach may be the most feasible.

The insurer may decline to provide a separate or higher limit for your Entity's project. If the insurer *is* willing to provide a higher limit, the contractor may be asked to pay additional premium. The cost of this premium may be passed along to your Entity if the contractor must obtain this coverage in order to receive the contract award.

The insurer will probably use Insurance Services Offices (ISO) forms or the equivalent to provide the additional coverage. The most commonly used forms appear in Appendix B.

They are:

- **ISO endorsement CG 25 04 11 85** (Amendment—Aggregate Limits of Insurance, Per Location) applies to tenants who rent multiple locations. If the tenant obtains this endorsement because of your Entity's insurance requirements, the tenant may attempt to pass the cost along to your Entity. This form provides a separate aggregate limit for all locations occupied by the tenant. While this is desirable from your Entity's point of view, make sure that you do not pay for increased limits at all other locations occupied by the tenant, including those not rented by your Entity.
- **ISO form number CG 25 03 11 85** (Amendment—Aggregate Limits of Insurance, Per Project) applies to contractors who perform multiple projects simultaneously. Again, make sure you are not paying for increased aggregate limits at locations your Entity does not own.
- **ISO form number CG 25 01 11 85** (Amendment of Limits of Insurance, Designated Project or Premises) can be used to amend policy limits for a specified project or location. The intent of this form appears to be to establish separate limits for the designated project only, which would solve the potential cost problems created by the two forms discussed above. However, the form states that its limits are inclusive of and not in addition to the limits that it replaces. Therefore, if the aggregate limit indicated on the endorsement is the same as the aggregate limit on the policy declaration page (a common practice), then the limits wording of the endorsement could eliminate any additional coverage intended. If you encounter this form, make sure that either (1) a higher aggregate is provided on this form, or (2) that this language is amended to clearly indicate that the aggregate limits applicable to your project will not be diluted by claims at other locations.

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The discussion above applies to coverage under the current ISO Commercial General Liability policy form. You may also encounter an older policy form known as Comprehensive General Liability coverage. This older form has an aggregate limit that applies only to products and completed operations. Some insurers still use the older form, but may modify it with general aggregate limitations. The most restrictive alternative is Insurance Services Office endorsement form GL 99 16, entitled Amendment Limits of Liability (Single Limit) (Policy Limit). This endorsement imposes one aggregate limit for all bodily injury and property damage claims, including products and completed operations liability. Other variations of endorsements adding aggregate limits exist. You should watch out for these forms when evaluating aggregate limits on your contractor's liability policies.

**Specify that the insurance must remain in effect for the duration of the project or lease.**

You should state in the contract and on your Entity's forms that the required insurance must be in effect prior to awarding the contract and that it or a successor policy must be in effect for the duration of the project or lease. **A clause in the contract should state that maintenance of proper insurance coverage is a material element of the contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated by your Entity as a material breach of contract.**

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### OBTAINING VERIFICATION OF COMPLIANCE

#### SUMMARY

*Your Entity should require the responsible party to submit acceptable proof of insurance before work can begin or premises be occupied. As proof of coverage, most insurance agents are accustomed to preparing, signing and submitting an insurance industry-designed certificate of insurance. Your Entity should require that the insurer use forms provided by your Entity. If the insurer insists on use of insurer-provided forms, the forms must be modified to comply with Entity insurance requirements. To the extent possible, you should require endorsements to the policy rather than certificates of insurance. For major projects, or to be as certain as possible about coverage and compliance with requirements, you should obtain a copy of the complete insurance policy and read it carefully.*

The California Insurance Code clarifies the role of certificates of insurance in relation to the insurance policies which they describe. According to Section 384, which became law on January 1, 1979:

“A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statements or words to the effect of:

This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.”

**This wording means that if the certificate is not accurate, the insurer is not required to conform to the certificate. Also, any statements made on the certificate, such as cancellation notice provisions, do not affect the policy.**

Occasionally, insurance agents or insurers may make errors when issuing certificates of insurance. The most common errors involve description of additional insureds and notice of cancellation. When these errors on the certificate conflict with terms found in the policy, the policy governs, according to California law. To reduce the possibility of errors, and for ease of administration, you should insist that the contractor’s insurer use Entity-supplied forms to provide evidence of insurance. Use of standard forms signed by the insurer’s representative provides greater assurance that coverage is in force.

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Also, standard forms simplify paperwork for your Entity and for the insurer as:

- They eliminate the need for the insurer to analyze your Entity contract and draft specific language to comply with it; and
- They match all of the coverage requirements, using language most acceptable to your Entity. Thus, they do not require detailed review.

To implement some of the insurance clauses in the sample specifications, the contractor's insurance agent must request the insurance companies to amend the contractor's insurance. Forms should be completed by the insurance company. They can be completed by the agent only if the agent is an authorized representative of the insurance company with authority to issue such forms. The forms must be signed by the underwriter or other authorized representative of the insurer. The original signed forms should be returned to your Entity before work begins.

The exhibits at the end of this chapter contain the language required by the insurance specifications in Chapter 5. The exhibits are:

Exhibit	Purpose	Use with Insurance Specifications Exhibits
1-A	Commercial General Liability endorsement	5, 6, 9, 10
1-B	Commercial General Liability endorsement	7
1-C	Commercial General Liability endorsement	8
2	Automobile Liability endorsement	5, 6, 9, 10
3	Workers' Compensation endorsement	5, 6, 7, 9, 10
4	Certificate of Insurance Form	5, 6, 7, 8, 9, 10

The titles used on the general liability endorsements conform as closely as possible to widely used insurance industry standard forms. Your Entity may adopt these forms and use them in conjunction with the insurance specifications exhibits.

Preferably, your Entity should accept only its own standard forms. However, an insurer may insist on use of its own forms. For example, the State Compensation Insurance Fund does not accept custom workers' compensation insurance certificates. Instead, it issues a package of four endorsements that achieve the same result. The Fund's forms can be used to accomplish the same purpose as the custom forms recommended in this manual.

Samples of the Fund's forms are in Appendix B.

Many of the items listed in the insurance specifications may already be found in the other party's insurance. For example, the types of coverage and the limits may already comply with the specifications. However, some of the other requirements recommended in this manual are not automatic and must be added by the insurer, by endorsement, such as the agreement to notify your Entity of cancellation. Also, few contractors have insurance policies that would automatically protect your Entity for claims arising from the contractor's work. Therefore, Entity specifications should require that the insurer add your Entity as an insured.

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The Insurance Services Office and the ACORD Corporation, two insurance industry service companies, have also developed forms that accomplish some of the amendments recommended in this manual. Some of these forms are shown in Appendix B. The risk in accepting these forms is that you must carefully review each form and compare it against the insurance requirements in your contract specifications. In addition, accepting a variety of forms complicates the compliance monitoring process and adds to the paperwork. If possible, it is far better to insist that the contractor's insurer use your Entity's custom insurance forms.

To simplify acceptance by insurers, the required general liability endorsements are based on widely used insurance industry forms, with modifications to meet your Entity's needs. The modifications add important protection for your Entity, so when you receive the endorsement, if the insurer uses its form rather than one sent out by the Entity, check to make sure that all the modifications have been included.

If your Entity is unable to have its own form completed, you may require a complete copy of the contractor's policy, including all of the required endorsements, for review to determine if all required conditions apply. Note that not all general liability insurance policies are the same. Some insurers have modified basic ISO forms. Occasionally you will encounter a completely custom form (manuscript policy).

**Failure of your Entity to require correct insurance coverages or failure to monitor compliance could result in significant financial loss to your Entity.**

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### CHANGES IN ENDORSEMENT FORM: ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement form has changed *materially* since the last edition of the manual.

The old Form Numbers are CG 20 10 11 85 (the 85 in the number sequence is the “edition date”); CG 20 10 10 93; CG 20 10 03 97; the updated form number is CG 20 10 10 01. This latest edition, CG 20 10 10 01 contains completed operations exclusions. The material change is contained in the second and third paragraph of the endorsement. We have included these forms in the manual on the following pages so that the user can see the changes for themselves.

The 1985 version, the version we had previously recommended your entity request, is no longer available from most admitted carriers. That version was worded:

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “*your work*” for the insured by or for you. (emphasis added)

The 1993,1997 and 2001 versions read:

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “*your ongoing operations*” performed for that insured. (emphasis added)

The 2001 version adds completed operations exclusions, which read:

With respect to the insurance afforded to these additional insureds, the following exclusions are added:

This insurance does not apply to “bodily injury” or property damage” occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
2. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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This change is significant because the altering of the wording “your work” to “your ongoing operations” effectively eliminates any possible coverage under this endorsement for products-completed operations exposures. Up to this “rewording”, Form CG 20 10 11 85 contained no exclusion for completed operations, and could therefore be called on to cover your entity for liability arising out of the products-completed operations hazard created by your contractor.

The new versions have increased the necessity for subrogation waivers on liability policies, in light of the Montrose case.

We therefore recommend that for contractors, your entity **also** request another form (CG 20 37 10 01), which contains coverage for products-completed operations. This version reads:

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization whom in the Schedule, but only with respect to liability arising out of “your work” at the location designated and described in the schedule of this endorsement performed for that insured and included in the “products-completed operations hazard.”

### IN SUMMARY

For contractors, you need two forms, Form CG 20 10 10 01 for ongoing work exposure and Form CG 20 37 10 01 for products-completed operations exposure.

For use of property (owners/lessees exposure), Form CG 20 10 10 01 is sufficient by itself.

There is also an ISO form for adding a public entity as an additional insured. An insurance carrier may require this Form CG 01 30 09 97 in lieu of Form CG 20 10 10 01. Please note it is not preferred as it has additional exclusionary language. This language is as follows:

With respect to the insurance afforded these additional insureds, the following additional provisions apply:

1. Exclusions b., c., g., h. (1), j., k., l., and n. under Coverage A – Bodily Injury and Property Damage Liability (Section I – Coverages) do not apply.
2. Additional Exclusions

This insurance does not apply to:

- a. “Bodily injury” or “property damage” for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability for the active negligence of the additional insured(s) in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.

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- b. “Bodily injury” or property damage” occurring after:
- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
  - (2) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractors or subcontractor engaged in performing operations for a principal as a part of the same project.
- c. “Bodily injury” or “property damage” arising out of any act or omission of the additional insured(s) or any of their “employees.”
- d. “Property damage” to:
- (1) Property owned, used or occupied or rented to the additional insured(s);
  - (2) Property in the care, custody, or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
  - (3) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

We do not recommend this form, but have provided it as an insurer may require it.

*(continued)...*

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Reproduction of Insurance Services Office, Inc. Form

**POLICY NUMBER:** **COMMERCIAL GENERAL LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.

**CG 20 10 11 85 Copyright, Insurance Services Office, Inc., 1982**

*(continued)...*

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Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### **SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

CG 20 10 10 93

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Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### **SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

CG 20 10 03 97

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERICAL GENERAL LIABILITY  
CG 20 10 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIMITS OF INSURANCE (DESIGNATED PROJECT OR PREMISES)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation of Project Or Premises:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – WHO IS AN INSURED is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of your ongoing operations performed for the insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

1. Exclusions

This insurance does not apply to “bodily injury” or “property damage” occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than contractor or subcontractor engaged in performing operations for a principal as part of the same project.

CG 20 10 10 01

ISO Properties, Inc., 2000

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY  
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Name of Person or Organization:

Location And Description of Completed Operations:

Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

*Section II – WHO IS AN INSURED is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of “your work” at the location designated and described in the Schedule of this endorsement performed for that insured and included in the “products-completed operations hazard.”*

CG 20 37 10 01

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**Reproduction of Insurance Services Office, Inc. Form**

POLICY NUMBER: COMMERICAL GENERAL LIABILITY  
CG 01 30 09 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA CHANGES –  
ADDITIONAL INSURED – PUBLIC AGENCY –  
OWNERS, LESSEES OR CONTRACTORS –  
SCHEDULED PERSON OR ORGANIZATION (FOR USE  
WHEN CONTRACTUAL LIABILITY COVERAGE IS NOT  
PROVIDED TO YOU IN THIS POLICY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person Or Organization (Additional Insured):	Location Of Covered Operations						
Bodily Injury And Property Damage Liability	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">Premium Basis Cost</td> <td style="width: 33%;">Rates (Per \$1000 Of Cost)</td> <td style="width: 33%;">Advance Premium \$</td> </tr> <tr> <td colspan="2">Total Advance Premium:</td> <td>\$</td> </tr> </table>	Premium Basis Cost	Rates (Per \$1000 Of Cost)	Advance Premium \$	Total Advance Premium:		\$
Premium Basis Cost	Rates (Per \$1000 Of Cost)	Advance Premium \$					
Total Advance Premium:		\$					

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. Who Is An Insured (Section II) is amended to include as an insured the person or organization (called “additional insured”) shown in the Schedule but only with respect to liability arising out of your ongoing operations performed for the additional insured(s) at the location designated above; or
- B. With respect to the insurance afforded these additional insureds, the following additional provisions apply:

1.



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Exclusions b., c., g., h. (1), j., k., l. and n. under Coverage A – Bodily Injury and Property Damage Liability (Section I – Coverages) do not apply.

### 2. Additional Exclusions

This insurance does not apply to:

- a. “Bodily injury” or “property damage” for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability for the active negligence of the additional insured(s) in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.
- b. “Bodily injury” or “property damage” occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
  - (2) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- c. “Bodily injury” or “property damage” arising out of any act or omission of the additional insured(s) or any of their “employees.”
- d. “Property damage” to:
  - (1) Property owned, used or occupied by or rented to the additional insured(s);
  - (2) Property in the care, custody or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
  - (3) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

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### EXHIBIT 1-A

#### Reproduction of Insurance Services Office, Inc. Form

**INSURER:** ISO FORM CG 20 10 11 85: (MODIFIED)  
**POLICY NUMBER:** COMMERCIAL GENERAL LIABILITY  
**ENDORSEMENT NUMBER:** EXHIBIT 1-A

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

#### ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

#### SCHEDULE

Name of Organization

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.

#### Modifications to ISO form CG 20 10 11 85:

1. The insured scheduled above includes the Insured's officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the Entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

CG 20 10 11 85

Insurance Services Office, Inc. Form (Modified)

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## CHAPTER FOUR

### EXHIBIT 1-B

#### Reproduction of Insurance Services Office, Inc. Form

**INSURER:** ISO Form CG 20 11 11 85 (Modified)  
**POLICY NUMBER:** Commercial General Liability  
**ENDORSEMENT NUMBER:** Exhibit 1-B

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

#### ADDITIONAL INSURED — MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

#### SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured):
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**WHO IS INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization show in the schedule.

#### Modifications to ISO form CG 20 11 11 85:

1. The insured scheduled above includes the insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage.  
In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the Entity.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

CG 20 11 11 85

Insurance Services Office, Inc. Form (Modified)

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## CHAPTER FOUR

### EXHIBIT 1-C

#### Reproduction of Insurance Services Office, Inc. Form

**INSURER:** ISO FORM CG 20 26 11 85: (MODIFIED)  
**POLICY NUMBER:** COMMERCIAL GENERAL LIABILITY  
**ENDORSEMENT NUMBER:** EXHIBIT 1-C

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

#### ADDITIONAL INSURED — DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

#### SCHEDULE

Name of Person or Organization

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

#### Modifications to ISO form CG 20 26 11 85:

1. "Operation" includes the named Insured's products.
2. The insured scheduled above includes the Insured's officers, officials, employees and volunteers.
3. This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage.  
In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
4. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the Entity.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

**CHAPTER FOUR**

**EXHIBIT 2**

<b>AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT FOR _____ (Entity)</b>			<b>SUBMIT IN DUPLICATE</b>	
			ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)
<b>PRODUCER</b>  Telephone _____		<b>POLICY INFORMATION:</b> Insurance Company: Policy No.: Policy Period: (from) _____ (to) _____ LOSS ADJUSTMENT EXPENSE <input type="checkbox"/> Included in Limits <input type="checkbox"/> In Addition to Limits  <input type="checkbox"/> Deductible Self-Insured Retention (check which ) of \$ _____		
<b>NAMED INSURED</b>		<b>APPLICABILITY.</b> This insurance pertains to the operation and/or tenancy of the named insured under all written agreements and permits in force with the Entity unless checked here <input type="checkbox"/> in which case only the following specific agreements and permits with the Entity are covered: CITY AGREEMENTS/PERMITS		
<b>TYPE OF INSURANCE</b> <input type="checkbox"/> COMMERCIAL AUTO POLICY <input type="checkbox"/> BUSINESS AUTO POLICY <input type="checkbox"/> OTHER _____		<b>OTHER PROVISIONS</b> <input type="checkbox"/>		
<b>LIMITS OF LIABILITY</b>		<b>CLAIMS:</b> Underwriter's representative for claims pursuant to this insurance. Name: _____ Address: _____ Telephone: ( _____ ) _____		
\$ _____ per accident, for bodily injury and property damage <input type="checkbox"/>				
In consideration of the premium charge and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:				
<ol style="list-style-type: none"> <li>INSURED: The Entity, its officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, or for which the Named Insured is responsible.</li> <li>CONTRIBUTION NOT REQUIRED. As respects work performed by the Named Insured for or on behalf of the Entity, the insurance afforded by this policy shall: (a) be primary insurance as respects the Entity, its officers, officials, employees and volunteers; or (b) stand I an unbroken chain of coverage excess of the Named Insured's primary coverage. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees and volunteers shall be excess of the Named Insured's insurance and not contribute with it.</li> <li>CANCELLATION NOTICE. With respect to the interests of the Entity, this insurance shall not be canceled, except after thirty (30) days prior written notice by receipted delivery has been given to the Entity.</li> <li>SCOPE OF COVERAGE. This policy affords coverage at least as broad as: <ol style="list-style-type: none"> <li>If primary, Insurance Services Office Form Number CA0001 (Ed. 1/87), Code 1 ("any auto"); or</li> <li>If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding Section (1).</li> </ol> </li> </ol> <p>Except as stated above, nothing herein shall beheld to waive, alter or extend any of the limits conditions, agreements or exclusions of the policy to which this endorsement is attached.</p>				
<b>ENDORSEMENT HOLDER</b>				
<b>ENTITY</b>  		<b>AUTHORIZED REPRESENTATIVE</b> <input type="checkbox"/> Broker/Agent <input type="checkbox"/> Underwriter <input type="checkbox"/> _____ I, _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company, and by my signature hereon do so bind this company to this endorsement.  Signature _____ (original signature required) Telephone: ( _____ ) _____ Date Signed _____		

**CHAPTER FOUR**

**EXHIBIT 3**

<b>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT FOR _____ (Entity)</b>			<b>SUBMIT IN DUPLICATE</b>	
			ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)
<b>PRODUCER</b>  Telephone <input type="checkbox"/>		<b>POLICY INFORMATION:</b> Insurance Company: Policy No.: Policy Period: (from) _____ (to) _____		
<b>NAMED INSURED</b>  <input type="checkbox"/>		<b>OTHER PROVISIONS</b>		
<b>CLAIMS:</b> Underwriter's representative for claims pursuant to this insurance. Name: _____ Address: _____ Telephone ( ) _____		<b>EMPLOYERS LIABILITY LIMITS</b> \$ _____ (Each Accident) \$ _____ (Disease - Policy Limit) \$ _____ (Disease - Each Employee)		
In consideration of the premium charge and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows: 1. CANCELLATION NOTICE. This insurance shall not be canceled, except after thirty (30) days prior written notice by receipted delivery has been given to the Entity. 2. WAIVER OF SUBROGATION. This Insurance Company agrees to waive all rights of subrogation against the Entity, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the Named Insured for the Entity.  Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached. <input type="checkbox"/>				
<b>ENDORSEMENT HOLDER</b>				
<b>ENTITY</b>		<b>AUTHORIZED REPRESENTATIVE</b> <input type="checkbox"/> Broker/Agent <input type="checkbox"/> Underwriter <input type="checkbox"/> _____ I, _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company, and by my signature hereon do so bind this company to this endorsement.  Signature _____ <i>(original signature required)</i>  Telephone: ( ) _____ Date Signed _____		

Rev. 1/93



**CHAPTER FOUR**

<b>CERTIFICATE OF INSURANCE</b>					ISSUE DATE (MM/DD/YY)	
<b>(Entity)</b>						
<b>PRODUCER</b>			THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
<input type="checkbox"/>			<b>COMPANIES</b>		<b>BEST'S RATING</b>	
<b>INSURED</b>			<b>COMPANY LETTER</b> <b>A</b> _____		_____	
<input type="checkbox"/>			<b>COMPANY LETTER</b> <b>B</b> _____		_____	
			<b>COMPANY LETTER</b> <b>C</b> _____		_____	
			<b>COMPANY LETTER</b> <b>D</b> _____		_____	
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS ARE SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input type="checkbox"/> OTHER _____ <input type="checkbox"/>				GENERAL AGGREGATE	\$
		PRODUCTS-COMP/OPS AGGREGATE	\$			
		PERSONAL & ADVERTISING INJURY	\$			
		EACH OCCURRENCE	\$			
		FIRE DAMAGE (Any one fire)	\$			
		MEDICAL EXPENSE (any one person)	\$			
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NONOWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT	\$
		BODILY INJURY (Per person)	\$			
		BODILY INJURY (Per accident)	\$			
		PROPERTY DAMAGE	\$			
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
		AGGREGATE	\$			
	<input type="checkbox"/> <b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				STATUTORY	\$
		EACH ACCIDENT	\$			
		DISEASE-POLICY LIMIT	\$			
		DISEASE-EACH EMPLOYEE	\$			
	<b>PROPERTY INSURANCE</b> <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE	\$
DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/RESTRICTION/SPECIAL ITEMS						
<b>THE FOLLOWING PROVISIONS APPLY:</b>						
<ol style="list-style-type: none"> <li>1. None of the above-described policies will be canceled until after 30 days' written notice has been given to the Entity at the address indicated below.</li> <li>2. The Entity, its officials, officers, employees and volunteers are added as insureds on all liability insurance policies listed below.</li> <li>3. It is agreed that any insurance or self-insurance maintained by the Entity will apply in excess of and not contribute with, the insurance described above.</li> <li>4. The Entity is named a loss payee on the property insurance policies described above, if any.</li> <li>5. All rights of subrogation under the property insurance policy listed above have been waived against the Entity.</li> <li>6. The workers' compensation insurer named above, if any, agrees to waive all rights of subrogation against the Entity for injuries to employees of the insured resulting from work for the Entity or use of the Entity's premises or facilities.</li> </ol>						
<b>CERTIFICATE HOLDER/ADDITIONAL INSURED (ENTITY)</b>			<b>AUTHORIZED REPRESENTATIVE</b>			
			SIGNATURE _____			
			TITLE _____			
			PHONE _____ NO.			
			<input type="checkbox"/>			

## CHAPTER FIVE

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### CHAPTER FIVE

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#### SPECIFICATIONS FOR COMMON SITUATIONS

##### SUMMARY

*Although your Entity may enter into a wide variety of contracts each year, many of those contracts may be grouped into a few categories for insurance purposes. The exhibits at the end of this chapter provide standardized specifications suitable for many contracts. This chapter provides guidelines for the use of the specifications. See Chapter Six for consultant and environmental insurance specifications.*

The various sets of insurance specifications at the end of this chapter have been developed for the most common situations your Entity staff will encounter. These exhibits are:

Exhibit 5	Insurance Requirements for Contractors
Exhibit 6	Insurance Requirements for Contractors (with Construction Risks)
Exhibit 7	Insurance Requirements for Lessees (No Auto Risks)
Exhibit 8	Insurance Requirements for Suppliers

Each of these specifications requires that the other party submit insurance documentation on forms supplied by your Entity.

Exhibits 5 and 6 are the broadest requirements. While Exhibit 5 can be used for tenant or supplier contracts, its requirements are broader than usually needed for such agreements. For example, the exhibit requires automobile insurance. Automobile insurance is not required in most tenant situations.

Exhibit 7 is identical to Exhibit 5 but deletes the automobile insurance requirement. It should be used for most tenant situations, provided the tenant does not use or commercially park vehicles on the leased premises.

Exhibit 8 is intended for contracts that involve only the purchase of equipment or supplies which do not require installation or maintenance by the vendor. It is identical to the first exhibit, except that both the auto insurance requirement and the workers' compensation insurance requirement are deleted.

If the activity or subject of the contract fits into more than one category, use the broadest applicable language. For example, if a vendor will also install or maintain the product or perform other services for your Entity, the vendor should be considered as a contractor for the purpose of insurance requirements. Instead of using Exhibit 8, the broader language of Exhibit 6 should be used.

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## CHAPTER FIVE

Following are some guidelines for determining which set of specifications to use or if special language is needed.

<i><b>TYPE OF ACTIVITY</b></i>	<i><b>SPECIFICATIONS AND LIMITS</b></i>
<b>Construction and services contracts</b> , including most construction and remodeling, janitorial service, movers, on-site equipment maintenance agreements, tow service, tree maintenance, road maintenance, welding, plumbing, painting, electrical work and fireworks exhibits.	Use <b>Exhibit 5</b> , with a minimum limit of \$1 million. Major public works projects should require substantially higher limits. Also, see the discussion on builder's risk insurance in the glossary. If the contractor is required to buy the builder's risk insurance, use <b>Exhibit 6</b> . Remember to base the required limits on the amount of damage that may occur, not on the contract price.
<b>Construction projects</b>	Use <b>Exhibit 6</b> . Construction projects will usually require course of construction (builders' risk) property insurance. Major construction projects, especially those which involve many subcontractors, may call for special insurance requirements. One such option is called wrap-up or consolidated insurance program. This type of insurance is purchased by the project owner and covers all contractors and subcontractors for liability. See Chapter 6 for a more complete discussion.
<b>Professional services</b> , including architects, engineers, consultants, counselors, medical professionals, hospitals, clinics, attorneys and accountants.	Use <b>Exhibit 9</b> (Chapter 6). Your Entity should require proof of professional liability insurance.
<b>Environmental risks</b> , including asbestos, hazardous chemicals or waste, and nuclear risks.  <i>[Reminder: Your Entity has no pollution coverage through the pool. If you don't transfer the risk, your Entity could be totally responsible for a loss.]</i>	Use <b>Exhibit 10</b> (See Chapter 6) . <b>However, coverage specifications and limits should be developed to fit the circumstances of the situation.</b> Generally, limits should be no less than \$1 million. Special insurance is available for nuclear risks and may be available for asbestos removal/containment or waste handling.
<b>Aircraft, watercraft and airports operated under contract</b> , including charter of aircraft or watercraft by your Entity or by another party in performance of work for your Entity.  <i>[Reminder: The pool does not cover aircraft or airports. If you don't transfer the risk, your Entity could be totally responsible for a loss.]</i>	<b>Exhibit 5</b> may be appropriate if additional specialized liability insurance requirements are added. For aviation exposures, limits should be \$100 million or more. If the tenant is a marina operator or boat or airplane repairer, marina operator or ship repairer's or hangarkeeper's liability is required. Limits should be large enough to cover the value of the most expensive object in the tenant's custody and 3 or 4 surrounding objects.
<b>Tenants and concessionaires</b> including food and beverage concessions, gift shops, office space tenants, child care centers, senior centers and other space rental to lessees who have full-time or part-time employees.	<b>Exhibit 7</b> can be used if no autos are used or commercially parked on the premises. If autos are used or parked, <b>Exhibit 5</b> should be used. If the tenant's activities include valet parking, either with or without fee, <b>Exhibit 5</b> may need to be supplemented by additional coverage called garagekeeper's legal liability. The required limit for this coverage should be equal to the value of the maximum number of automobiles that may be in the tenant's custody.

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<b>TYPE OF ACTIVITY</b>	<b>SPECIFICATIONS AND LIMITS</b>
<b>Vendors</b> , including vendors who supply equipment or other products to your Entity and who do not perform other functions, such as installation or maintenance.	<b>Exhibit 8</b> can be used.
<b>Space rental</b> , including short-term space rental for special occasions to groups who have no employees, such as club functions, weddings, dances, picnics or social dinners, crafts exhibitions or classes, animal shows and recreational activities, including baseball and football.	<b>Exhibit 7</b> may be used.  <i>[Reminder: A special events policy is available to member Entities. Contact your risk management official for details.]</i>
<b>Property risks:</b> These insurance specifications presume that all supplies and equipment to be installed remain the property of the other party until the project is complete and accepted by your Entity. Likewise, for suppliers, it assumes that the goods remain the property of the supplier until delivered to the receiving location at your Entity. Property insurance should be required when your Entity has a financial interest in the continued existence of tenant constructed buildings or improvements.	If the other party's property might be construed as being in the custody of your Entity, such as storage of tools and equipment on Entity-owned or controlled premises, this risk may be mitigated by a properly worded hold harmless agreement.  If Entity property is to be in the custody of a supplier, for example, a shipment sent F.O.B. the supplier's warehouse, your Entity may arrange for transit insurance or request the supplier to do so.  When required for tenant's improvements, the amount should equal the replacement cost of the property. A Waiver of Subrogation may be appropriate. Your Entity should be named as loss payee.
<b>Transportation of Hazardous Materials</b>	<b>Use Exhibit 10</b> (See Chapter Six). Your entity should require proof of the MCS-90 Endorsement

### PLEASE NOTE:

**Noninsurance sections of the contract are also very important to the risk management process. It is not your Entity's problem if the contractor's insurance does not cover all of their indemnity exposure with you; that is their problem to solve.**

- **There should always be a section in the contract that states that the lack of insurance does not negate the contractor's obligation under the contract.**
- **Driver Alliant is not a law firm and, therefore, recommends that the manual user consult with their Entity's attorney for specific language for this sections' wording.**

**Always remember that insurance is only one way that the contractor can indemnify your Entity. Use clear and strong indemnity language. Lastly, if the contractor does not carry sufficient or correct insurance to cover their obligations to your Entity, make sure they have the assets to indemnify those uninsured or underinsured areas.**

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### EXHIBIT 5

## INSURANCE REQUIREMENTS FOR CONSTRUCTION CONTRACTORS

Construction contracts are often the largest and most complex agreements that your organization will create. The potential for loss in construction related events can be devastating. The size and nature of most construction agreements give your agency a significant advantage in the negotiation process for requiring insurance. You need to carefully examine all of the exposures to risk in the construction agreement and then must require specific insurance for each exposure.

The discussion on Construction agreements will provide a baseline for the majority of agreements that will be created for your organization. Discussion on the specifics of the project should occur early on in the design process. This will better position your organization to develop your requirements and provide the bidding contractors with all of the requirements at the time the bids are submitted. It should be made clear during the pre-bid meetings that your organization has specific contractual requirements and contractors should be encouraged to contact their brokers/carriers as they are developing their quotes.

Your organization should specifically advise bidding contractors that you will not accept change orders that are based on insurance costs that were not appropriately considered.

### **General Insurance Requirements:**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### ***Minimum Limits of Insurance***

Contractor shall maintain limits no less than:



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1. General Liability:

(Including operations, products and completed operations.)

**\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Course of Construction: Completed value of the project with no coinsurance penalty provisions.
4. Workers' Compensation: As required by the State of California.
5. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### ***Other Insurance Provisions***

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the contractor's insurance policy, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

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3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the contractor, its employees, agents and subcontractors.

### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

### *Verification of Coverage*

Contractor shall furnish the Entity with original certificates and **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### *Subcontractors*

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to the Entity for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

### *Builders Risk Insurance:*

Contractors may submit evidence of builders risk insurance as evidence of course of construction coverage. The insurance protects the parties to the agreement from financial loss during the construction process. There may be multiple parties that have a financial interest in the process and may include the owner of the project, a lender and contractors. You must review the policy language provided for termination events such a substantial completion, owner occupancy and full completion. These times and dates will be important to coordinate with your existing property policies to guarantee that no gaps in coverages will occur.

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### ***Bonds:***

Public Construction Projects require the use of bonds to insure performance by Contractor, for the goods and services to be provided and to guarantee the bid as submitted. Surety companies carefully underwrite applicants for bonds by examining the contractor's managerial and financial ability to undertake and complete a job. Thus, the requirement for surety bonds may also serve to eliminate incompetent contractors from the bid process.

There are three primary elements involved in Surety Bond Prequalification and they are Capital, Capacity and Character. Capital refers to the financial strength of the contractor, a guarantee they have the financial capacity to complete the project. Capacity is the ability of the contractor to perform based upon the requirements of the agreement. Character addresses the references and reputation of the contractor. These three C's provide a substantial guarantee that the contractor will perform.

You should check with your legal counsel to determine which bonds will be included within your documents.

A *Bid Bond* is a guarantee by the surety that the bidder for a public works contract will undertake the job at the quoted price.

A *Performance (Completion) Bond* is a guarantee that if the bonded contractor fails to complete the bonded job as quoted, the surety will assume the contractor's financial responsibility to have the work completed.

A *Payment Bond* is a guarantee that the contractor will pay all the bills incurred on the work, as provided in the lien laws.

A *Labor and Material Bond* is a guarantee of the furnishing and delivery of labor or material and supply at an agreed price. These bonds are typically written for subcontractors on a job.

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### EXHIBIT 6

#### INSURANCE REQUIREMENTS FOR CONTRACTORS (with Construction Risks)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

##### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form (G0009 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor). (See Appendix B for form language.)
3. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
4. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
5. Course of Construction insurance covering all risks of loss less policy exclusions.

##### *Minimum Limits of Insurance*

Contractor shall maintain limits no less than:

1. General Liability:  

(Including operations, products and completed operations.)
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**\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Course of Construction: Completed value of the project with no coinsurance penalty provisions.

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### *Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### *Other Insurance Provisions*

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Course of construction policies shall contain the following provisions:

1. The Entity shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the Entity.

### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

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### *Verification of Coverage*

Contractor shall furnish the Entity with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### *Subcontractors*

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to the Entity for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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### EXHIBIT 7

#### INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

##### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

##### *Minimum Limits of Insurance*

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

##### *Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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### EXHIBIT 7 (continued)

#### *Other Insurance Provisions*

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

#### *Verification of Coverage*

Lessee shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

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### EXHIBIT 7

#### INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

##### EXCEPTIONS FOR THE CIVIC CENTER ACT

“**The Civic Center Act**” states which groups are entitled to the use of school district facilities free of charge and those groups which the district can elect to charge for a fee for use of the facility.

With respect to the insurance requirements and indemnification language, there are differences in what the district can require depending upon whether the user is a free of charge user or a paying user.

**Free of Charge Users** – Groups entitled to use school facilities free of charge under Section 40043 (a) must be able to demonstrate the following:

- (a) There is no other suitable meeting place available;
- (b) The group is a nonprofit organization;
- (c) The group is organized to promote youth and/or school activities.

For Free of Charge Users the school district is liable for any injuries resulting from the negligence of the district and the maintenance of those facilities and grounds. This cannot be transferred. The user shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds.

***The Other Insurance Provisions*** - Clause 1 on page 37 needs to be amended to state that:

“1. The District, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of negligence of the user during the use of the facilities or grounds.”

Clauses 2 and 3 should remain unchanged.

**This exception applies only to Free of Charge Users.**

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### EXHIBIT 8

#### INSURANCE REQUIREMENTS FOR SUPPLIERS

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Entity. The cost of such insurance shall be borne by the Vendor.

##### *Minimum Scope of Insurance*

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) and including products coverage.

##### *Minimum Limits of Insurance*

Vendor shall maintain limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and an aggregate limit of \$1,000,000.

##### *Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

##### *Other Insurance Provisions*

The policy or policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds as respects products of the Vendor.
2. The Vendor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.

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### EXHIBIT 8 (continued)

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

#### *Verification of Coverage*

Vendor shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements or policies conform to the requirements. All endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

#### *Vendor Exceptions*

There are a number of organizations/companies that provide services to your agencies that will not have formal contracts in place. These include but are not limited to, United Parcel Service, Federal Express, United States Mail, and for hire interstate truck lines as examples. Although each of these companies may provide vendor services to you, you typically not require formal contracts and will not require evidence of insurance. All of the companies listed above are required to be licensed under the Department of Transportation rules and regulations which also requires specific limits of insurance.

## CHAPTER SIX

### SPECIAL SITUATIONS

#### SUMMARY

*This chapter provides general information about special insurance situations. These include:  
Contracts for consultants such as architects, engineers, auditors and others.*

*Major construction projects.*

*Contracts with private individuals.*

*Environmental services contracts.*

#### **Professional Services Contracts**

Professional liability insurance protects against losses that occur when a professional fails to practice his or her art to the standards usual and customary to that profession. The types of losses that can occur under such circumstances are often excluded in general liability policies. Thus, professional liability insurance is needed.

When contracting for professional services, your Entity should ensure that the other party to the contract (consultant) carries sufficient professional and general liability insurance to protect against losses that may result from their negligent acts or omissions. Personal injury liability lawsuits arising out of work done for your Entity will name the consultant, your Entity and any other connected party as defendants. Even though the consultant may be the party liable under the law, your Entity, in the event of even the slightest joint liability, could still be required to pay for all or part of a loss if the consultant carried insufficient insurance or was uninsured. This is an example of what is commonly referred to as the deep pocket exposure.

As either general liability, professional liability, or both types of insurance may ultimately pay for the loss, your Entity should require both types of coverage from the consultant. If the consultant will use an automobile in any phase of the work performed for your Entity, you should also require evidence of automobile liability insurance. In some cases, the consultant will own no automobiles and therefore may not purchase automobile liability coverage. In that event, the consultant can obtain an endorsement to the general liability policy which provides coverage for nonowned and hired automobiles. The consultant should have this coverage anyway, so your Entity's requirement does not pose a hardship.

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Unless the consultant is a sole practitioner, your Entity should require evidence of workers' compensation insurance. Even though the contract with the consultant may make clear that the consultant is hired as a contractor and not as an employee, the courts may find a way to provide workers' compensation coverage through Entity resources in the event that a consultant's employee is injured and the consultant has failed to purchase the necessary insurance.

The special work assignments and performance standards need to be reviewed. The Internal Revenue Service may ultimately make a determination whether or not a consultant should have been considered an employee. Your agency should carefully review all consultant agreements to avoid a ruling that you are responsible for benefits, payroll taxes, social security and medicare payments as a result of the consultant's function. The following excerpts are taken from the Internal Revenue Service Industries/Professions section:

### ***Who is An Independent Contractor?***

A general rule is that you, the payer, have the right to control or direct only the result of the work done by an independent contractor and not the means and methods of accomplishing the result.

### ***Who is An Employee?***

A general rule is that anyone who performs service for you is your employee if you can control what will be done and how it will be done.

In the process of reviewing contracts, it is not only important that you understand the hold harmless/indemnification insurance clauses and bonding requirements but that you look further into the agreements to effectively manage risks within your organization.

Special care is needed in drafting indemnification requirements for the contract with the consultant. Many professional liability insurers exclude liability assumed under contract by their insureds. On the other hand, most *general* liability policies in use today automatically provide coverage for bodily injury and property damage liability assumed under contract. Therefore, the indemnity agreement should be carefully worded so that the consultant agrees to indemnify your Entity for bodily injury or property damage arising out of the consultant's negligent acts or omissions in performance of the work. This assumption of liability is insurable under general liability policies.

As stated above, contractually-assumed responsibility for indemnification of your Entity for the consultant's professional acts, errors or omissions (such as design errors) is often not insurable. In such case, your Entity would be relying entirely on the consultant's own assets to pay the promised indemnity. Note, however, that your Entity would seldom be liable for the loss, as the concept of professional liability applies to a practitioner of that profession. The only way your

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Entity could be directly liable for a professional error is if it negligently chose the consultant or negligently signed off on or negligently approved a design or work product.

Exhibit 9 (at the end of the chapter) is a sample set of specifications for consultant insurance requirements. Limits required by these sample specifications are \$1,000,000. You should pay special attention to the appropriateness of limits selected for the specifications. In some cases, smaller consulting firms may be unable to obtain (or afford) a limit of \$1,000,000 for professional liability, although that amount should be available for General Liability coverage. On large projects, or those with significant potential for loss such as bridges or dams, higher limits are appropriate.

You must also exercise judgment on the subject of minimum acceptable insurer requirements. For some professions, limited insurance markets exist for professional liability coverage. There may be no insurers meeting your Entity's standard insurer requirements that are willing to write the particular kind of coverage required. Certain specialty insurers or captive insurers formed to write professional liability insurance only, may not be rated, or may have received conditional or preliminary ratings. Where a highly rated professional liability insurance carrier is available, the rating may be due to Best's practice of fleet rating, or ascribing to a subsidiary the rating of its parent. Such an insurer may not provide the best coverage. A lower-rated company may provide broader coverage.

In such cases, you must sometimes be willing to relax standard insurer rating requirements. When doing so, you should attempt to evaluate the financial condition of the insurer, determine how long it has been writing the kind of professional liability in question and determine whether or not the insurer is admitted in California. Many carriers writing this coverage are nonadmitted. Contact your risk management advisor for assistance.

Because professional liability insurance is almost always written on a claims-made basis, Entities that hire architects or engineers should have concern about coverage for latent defects or design errors that may result in future claims after the current coverage has expired. One solution to this problem is to require the design professional to agree to maintain coverage for a specified period after the project has been completed (extended reporting period, or tail, coverage). However, this requirement may be very difficult to enforce. If the project is large enough, the architect's or engineer's insurer may provide a project policy in the name of the Entity, with a built-in tail. The policy may cover all design professionals on a project. This arrangement affords greater protection for the Entity's interests but one disadvantage of a separate project policy is an additional premium. This is only cost effective on large projects (when architects and engineering fees exceed \$1 million).

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The area of professional liability insurance does not lend itself to the application of hard-and-fast rules. Flexibility and the exercise of discretion are needed to protect your Entity. Although there are no absolute guarantees to assure that your Entity will not be forced to pay a loss due to errors or omissions of its consultants, the practices described above can help provide a reasonable measure of protection.

### **Property Insurance**

Transfer of responsibility for loss occurs in most contracts. Responsibility for damage to property owned by one of the parties is also dictated in some contracts, although this activity is less frequent. There are two primary situations where responsibility for property loss should be clearly spelled out: Buildings in the course of construction, and leases involving extensive tenant improvements and betterments.

#### *Course of Construction*

Insurance for property under construction is called course of construction insurance or builder's risk insurance. This type of insurance covers property in place but under construction as well as equipment and materials to be installed. Pricing takes into account changing values as construction nears completion. Your Entity should arrange for builder's risk insurance on construction projects through the contractor, in most cases. Items to consider include:

#### *Perils*

Coverage should include all risk insurance. Earthquake coverage is optional based on the needs and location of the project. For example, earthquake coverage must be included if a grant funding the project or financing arrangements (i.e., bonds) require it.

#### *Deductibles*

Deductibles should be reasonable in relation to the financial ability of the parties and the size of the project.

#### *Property Covered*

At minimum, the insurance should cover the full insurable value of the improvements. It may, at your Entity's option, also include consequential loss insurance, if your Entity could be harmed financially because of delay due to an insured loss. Coverage is available for both loss of revenue (rents or earnings) and for additional interest costs or expenses.

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### *Loss Payments*

Depending on circumstances of the contract, your Entity may prefer that any loss payments be made to your Entity.

### *Valuation Basis*

Coverage can be written based on the completed value of the project or by reporting changes in value on a monthly basis. Usually, the former method is preferred as it is less complex and as there is less of a chance of error resulting in inadequate insurance.

**As builder's risk insurance is written specifically for the project, you should receive a copy of the policy.** It is not necessary to provide endorsement or certificate forms, but requirements for the coverage should be stated in the bid documents.

### **Tenant's Improvements and Betterments**

Property insurance should be required where your Entity has a continuing interest in improvements or betterments installed by a tenant in one of your properties. Many leases require that such improvements revert to the property owner at the completion of the lease. Often the value of these improvements is factored into the lease cost. In such cases, you should require the tenant to provide sufficient insurance to cover the full replacement value of the improvements, and to name your Entity as loss payee on the policy. You should also require a copy of the policy for your review.

It is also important to include a Waiver of Subrogation on property risks whenever you are in a tenant landlord situation. The major benefits of a Joint Waiver of Subrogation clause are:

- No need to purchase separate fire legal liability
- No dispute over cause of loss between tenant and landlord
- Existing property policy may have built in language that allows you to waive subrogation in writing as either a tenant or landlord
- You are not relying on someone else's policy nor do you have to verify the adequacy of their coverage as respects to your property

An example of language for a waiver is as follows:

Tenant and landlord agree that insurance carried or required to be carried by either of them against loss or damage to property by fire, flood, earthquake, acts of terrorism, acts of war or other casualty shall contain a clause whereby the insurer waives its right to subrogation against the other party, its elected officials, directors, employees, volunteers, and agents and each party shall indemnify the other against any loss or expense, including reasonable attorneys fees, resulting from the failure to obtain such waiver.

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### Major Construction Contracts

Construction contracts may vary widely in scope and in degree of risk involved. Simple remodeling projects or building repairs can be addressed through the appropriate specifications as presented in the exhibits in Chapter 5. Larger projects may require more sophisticated insurance techniques.

Large-scale construction projects involve numerous contractors, subcontractors, consultants and other parties, all subject to a variety of risks arising out of the work. Because of the numerous parties involved, assuring adequate insurance protection for all concerned poses certain technical and logistical problems. An approach often advocated to deal with these complexities is called the Consolidated Insurance Program (CIP).

CIP usually involves procurement by the project owner or general contractor of certain insurance policies which protect both the project owner and various contractors and subcontractors involved in the construction. A CIP purchased by the general contractor is often called a wrap-up. These coverages may include general liability, workers' compensation, umbrella liability and builder's risk. The owner or general contractor arranges for safety and loss control services, if any, beyond those provided by the insurer. CIP works best on large projects such as those exceeding \$100 million, where there are a number of contractors, where the project is labor intensive, where construction takes place in a limited geographical area, and where the owner or general contractor is committed to safety and loss control, including top quality claims management.

Theoretically, the CIP concept should provide for cost savings to the owner due to purchasing economies of scale, cash flow advantages from controlling premium payments, potential for dividend returns and potential for savings due to coordinated loss control. In practice, however a number of factors can reduce or eliminate these potential savings. Some of these factors may include:

- **Insufficient contractor motivation to control losses.** Many contractors do not realize that workers' compensation losses on a CIP project will affect the contractor's experience modifier. The contractor may therefore be more highly motivated to complete the project ahead of schedule or under budget than to pay attention to safety.
- **Inclusion of contractor insurance charges.** Depending on the competitive environment, contractors may include the cost of insurance in its bid pricing. Additionally, the contractor may feel it necessary to charge for difference in conditions coverage to fill any gaps in the owner's insurance program as it applies to the contractor.
- **Inclusion of non project-related claims.** If a contractor has employees assigned to the project who also work on other projects for the contractor, it is possible that workers' compensation claims not related to the project may show up on the owner's loss runs.

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- **Increased administrative costs.** In order to obtain the cost-saving benefits of the concept, the owner of a CIP project must provide superior loss control services either through staff or contractors. Keeping track of various workers' compensation insurance policies and other paperwork adds administrative expense to the project.

To a certain extent, all of the above factors can be controlled. If properly administered, the CIP concept should generate cost savings, some of which may be realized by the project owner. Because of the variables cited above and other factors, precision in estimating savings usually is not possible.

Other than possible savings, reasons for using CIP include better control of claims involving potential multiple defendants, and the comfort of knowing that adequate insurance is in place. Because there is a single policy for liability insurance, limits and breadth of coverage under a CIP are known and uniform, rather than a patchwork quilt of different insurance that might be purchased by the various contractors. A CIP eliminates much of the need for establishing insurance specifications in each contract with each contractor, as the owner provides the insurance. Also, the paperwork burden of keeping up with certificates is greatly reduced.

California statute (Government Code, Section 4420) prohibits Entities from requiring contractors to participate in owner-controlled insurance programs except for builders' risk and owner-protective policies. There are certain exceptions for transit guideway systems. Thus, for most Entities, consolidated insurance programs must usually be arranged by the general contractor.

### **Contracts with Private Parties**

Occasionally, your Entity will enter into contracts with private individuals. A common example may be rental of a facility for private usage, such as a park, meeting hall or historic building for holding a wedding or other private gathering. Another example is rental of a booth at a community fair. As private individuals (and some small nonprofit organizations) do not normally purchase commercial liability insurance, other forms of financial guarantee may be needed.

Most homeowner insurers will provide additional insured coverage to another party if requested. Thus an individual who purchases a homeowner's policy or tenant's package policy would be able to ask their insurance agent to provide the additional insured endorsement.

**Personal lines insurers may balk at signing custom endorsement forms designed for commercial liability insurance. So, the suggested forms in Chapter 4 may not be useful. Your Entity could either modify the custom forms, or accept an endorsement to the homeowners or tenant's package policy provided by the insurer.**



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Another problem in this situation is the issue of limits. Most private individuals do not carry large amounts of liability insurance. Unless the homeowner purchases personal umbrella liability coverage, limits on the homeowners or tenant's package policy are likely to be in the vicinity of \$300,000 to \$500,000. However, the risks involved in a private party event may be just as severe as those in a commercial contract. Crowd exposures and food poisoning are examples.

One possible alternative to endorsement on a homeowner's policy is to require the purchase of special event coverage. For those Entities that frequently rent or lease facilities, special event coverage may be attractive. Coverage is negotiated by your Entity, and a master policy is issued to your Entity by the insurer. Each tenant applies for and pays the premium on coverage for the special event. The insurer issues a binder for that event only. Coverage applies to the event holder as well as the Entity. The advantage of special event coverage is that your Entity can determine coverage and limits. Contact your risk management advisor for information concerning the availability of a special events insurance program for your Entity.

### **Environmental Contractors and Consultants**

Environmental issues are becoming an increasing concern and responsibility of municipal risk managers both as the owner of potentially contaminated property and as the jurisdiction responsible for the permit process. Entities are increasingly recognizing their exposure as generator and transporter of hazardous materials and pollutants. Entities are involved in issuing encroachment permits for access to their property involving both groundwater and soil contamination testing and potential cleanup of pollution generators within their communities.

Exhibit 10 (at the end of the chapter) addresses the availability of coverage for the unique risks associated with environmental issues in today's insurance market. When testing and cleanup are either mandated or desired, a common public goal must be met. There are very few insurance companies underwriting these unusual risks, and they are reluctant to amend the policy conditions. Careful research and compromise on the part of the risk manager is recommended.

Many times the standard insurance requirements as set forth in other sections of this manual may not be achievable for environmental contractors and/or consultants. An example is the issuance of encroachment permits relating to environmental work. The most prudent solution is to include appropriate requirements in original bid specifications, but this only applies when the Entity is the owner. The encroachment or other permit process must be handled differently. Frequently contractors and consultants are not made aware of, the Entity's requirements when responding to the private sector and many times the contractor's insurance companies will not comply with standard requirements. Therefore, these standards must be flexible to allow for compliance by the few professional firms experienced in environmental testing and cleanup, since they will not typically be aware of your Entity's specific requirements until they have been hired by the private sector firm to conduct testing. Without preventing the needed testing or cleanup, the Entity must recognize how to transfer risk with the best protection for the Entity while still reaching the common goal.

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Exhibit 10 contains insurance requirements appropriate for environmental contractors and/or consultants. If you cannot verify the A.M. Best's rating of the company, or if the coverage is written by a Risk Retention Group or captive insurance company, you may want to check with your Program Director for further information about the market.

**Note:** Automobile, Pollution, Asbestos Pollution and/or Errors & Omissions insurance carriers may not name the Entity as additional insured. If the Entity cannot be named as additional insured, you should request a letter from the insurance company confirming their position.

### Transporters of Hazardous Materials and Wastes

Entities are increasingly recognizing their exposure as generator and transporter of hazardous materials and pollutants. It is important to know that all motor carriers and drivers involved in transportation of hazardous materials must comply with requirements contained in federal and state regulations and must apply for and obtain a hazardous materials transportation license. Additionally, transporters of hazardous wastes are required to carry the MSC-90.

The MCS-90 is a required endorsement to a business automobile policy for hazardous material/waste transporters. It originated in response to the Motor Carrier Act of 1980. Its purpose is to ensure that funds are available for damages arising from a trucking accident that involves hazardous materials.

What is a hazardous material? The California Waters Bill defines hazardous material as "any material that, because of its quantity, concentration or physical or chemical characteristics, poses a significant presence or potential hazard to human health and safety, or to the environment." Hazardous materials include, but are not limited to, hazardous substances and hazardous wastes.

A hazardous waste is a waste or combination of wastes that because of its quantity, concentration or physical, chemical or infectious characteristics may do either of the following:

- Cause or significantly contribute to an increase in serious irreversible illness or death; or
- Pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of.

A hazardous substance is any substance or chemical product for which any of the following applies:

- The substance is listed as hazardous by the US Department of Transportation;
- The substance is listed on the so-called "Director's List of Hazardous Substances," which is maintained by CalOSHA;
- The substance is listed as radioactive by the Nuclear Regulatory Commission; or
- The manufacturer or producer is required to prepare a Material Safety Data Sheet (MSDS) for the substance.

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**Exhibit 10 contains insurance requirements appropriate for environmental contractors and/or consultants. These same insurance requirements are appropriate for transporters of hazardous wastes.**

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### EXHIBIT 9

### INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

#### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

#### *Minimum Limits of Insurance*

Consultant shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.  
(Including operations, products and completed operations, as applicable.)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence.

#### *Deductibles and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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### EXHIBIT 9 (continued)

#### *Other Insurance Provisions*

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

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### *Verification of Coverage*

Consultant shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms provided those endorsements conform to Entity requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

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### Exhibit 10

#### INSURANCE REQUIREMENTS FOR ENVIRONMENTAL CONTRACTORS AND/OR CONSULTANTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Asbestos Pollution Liability coverage should be maintained for a minimum of five (5) years after contract completion.

#### *Minimum Scope of Insurance*

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001 or Claims Made Form CG 0002).
2. Insurance Services Office Form No. CA 0001, covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions.

#### *Minimum Limits of Insurance*

Contractor shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.  
(Including operations, products and completed operations, as applicable.)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** each accident, **\$1,000,000** policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.
4. Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions: **\$1,000,000** each occurrence/**\$2,000,000** policy aggregate.

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### EXHIBIT 10 (continued)

#### *Deductible and Self Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Entity. If possible, the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Contractor shall provide evidence satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

#### *Other Insurance Provisions*

- A. The General Liability, Automobile Liability, Pollution and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:
1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
  2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the Entity.
  4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- B. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
- C. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:
1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
  2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

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### EXHIBIT 10 (continued)

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VI if admitted. If pollution and/or Asbestos Pollution and/or errors and omissions coverages are not available from an “Admitted” insurer, the coverage may be written by a Nonadmitted insurance company. A Nonadmitted company should have an A.M. Best’s rating of A:X or higher. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

#### *Verification of Coverage*

Contractor shall furnish the Entity with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Entity, unless the insurance company will not use the Entity’s form. All endorsements are to be received and approved by the Entity before work commences. As an alternative to the Entity’s forms, the Contractor’s insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

#### *Subcontractors*

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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## CHAPTER SEVEN

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### CLAIMS HANDLING PROCEDURES FOR INSOLVENT, REHABILITATED AND/OR LIQUIDATED INSURANCE CARRIERS

#### Carrier Insolvency, Case-By-Case

*The first thing to know about insurance carrier insolvency is that various state Insurance Commissioners handle these on a case-by-case basis; no two alike. With that said, there are no real set guidelines with which to approach this issue. Here is some basic information and guidelines to follow:*

#### Notice to Policyholders, Creditors and Shareholders

When an insurance carrier develops severe financial problems, the Insurance Commissioner applies to the Superior Court of California for a conservation order to place the financially troubled company into conservatorship. Once the Insurance Commissioner is appointed conservator, an investigation by the Conservation and Liquidation Office (CLO) is initiated to determine if the company can be rehabilitated. If it is determined that the company cannot be saved, the Insurance Commissioner will apply for a court order to liquidate the company.

#### Liquidation and How It Is Achieved

When a liquidation order is issued, the insurance company is closed, all outstanding policies are cancelled and the process of selling off any remaining company assets begins. The proceeds from the assets sale, if any, will be used to pay off the company's debts and outstanding insurance claims.

Once the court issues the liquidation order, the CLO publishes a notice to the company's policyholders, creditors and shareholders and all parties interested in the company's assets. In the notice, policyholders are required to submit a proof of claim form in order to seek compensation for claims under their policy. The notice will state the deadline for submitting the proof of claim form.

#### Contacts

The California Department of Insurance may be contacted by calling 1-800-927-4357. For non-California insureds, contact the Department of Insurance in the state where your business resides. You may also contact your Driver Alliant representative with questions.

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## APPENDIX A

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### COMMONLY ENCOUNTERED INSURANCE COVERAGES

#### **Aircraft/Airport Liability Insurance**

Aircraft liability insurance protects owners and operators of aircraft against liability for injury to other people or damage to the property of others arising out of the ownership or use of aircraft. Airport liability insurance protects airport tenants against claims arising out of operations at an airport.

#### **Automobile Liability Insurance**

This coverage insures against liability claims arising out of the contractor's use of automobiles. The scope of coverage is defined by the symbol used in the policy. Exhibit A-1 at the end of Appendix A provides descriptions of automobile designation symbols quoted from standard language used by insurers. Generally, you should require Code 1, (any auto) which is the broadest code. The term auto is defined in the Insurance Services Office Commercial Auto Coverage policy as a land motor vehicle, trailer or semi-trailer designed for travel on public roads but does not include "mobile equipment" or "contractors equipment." Automobile coverage requirements should be waived only when the other party's work clearly does not involve the use of an automobile. Should any doubt exist, this coverage should be required.

#### **Builder's Risk Insurance**

Builder's risk insurance is a type of property insurance that addresses the special needs of construction projects by insuring property already in place but under construction, as well as equipment and materials to be installed.

#### **Commercial General Liability Insurance**

Commercial General Liability coverage was introduced in 1986. The form provides protection against bodily injury and property damage claims arising from the operations of a contractor or tenant. This type of policy provides coverage for: premises and operations, use of independent contractors, and products and completed operations. Major exclusions include liability arising out of the ownership, maintenance or use of watercraft, aircraft and automobiles. These exposures are normally covered by other insurance policies.

Commercial General Liability is probably the most commonly used liability insurance form for business today. It limits all loss payments to two aggregate limits, one for products and completed operations and one for all other loss. This form can be written on either a claims-made or an occurrence basis. The name of this form is similar to that of an older form (described below), so care must be used in distinguishing the names of these forms.

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Comprehensive General Liability (1973 form) is the older form which is still in use in some areas. It also provides protection against bodily injury and property damage claims. Generally, it does not have an aggregate limit except for products and completed operation liability, although an aggregate limit for other areas may be added by endorsement.

The last edition of the Commercial General Liability form prior to the 1996 addition was the 1976 form. This coverage form has changed ***materially*** since the 1976 edition.

***AS A RESULT OF THESE CHANGES, IT IS IMPERATIVE THAT THE USER MAKE CERTAIN THAT ATTORNEY FEES AND LITIGATION EXPENSES ARE ASSUMED BY THE CONTRACTOR IN THE INDEMNITY AND/OR HOLD-HARMLESS SECTION OF THE CONTRACT. FAILURE TO DO SO WILL RESULT IN THESE EXPENSES NOT BEING COVERED.***

Also, be aware that ***the changes have also restricted defense coverage to only those lawsuits involving issues that are covered perils under the contractor's insurance.*** Therefore, it is also imperative that your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, they do have the assets to indemnify those uninsured or underinsured areas.

The supplementary duty to defend also exists only when the contractor and its indemnitee (your entity) are *both* being sued. There must be no apparent conflict of interest between the two parties.

The remaining caution regards the obligation of the additional insured (your entity) to allow the contractor's insurance company to control the lawsuit. These conditions precedent to litigation defense are contained in the Supplementary Payments - Coverages A and B Section, on page 6 of 13; specifically 7f and following. The coverage is integrally tied to these restrictions, and ceases when they are violated. We urge the user to have their entity's attorney review these restrictions.

We are therefore recommending that your entity continue to request the 1976 edition when specifying this coverage form. You may find that the contractor's insurance company refuses to do so, because they understand the implications of using the 1976 form. In that case, be certain that you follow the above guidelines.

The Broad Form Comprehensive General Liability (BFCGL) endorsement is a composite endorsement which includes 12 add-on items that expand the coverage of the Comprehensive General Liability Coverage.

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### Commercial General Liability Coverage Endorsements

1. Contractual Liability
2. Personal Injury and Advertising Injury Liability
3. Premises Medical Payments
4. Host Liquor Law Liability
5. Fire Legal Liability - Real Property
6. Broad Form Property Damage Liability (Including Completed Operations)
7. Incidental Medical Malpractice Liability
8. Nonowned Watercraft Liability (under 26 feet in length)
9. Limited Worldwide Liability
10. Additional Persons Insured
11. Extended Bodily Injury
12. Automatic Coverage—Newly Acquired Organizations (90 Days)

Most of these coverage extensions are automatically included in the newer Commercial General Liability form. The Board Form Comprehensive General Liability (BFCGL) endorsement should be required if the contractor's insurer uses the old Comprehensive General Liability form (1973).

**Your Entity should require a Commercial General Liability insurance policy or equivalent, from all contractors, vendors and tenants.** Other, more limited forms such as Manufacturers and Contractors Liability and Owners, Landlords and Tenants Liability forms should not be accepted unless specifically approved by your Entity.

### Garagekeeper's Legal Liability Insurance

This protects parking lot operators who provide valet parking, car dealers and garage owners against liability for damage to vehicles in their care, custody or control. The garagekeeper who accepts another's property for repair or keeping becomes a bailee. The law imposes certain legal responsibilities on a bailee. These responsibilities are normally excluded by General Liability policies under the care, custody and control exclusion. Therefore, this coverage is needed.

### Marina Operator's Legal Liability Insurance

This coverage is another form of bailee liability insurance that protects marina operators against liability for damage to boats in their custody. Tenants who berth at the marina are potential claimants for damage to their boat while in its slip.

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### **Owners and Contractors Protective (OCP) Insurance**

OCP policies, an often-proposed solution to the aggregate limits problem with General Liability policies, provide limited coverage for the Entity's interests only. They insure only the Entity's liability arising out of operations performed by the contractor for your Entity at the project location, or liability arising out of acts or omissions in connection with the general supervision of the project. OCP policies do not, for example, provide coverage for:

- contractual liability;
- injury resulting from the Entity's activities beyond the general supervision of the contractor's operations; and
- claims alleging joint liability or sole liability of the owner.

OCP policies are not widely used in California, but are widely used in some other states. If the insurer is not willing to provide an additional insured endorsement with the required modifications shown in the Exhibits to this manual, then an OCP policy would be an acceptable alternative. Appendix B contains a sample OCP policy form.

### **Professional Liability Insurance**

Professional liability insurance provides limited protection against claims for damages arising out of the insured's negligence, acts, mistakes or failure to take appropriate action in the performance of business or professional duties. Examples of such claims include design errors of architects or engineers resulting in property damage, and malpractice of doctors or lawyers - allegations that improper or insufficient care on the part of those professionals resulted in injury or loss. Other types of professionals may also purchase special liability insurance.

Coverage provided by Professional Liability insurance policies differs from coverage provided by General Liability insurance. General Liability policies exclude professional exposures such as design errors. General Liability policies are also limited to claims for bodily injury, property damage, advertising injury, and personal injury. Professional Liability policies often cover a broader range of economic loss. Because of the highly personal nature of Professional Liability insurance (the insurer insures the professional's competence) insurers generally will not add additional insureds to the policy unless they are employees or subsidiaries of the insured.

### **Property Insurance**

Property insurance protects against financial loss resulting from destruction of property by insured perils such as fire. This is different from property damage liability insurance, which covers the insured's legal liability for damage to others' property.

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Property insurance should be required when your Entity has a financial interest in property leased to others. Generally, your Entity should handle the property insurance (or self-insurance) when it owns the building, rather than requiring the tenant to purchase coverage on behalf of your Entity. The advantages of your Entity providing property insurance are:

- Assurance that adequate coverage is afforded; and
- Assurance that premiums will be paid, thus avoiding cancellation for nonpayment of premium.

If the tenant owns the building (on land owned by your Entity), your Entity may wish to have the tenant purchase the insurance and name your Entity as a loss payee. Also, the tenant's policy should:

- Provide coverage against at least fire and the extended coverage perils (defined in insurance policies as windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles and smoke); and
- Insure the building to at least 90% of its replacement cost.

### **Protection and Indemnity Insurance**

This coverage protects boat owners or permitted boat users against liability arising out of use of the boat. Tenants who own boats or contractors who may use a boat in their operations for your Entity must provide evidence of this type of insurance. These individuals include persons leasing private slips and moorings, Marina Operators and others providing services involving the use of boats such as salvage and repair operators. For private vessels, watercraft liability coverage is also acceptable.

### **Ship Repairer's Legal Liability Insurance**

This is another type of bailee liability insurance that protects against claims from those who leave boats in the ship repairer's repair yard or otherwise in the repairer's custody.

### **Surety**

Surety is a three party contract wherein a person or entity agrees to be responsible for the contractual obligations of another should those obligations not be met.

A surety bond is a contractual agreement under which the surety company guarantees the performance of certain obligations of the principal for the benefit of another. In public works contracts, for example, the surety company guarantees the completion of the construction project by the contractor for the benefit of the public entity.

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## APPENDIX A

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Essentially, the surety company stands behind the bonded contractor and guarantees the completion of the bonded work. In this way, the surety bond is a risk transfer technique similar to but different to insurance. A bond differs from insurance in two fundamental ways: (1) the number of parties to the agreement, and (2) the surety's right of indemnity.

Insurance has two parties to the insuring agreement: the insurer and the insured (policyholder). A bond, however, has three parties to the surety agreement: the bonding company (surety), the entity being bonded (principal), and the entity who benefits in the event of a bonded default (obligee).

A surety company also has the right of indemnity from the principal. If a surety is called upon to make a payment on a bond because the principal failed to meet a bonded obligation to the obligee, the surety may recover the amount of loss from the obligor.

Surety bonds are designed to help the obligee ensure that the contractor will complete the job in accordance with the contract. If a bonded contractor defaulted on any obligation of a bonded job, the surety may seek to recover any amounts it paid to the obligee (the Entity) from the principal (the bonded contractor). Thus, the bonded contractor has a punitive incentive through the legal constraints of the bond to complete the work expected by the obligee.

Further, surety companies carefully underwrite applicants for bonds by examining the contractor's managerial, financial ability, to undertake and complete a job. Thus, the requirement for surety bonds may also serve to eliminate unqualified contractors from the bid process.

All public works contracts should include a requirement that the contractor furnish contract bonds, but you may choose to exercise discretion for certain types of jobs that have inconsequential cost or risk of other harm should a contractor fail to complete the work.

The basic surety bonds related to public work contracts include: Bid Bond, Performance Bond and Payment Bonds and Completion Bonds. Collectively, they are referred to as Contract Bonds.

A *Bid Bond* is a guarantee by the surety that the bidder for a public works contract will undertake the job at the quoted price.

A *Performance Bond* is a guarantee that if the bonded contractor fails to complete the bonded job as quoted, the surety will assume the contractor's financial responsibility to have the work completed.

A *Payment Bond* or A Labor and Material Bond is a guarantee that the contractor will pay all the bills incurred on the work, as provided in the lien laws (subcontractors, suppliers, laborers).

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A *Subdivision or Completion Bond* is a guarantee that if a developer or contractor fails to complete improvements in a contract, the obligee will assume the obligation.

The contractor should obtain a Performance and Payment Bond with penalties equal to one hundred percent (100%) of the Contract Price as determined from the prices in the bid form. The bond amount may be adjusted from time to time as necessary to cover and satisfy all payment obligations arising from the contract.

The contractor should file the required bond with the public entity prior to or simultaneous to the execution of the contract.

Although bonds are most commonly used in Construction Agreements, there are specific agreements where performance bonds may be used by your agency. Purchase agreements for specific items such as software development or other products specifically engineered by the vendor may incorporate language requiring a performance/material bond.

Performance and Payments Bonds should be submitted on forms provided by the public entity. The surety should possess a minimum rating from A. M. Best Company of A- VII. Also, the surety or co-sureties should be listed as an acceptable surety on federal bonds by the United States Department of the Treasury, subject to the maximum amount shown in the listing. If co-sureties are used, their bonds shall be on a joint and several basis. In California, the only requirement by law is that the surety needs to be an admitted carrier with a valid surety license.

### **Umbrella Liability**

An umbrella Liability policy:

- Raises the limits of all primary or underlying liability insurance policies; and
- Provides coverage in some areas not covered under primary policies.

Umbrella policies are sometimes a way for a contractor to provide sufficient limits to meet your Entity's requirements.

### **Workers' Compensation and Employer's Liability Insurance**

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Workers' Compensation insurance provides statutory protection against bodily injury, sickness or disease sustained by employee of the other party in the scope of their employment. It should be required of any contractor performing work for your Entity.

Employers Liability coverage is included in standard Workers' Compensation policies. It covers common law claims of injured employees made in lieu of or in addition to a workers' compensation claim. If the contractor's employees will work around shipyards or docks, then US Longshoremen's and Harborworkers' coverage is required. Maritime workers need Jones Act coverage.

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BOND NO. \_\_\_\_\_  
PREMIUM: \_\_\_\_\_

**PERFORMANCE BOND**

WHEREAS, The \_\_\_\_\_, (hereinafter designated as "Obligee") and \_\_\_\_\_ (hereinafter designated as "Principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated \_\_\_\_\_, and identified as project \_\_\_\_\_ is hereby referred to and made a part hereof; and

WHEREAS, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

NOW, THEREFORE, We, the principal and \_\_\_\_\_ as surety, are held and firmly bound unto the hereinafter called "The Obligee," in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally firmly by these presents.

The condition of this obligation is such that if the above bound principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Obligee, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specification accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on

By \_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_  
Attorney-In-Fact



APPENDIX A

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**PAYMENT BOND PUBLIC WORKS**

**BOND NO.:** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_ as Principal, and \_\_\_\_\_, incorporated under the laws of the State of \_\_\_\_\_ and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto any and all persons named in California Civil Code Section 1181 whose claim has not been paid by the contractor, company or corporation, in the aggregate total of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ), for the payment thereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition of the foregoing obligation is such that; whereas the above bounden Principal has entered into a contract, dated \_\_\_\_\_, with the \_\_\_\_\_ to do the following work, to-wit:

NOW, THEREFORE, if the above bounden Principal contractor, person, company or corporation, or his or its subcontractor, fails to pay any claimant named in Section 3181 of the Civil Code of the State of California, or amounts due under the Unemployment Insurance Code, with respect to work or labor performed by any such claimant, that, the Surety on this bond will pay the same, in an amount not exceeding the aggregate sum specified in this bond, and also in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxes as costs in said suit.

This bond shall inure to the benefit of any person named in Section 3181 of the Civil Code of the State of California so as to give a right of action to them or their assignees in any suit brought upon this bond.

This bond is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code Sections 3247-3252 inclusive, and all amendments thereto.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY \_\_\_\_\_

BY \_\_\_\_\_  
ATTORNEY-IN-FACT



## APPENDIX A

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### **Umbrella Liability**

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- Raises the limits of all primary or underlying liability insurance policies; and
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## APPENDIX A

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### EXHIBIT A-1

#### CODES USED IN BUSINESS AUTO POLICIES

1. **ANY AUTO.** *(This is the broadest coverage and includes all other categories shown below.)*
2. **OWNED AUTOS ONLY.** Only those autos owned by the Named Insured (and, for liability coverage, any nonowned trailers while attached to power units owned by the Named Insured). This includes autos acquired after the policy begins.
3. **OWNED PRIVATE PASSENGER AUTOS ONLY.** Only the private passenger autos owned by the Named Insured. This includes those private passenger autos acquired after the policy begins.
4. **OWNED AUTOS OTHER THAN PRIVATE PASSENGER AUTOS.** Only those autos owned by the Named Insured which are not of the private passenger type (and, for liability coverage, any nonowned trailers while attached to owned power units). This includes autos, not of the private passenger type, acquired after the policy begins.
5. **OWNED AUTOS SUBJECT TO NO-FAULT.** Only those autos owned by the Named Insured which are required to have No-fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the Named Insured to have No-fault benefits in the state where they are licensed or principally garaged.
6. **OWNED AUTOS SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW.** Only those autos owned by the Named Insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorists requirement.
7. **SPECIFICALLY DESCRIBED AUTOS.** Only those autos described in the policy for which a premium charge is shown (and, for liability coverage, any nonowned trailers while attached to those described power units).
8. **HIRED AUTOS ONLY.** Only those autos leased, hired, rented, or borrowed by the Named Insured. This does not include any auto leased, hired, rented, or borrowed from employees or members of their households.
9. **NONOWNED AUTOS ONLY.** Only those autos owned, leased, hired or borrowed by the Named Insured which are used in connection with business. This includes autos owned by the Named Insured's employees or members of their households, but only while used in the Named Insured's business.

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## APPENDIX B

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### COMMON INSURANCE INDUSTRY FORMS

- ACORD Certificate of Insurance
  - Standard form
  - Annotated form
- Two ISO standard endorsements used to add Entities as insureds on Contractors' Liability insurance:
  - Additional Insured - Owners, Lessees or Contractors, (Form A)
  - Additional Insured - Owners, Lessees or Contractors, (Form B)
- ISO endorsement: Waiver of Transfer Rights of Recovery Against Others
- ISO endorsement: Waiver of Subrogation
- Four ISO endorsements used to amend policy limits:
  - Amendment of Limits of Insurance (Designated Project or Premises)
  - Amendment of Limits of Insurance
  - Amendment - Aggregate Limits of Insurance (Per Project)
  - Amendment - Aggregate Limits of Insurance (Per Location)
- Four State Compensation Insurance Fund Forms:
  - Certificate of Workers' Compensation Insurance
  - Additional Insured Employer
  - Waiver of Subrogation
  - Certificate Holders' Notice (Cancellation notice)
- ISO policy which can be issued by the Entity as an acceptable alternative to an Additional Insured Endorsement on a Contractor's Insurance policy:
  - Owners and Contractors Protective Liability - Coverage for Operations and Designated Contractor
- Form MCS-90 - Endorsement for Motor Carrier Policies of Insurance for Public Liability

**APPENDIX B**

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YY)
PRODUCER	<p><b>THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b></p> <p style="text-align: center;"><b>INSURERS AFFORDING COVERAGE</b></p>	
INSURED	INSURER A: INSURER B: INSURER C: INSURER D: INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXPENSE (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS-COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY-EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b>				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	<b>OTHER</b>				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL/PROVISIONS



CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE

## APPENDIX B

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### IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

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**APPENDIX B**

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YY)																																										
<b>PRODUCER</b>  <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>1</b> This block identifies the Agent or Broker.         </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>2</b> This notice confirms the provisions of the California Insurance Code, § 384. Other states have similar provisions. It states that the policy, not the certificate governs coverage.         </div>	<p><b>THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b></p>																																										
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DISEASE - POLICY LIMIT \$         </td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"> <b>EXCESS LIABILITY</b>  <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE            DEDUCTIBLE RETENTION \$         </td> <td style="padding: 2px; vertical-align: top;"><b>6</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>8</b></td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"> <b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b> </td> <td style="padding: 2px; vertical-align: top;"><b>6</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>8</b></td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"><b>OTHER</b></td> <td style="padding: 2px; vertical-align: top;"><b>6</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>7</b></td> <td style="padding: 2px; vertical-align: top;"><b>8</b></td> </tr> </tbody> </table>	INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	<b>*3</b>	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<b>5</b>	<b>6</b>	<b>7</b>	EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXPENSE (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS/COMP/OP AGG \$		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	<b>6</b>	<b>7</b>	<b>7</b>	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per/accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY-EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ EACH OCCURRENCE \$ AGGREGATE \$		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO	<b>6</b>	<b>7</b>	<b>7</b>	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$		<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>		<b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>		<b>OTHER</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>5</b> This notice again states that the policy supersedes the certificate form.         </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>6</b> This section and those immediately below show the type of coverage provided through the agent or broker identified in "1" above. If the insured uses more than one broker, this certificate will not identify all existing.         </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>7</b> These two column shows inception and expiration dates for policies identified. Pay special attention that coverage does not expire before or during your project or lease.         </div> <div style="border: 1px solid black; padding: 5px;"> <b>8</b> This column identifies limits per occurrence and aggregate for each type of coverage afforded. Pay special attention to low aggregate limits for public works-type contractors. Losses on other jobs may reduce your coverage.         </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>9</b> This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.         </div> <div style="border: 1px solid black; padding: 5px;"> <b>11</b> Cancellation provisions as written guarantees nothing. Some brokers will cross out the words "endeavor to" but his still does not amend the policy.         </div>
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS																																							
<b>*3</b>	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<b>5</b>	<b>6</b>	<b>7</b>	EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXPENSE (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS/COMP/OP AGG \$																																							
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	<b>6</b>	<b>7</b>	<b>7</b>	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per/accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY-EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ EACH OCCURRENCE \$ AGGREGATE \$																																							
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO	<b>6</b>	<b>7</b>	<b>7</b>	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$																																							
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>																																							
	<b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>																																							
	<b>OTHER</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>8</b>																																							
<b>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL/PROVISIONS</b>  <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>9</b> This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would omit the coverage required by your specifications.         </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>10</b> Certificate holder is your entity.         </div> <div style="border: 1px solid black; padding: 5px;"> <b>12</b> The authorized representative of the insurer should be an employee, unless the agent or broker is specifically authorized to sign on behalf of the company.         </div>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE _____</p>																																										

ACORD 25-S (7/97)

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## APPENDIX B

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### **CHANGES IN ENDORSEMENT FORM: ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM A)**

This endorsement form has changed over Time. The 1985 version is no longer easily available.

The old form number is CG 20 09 11 85 (the 85 in the number sequence is the “Edition date”); while the updated form number is CG 20 09 10 93. A new form CG 20 09 03 97 has been issued and only changes the title by adding “scheduled person or organization (for use when Contractual Liability coverage is not provided to you in this policy) and deletes (Form A) from the title. We have included these forms in the manual on the following pages, so that the user can see the changes for themselves.

The material changes are contained in 1A., 2B3, and 2B4c of the endorsement. The 1985 and 2001 version uses the phrase “your work,” in the description of what is covered, whereas the 1993, 1997 and 2001 versions use the term “your ongoing operations performed,” or “any work.”

By altering the wording “your work” to “your ongoing operations,” the form effectively eliminates any possible coverage under this endorsement for products-completed operations exposures. However, because Form A has always contained an exclusion for completed operations, this change merely clarifies the fact that the contractor’s coverage can not be called on to cover your entity for liability arising out of the products-completed operations hazard created by your contractor.

We, therefore, recommend that for contractory, your entity also request the new version of Form CG 2037 10 01. This version contains language for completed operations. A verbal description is provided on page 20 and a sample of the form is on page 26.

The 1993, 1997 and 2001 versions have clarified the necessity for subrogation waivers on liability policies, in light of the Montrose case.

*(continued)...*



**APPENDIX B**

**Reproduction of Insurance Services Office, Inc. Form**

**POLICY NUMBER: COMMERCIAL LIABILITY**

**CGL-ENDORSEMENTS**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM A)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name of Person or Organization (Additional Insured):		Location of Covered Operations	
	<b>Premium Basis</b>		<b>Advance Premium</b>
<b>Bodily Injury and Property Damage Liability</b>	<b>Cost</b>		<b>\$</b>
			<b>Rates (Per \$1,000 of cost)</b>
			<b>Total Advance Premium</b>
			<b>\$</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- |  |  |
|--|--|
| <p>1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:</p> <p>A. "Your work" for the additional insured(s) at the location designated above; or</p> <p>B. Acts or omissions of the additional insured(s) in connection with their general supervision of your work at the location shown in the schedule.</p> <p>2. With respect to the insurance afforded these additional insureds, the following additional provisions apply:</p> <p>A. None of the exclusions under Coverage A, except exclusions (a), (d), (e), (f), (h2), (i) and (m) apply to this insurance</p> <p>B. Additional Exclusions. This insurance does not apply to:</p> <p>(1) "Bodily injury" or "property damage" for which the additional insured(s) are</p> | <p>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 that the additional insured(s) would have in the absence of the contract or agreement.</p> <p>(2) "Bodily injury" or "property damage" occurring after:</p> <p>(a) All work on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or</p> <p>(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in</p> |
|--|--|

## APPENDIX B

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- performing operations for a principal as a part of the same project.
- (3) "Bodily injury" or "property damage" arising out of any act or omission of the additional insured(s) or any of their "employees," other than the general supervision by the additional insured(s) of your work performed for the additional insured(s) by you.
- (4) "Property damage" to:
- (a) Property owned, used or occupied by or rented to the additional insured(s);
  - (b) Property in the care, custody or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
  - (c) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

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**APPENDIX B**

Reproduction of Insurance Services Office, Inc. Form

**POLICY NUMBER:**

**COMMERCIAL GENERAL LIABILITY  
CG 20 09 10 93**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS (FORM A)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person or Organization (Additional Insured):**

**Location of Covered Operations**

	<b>Premium Basis</b>	<b>Rates</b>	<b>Advance Premium</b>
<b>Bodily Injury and Property Damage Liability</b>	<b>Cost</b>	<b>(Per \$1,000 of cost)</b>	<b>\$</b>
		<b>Total Advance Premium</b>	<b>\$</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- |  |   |
|--|---|
| <p>1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:</p> <p>A. Your ongoing operations performed for the additional insured(s) at the location designated above; or</p> <p>B. Acts or omissions of the additional insured(s) in connection with their general supervision of your work at the location shown in the schedule.</p> <p>2. With respect to the insurance afforded these additional insureds, the following additional provisions apply:</p> <p>A. Exclusions b., c., g., h.(1), j., k., l. and n. under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) do not apply.</p> <p>B. Additional Exclusions. This insurance does not apply to:</p> | <p>(1) "Bodily injury" or "property damage" for which the additional insured(s) are 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 that the additional insured(s) would have in the absence of the contract or agreement.</p> <p>(2) "Bodily injury" or "property damage" occurring after:</p> <p>(a) all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or</p> |
|--|---|

## APPENDIX B

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- (b) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- (3) “Bodily injury” or “property damage” arising out of any act or omission of the additional insured(s) or any of their “employees,” other than the general supervision by the additional insured(s) of your work (85) performed of the additional insured(s).
- (4) “Property damage” to:
  - (a) Property owned, used or occupied by or rented to the additional insured(s);
  - (b) Property in the care, custody or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
  - (c) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you

*(continued)...*



**APPENDIX B**

Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 09 03 97

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION (FOR USE WHEN CONTRACTUAL LIABILITY COVERAGE IS NOT PROVIDED TO YOU IN THIS POLICY)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name of Person or Organization (Additional Insured):	Premium Basis	Rates (Per \$1,000 of cost) Total Advance Premium	Location of Covered Operations
			Advance Premium
<b>Bodily Injury and Property Damage Liability</b>	<b>Cost</b>		<b>\$</b> <b>\$</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- |   |  |
|---|--|
| <p>1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:</p> <p>A. Your ongoing operations performed for the additional insured(s) at the location designated above; or</p> <p>B. Acts or omissions of the additional insured(s) in connection with their general supervision of your work at the location shown in the schedule.</p> <p>2. With respect to the insurance afforded these additional insureds, the following additional provisions apply:</p> <p>A. Exclusions b., c., g., h.(1), j., k., l. and n. under COVERAGE A - BODILY INJURY AND</p> | <p>PROPERTY DAMAGE LIABILITY (Section I - Coverages) do not apply.</p> <p>B. Additional Exclusions. This insurance does not apply to:</p> <p>(1) "Bodily injury" or "property damage" for which the additional insured(s) are 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 that the additional insured(s) would have in the absence of the contract or agreement.</p> <p>(2) "Bodily injury" or "property damage" occurring after:</p> <p>(a) all work, including materials, parts</p> |
|---|--|

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## APPENDIX B

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- or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (b) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- (3) “Bodily injury” or “property damage” arising out of any act or omission of the additional insured(s) or any of their “employees,” other than the general supervision by the additional insured(s) of your work (85) performed of the additional insured(s).
- (4) “Property damage” to:
- (a) Property owned, used or occupied by or rented to the additional insured(s);
  - (b) Property in the care, custody or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or
  - (c) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

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## APPENDIX B

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### CHANGES IN ENDORSEMENT FORM: ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement form has changed ***materially*** since the last edition of the manual.

The old form number is CG 20 10 11 85 (the 85 in the number sequence is the “edition date”); while the updated form number is CG 20 10 10 93. A new form CG 20 10 03 97 has been issued and only changes the title by adding “scheduled person or organization” and deletes (Form B) from the title. We have included these forms in the manual on the following pages, so that the user can see the changes for themselves.

The material change is contained in the second paragraph of the endorsement. The 1985 version, *the version we are recommending your entity continue to request* is worded:

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “***your work***” for that insured by or for you. (emphasis added)

The 1993 and 1997 versions read:

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of ***your ongoing operations*** performed for that insured. (emphasis added)

This change is significant because the altering of the wording “your work” to “your ongoing operations” effectively eliminates any possible coverage under this endorsement for products-completed operations exposures. Up to this “rewording”, Form B contained no exclusion for completed operations, and could therefore be called on to cover your entity for liability arising out of the products-completed operations hazard created by your contractor.

The 1993 and 1997 versions have also increased the necessity for subrogation waivers on liability policies, in light of the Montrose case.

We are therefore recommending that your entity continue to request CG 20 10 11 85 when specifying Form B. You may find that the contractor’s insurance company refuses to do so, because they understand the implications of using the 1985 form. In that case, be certain that your indemnification language obligates the contractor to cover the products-completed operations exposure specifically, and that your entity is included on that policy as an additional insured.

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## APPENDIX B

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

### SCHEDULE

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

CG 20 10 11 85

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## APPENDIX B

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

CG 20 10 10 93

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## APPENDIX B

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## **ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

CG 20 10 03 97

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## APPENDIX B

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### **CHANGES IN ENDORSEMENT FORM: WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement form has changed since the last edition of the manual.

The old form number is CG 24 04 11 85 (the 85 in the number sequence is the “edition date”); while the new form number is CG 24 04 10 93. We have included both forms in the manual on the following pages, so that the user can see the changes for themselves.

There are no material changes between these two editions, and we are therefore recommending that either form can be accepted by your entity. The wording changes clarify the insurer’s intent to include losses that fall under the products-completed operations hazard.

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## APPENDIX B

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

### SCHEDULE

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

We waive any right of recovery we may have against the person or organization shown in the Schedule because of payments we make for injury or damage arising out of "your work" done under a contract with that person or organization. The waiver applies only to the person or organization shown in the Schedule.

CG 24 04 11 85

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## APPENDIX B

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### Reproduction of Insurance Services Office, Inc. Form

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 24 04 10 93

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OCP LIABILITY COVERAGE PART

### SCHEDULE

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

CG 24 04 10 93

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## APPENDIX B

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### LIABILITY

#### WAIVER OF SUBROGATION

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide Comprehensive General and Automobile Liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to Entity, on behalf of any insurer providing Comprehensive General and Automobile Liability insurance to either Contractor or Entity with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance.

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## APPENDIX B

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Reproduction of Insurance Services Office, Inc. Form

**COMMERCIAL LIABILITY  
CGL-ENDORSEMENTS**

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **AMENDMENT OF LIMITS OF INSURANCE (DESIGNATED PROJECT OR PREMISES)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART.

#### SCHEDULE

	<b>Limit of Insurance</b>
General Aggregate Limit	\$ _____
Products-Completed Operations Aggregate Limit	\$ _____
Personal & Advertising Injury Limit	\$ _____
Each Occurrence Limit	\$ _____
Fire Damage Limit	\$ _____ Any One Fire
Medical Expense Limit	\$ _____ Any One Person

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The limits of insurance shown in the Declarations are replaced by the limits designated in the Schedule with respect to the project or premises entered above. These limits are inclusive of and are not in addition to the limits being replaced.

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*(continued)...*

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Reproduction of Insurance Services Office, Inc. Form

**COMMERCIAL LIABILITY  
CGL-ENDORSEMENTS**

**POLICY NUMBER:**

**COMMERCIAL GENERAL LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### AMENDMENT OF LIMITS OF INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

	<b>Limit of Insurance</b>	
General Aggregate Limit	\$ _____	
Products-Completed Operations Aggregate Limit	\$ _____	
Personal & Advertising Injury Limit	\$ _____	
Each Occurrence Limit	\$ _____	
Fire Damage Limit	\$ _____	Any One Fire
Medical Expense Limit	\$ _____	Any One Person

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The limits of insurance shown in the Declarations are replaced by the limits designated in the Schedule with respect to the project or premises entered above. These limits are inclusive of and are not in additional to the limits being replaced.

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Reproduction of Insurance Services Office, Inc. Form

COMMERCIAL LIABILITY  
CGL-ENDORSEMENTS

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **AMENDMENT—AGGREGATE LIMITS OF INSURANCE (PER PROJECT)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART/

The General Aggregate Limit under LIMITS OF INSURANCE (SECTION III) applies separately to each of your projects away from premises owned by or rented to you.

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## APPENDIX B

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Reproduction of Insurance Services Office, Inc. Form

COMMERCIAL LIABILITY  
CGL-ENDORSEMENTS

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

### **AMENDMENT—AGGREGATE LIMITS OF INSURANCE (PER LOCATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The General Aggregate Limit under LIMITS OF INSURANCE (SECTION III) applies separately to each of your projects away from premises owned by or rented to you.

“Location” means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

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## APPENDIX B

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### REPRODUCTION OF STATE COMPENSATION Insurance Fund Form

# STATE COMPENSATION INSURANCE FUND

P.O. BOX 807, SAN FRANCISCO, CALIFORNIA 94101

### CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

POLICY NUMBER:  
CERTIFICATE EXPIRES:

[  
|  
  
|  
|

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days' written notice to the employer.

We will give you 30 days' advance notice should this policy be canceled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

PRESIDENT

**(Note: following text is typewritten addition to printed form)**

THE STATE COMPENSATION INSURANCE FUND WAIVES ANY RIGHT OF SUBROGATION ENDORSEMENT #2570. AGAINST (ENTITY) \_\_\_\_\_, ITS OFFICIALS, EMPLOYEES AND VOLUNTEERS BY REASON OF ANY PAYMENT UNDER THIS POLICY.

ENDORSEMENT #0015 ENTITLED ADDITIONAL INSURED EMPLOYER EFFECTIVE 07-20-87 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. ADDITIONAL INSURED EMPLOYER: \_\_\_\_\_

ENDORSEMENT #2065 ENTITLED 30 DAY CANCELLATION NOTICE EFFECTIVE 07-20-87 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

LIABILITY OF THE STATE COMPENSATION INSURANCE FUND IS LIMITED TO \$3,000,000 FOR ALL DAMAGES FOR ONE OR MORE CLAIMS RESULTING FROM EACH ACCIDENT OF OCCURRENCE ARISING OUT OF ANY ONE EVENT.

EMPLOYER

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**Reproduction of State Compensation  
Insurance Fund Form**

**STATE  
COMPENSATION  
INSURANCE  
FUND**

**ADDITIONAL INSURED EMPLOYER**

**ENDORSEMENT AGREEMENT**

Home Office  
San Francisco

All Effective Dates are  
at 12:01 AM Pacific  
Standard Time or the  
Time Indicated at  
Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRACT NOTWITHSTANDING,  
IT IS AGREED THAT

(NAMED OF ADDITIONAL INSURED  
EMPLOYER: ONE NAME  
PER ENDORSEMENT)

IS HEREBY NAMED AS AN ADDITIONAL INSURED EMPLOYER ON THIS POLICY  
BUT ONLY AS RESPECTS EMPLOYEES WHOSE NAMES APPEAR ON THE  
PAYROLL RECORDS OF

(POLICY NAME)

(HEREIN CALLED THE PRIMARY INSURED) WHILE THOSE EMPLOYEES ARE  
ENGAGED IN WORK UNDER THE SIMULTANEOUS DIRECTION AND CONTROL OF  
THE PRIMARY INSURED AND THE ADDITIONAL INSURED EMPLOYER.

IT IS FURTHER AGREED THAT THE PAYMENT OF THE FULL PREMIUM DUE AND  
PAYABLE UNDER THIS POLICY SHALL REMAIN THE SOLE RESPONSIBILITY OF  
THE PRIMARY INSURED.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HALED TO VARY, ALTER, WAIVE OR  
EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER  
THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE HELD TO VARY, ALTER, WAIVE  
OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO

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## APPENDIX B

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### Reproduction of State Compensation Insurance Fund Form

# STATE COMPENSATION INSURANCE FUND

#### WAIVER OF SUBROGATION

#### ENDORSEMENT AGREEMENT

Home Office  
San Francisco

All Effective Dates are  
at 12:01 AM Pacific  
Standard Time or the  
Time Indicated at  
Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING, IT IS AGREED THAT THE STATE COMPENSATION INSURANCE FUND WAIVES ANY RIGHT OF SUBROGATION AGAINST:

(SPECIFY 3RD PARTY REQUESTING WAIVER: ONE NAME PER ENDORSEMENT)

WHICH MIGHT ARISE BY REASON OF ANY PAYMENT UNDER THIS POLICY IN CONNECTION WITH WORK PERFORMED BY:

(POLICY NAME)

IT IS FURTHER AGREED THAT THE INSURED SHALL MAINTAIN PAYROLL RECORDS ACCURATELY SEGREGATING THE REMUNERATION OF EMPLOYEES WHILE ENGAGED IN WORK FOR THE ABOVE EMPLOYER.

IT IS FURTHER AGREED THAT PREMIUM ON THE EARNINGS OF SUCH EMPLOYEES SHALL BE INCREASED BY \_\_\_\_\_ %.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELED TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BEHELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO

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### Reproduction of State Compensation Insurance Fund Form

# STATE COMPENSATION INSURANCE FUND

## CERTIFICATE HOLDERS' NOTICE

## ENDORSEMENT AGREEMENT

Home Office  
San Francisco

All Effective Dates are  
at 12:01 AM Pacific  
Standard Time or the  
Time Indicated at  
Pacific Standard Time

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING, IT IS  
AGREED THAT THIS POLICY SHALL NOT BE CANCELED UNTIL:

(SPECIFY NUMBER) \_\_\_\_\_ DAYS

AFTER WRITTEN NOTICE OF SUCH CANCELLATION HAS BEEN PLACED IN  
THE MAIL BY STATE FUND TO CURRENT HOLDERS OF CERTIFICATE OF  
WORKERS' COMPENSATION INSURANCE.

NOTHING IN THIS ENDORSEMENT CONTAINED SHALL BE HELED TO VARY, ALTER, WAIVE OR  
EXTEND ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY OTHER  
THAN AS STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BEHELD TO VARY, ALTER, WAIVE  
OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO

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## APPENDIX B

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### OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM - COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

This coverage form has changed ***materially*** since the last edition of the manual.

The old form number is CG 00 09 11 88 (the 88 in the number sequence is the “edition date”); while the new form number is CG 00 09 01 96. We have included both forms in the manual on the following pages, so that the user can see the changes for themselves.

The material changes are contained in 1A., 2, 2a & b; “Supplementary Payments” 8a, b, c, d, e, f, 2a & b; and a & b (following) of the coverage form. The remainder if the changes are editions of words and phrases and are immaterial.

We highly recommend that the user review these new sections, so that they understand the “import” of the changes. Although we highlight the significance of the changes here, we believe that the user will gain a better understanding through actually reviewing the sections for themselves or by having their entity’s attorney do so.

***AS A RESULT OF THESE CHANGES, IT IS IMPERATIVE THAT THE USER MAKE CERTAIN THAT ATTORNEY FEES AND LITIGATION EXPENSES ARE ASSUMED BY THE CONTRACTOR IN THE INDEMNITY AND/OR HOLD-HARMLESS SECTION OF THE CONTRACT. FAILURE TO DO SO WILL RESULT IN THESE EXPENSES NOT BEING COVERED.***

Also, be aware that ***the changes have also restricted defense coverage to only those lawsuits involving issues that are covered perils under the contractor’s insurance.*** Therefore, it is also imperative that your indemnity language is strong, and that if the contractor does not carry sufficient or correct insurance to cover their obligations to your entity, they do have the assets to indemnify those uninsured or underinsured areas.

The remaining caution regards the obligation of the additional insured (your entity) to allow the contractor’s insurance company to control the lawsuit. These conditions precedent to litigation defense are contained in the Supplementary Payments section, 8f and following. The coverage is very specifically tied to these restrictions, and ceases when these are violated. We urge the user to have their entity’s attorney review these restrictions.

We are therefore recommending that your entity continue to request CG 00 09 11 88 when specifying this coverage form. You may find that the contractor’s insurance company refuses to do so, because they understand the implications of using the 1988 form. In that case, be certain that you follow the above guidelines.

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Reproduction of Insurance Services Office, Inc. Form

COMMERCIAL GENERAL LIABILITY  
CG 00 09 11 88

### OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM - COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II).

Other word and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

#### SECTION I - COVERAGES BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (Section III); and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" and arises out of:
    - (a) Operations performed for you by the "contractor" at the location specified in the Declarations; or
    - (b) Your acts or omissions in connection with the general supervision of such operations; and
  - (2) The "bodily injury" or "property damage" occurs during the policy period.
- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss or services or death resulting at any time from the "bodily injury."

##### 2. Exclusions

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- (b) "Bodily injury" or "property damage" for which the insured 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.
  - (1) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. That insured would have in the absence of the contract or agreement; or
  - (2) That insured would have in the absence of the contract or agreement.
- (c) "Bodily injury" or "property damage" which occurs after the earlier of the following times:
  - (1) When all "work" on the project (other than service, maintenance or repairs) to be performed for you by the "contractor" at the

## APPENDIX B

- 
- site of the covered operations has been completed; or
- (2) When that portion of the “contractor’s” “work,” out of which the injury or damage arises, has been put to its intended use by any person or organization, other than another contractor or subcontractor working directly or indirectly for the “contractor” or as part of the same project.
- d. “Bodily injury” or “property damage” arising out of your, or your “employees,” acts or omission other than general supervision of “work” performed by you by the “contractor.”
- e. Any obligation of the insured under a workers’ compensation, disability benefits or unemployment compensation law or any similar law.
- f. “Bodily injury” to:
- (1) An “employee” of the insured arising out of and in the course of:
- (a) Employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that “employee” as a consequence of paragraph (1) above.
- This exclusion applies:
- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- This exclusion does not apply to liability assumed by the insured under an “insured contract.”
- g. “Property damage” to:
- (1) Property you own, rent or occupy;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured; or
- (4) “Work” performed for you by the “contractor.”
- (5)
- h. “Bodily injury” or “property damage” due to war, whether or not declared, or any act or condition incident of war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to:
- (1) Liability assumed under an “insured contract”; or
- (2) Expenses for first aid.
- i. “Bodily injury” or “property damage” arising out of the use of “mobile equipment” in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.
- j. (1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any item transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations:
- (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
- (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.
- Subparagraphs (a) and d(i) do not apply to “bodily injury” or “property damage” arising out of heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.
- (2) Any loss, cost or expense arising out of any:

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- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) 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 pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- k. "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
  - (1) A defect, deficiency, inadequacy or dangerous condition in "work" performed for you by the "contractor"; or
  - (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "work" performed by you by the "contractor."

### SUPPLEMENTARY PAYMENTS

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 4. All reasonable expenses incurred by the insured at our request to assist us 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.

- 5. All costs taxed against the insured in the "suit."
- 6. Prejudgment interest awarded against the insured on that party of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid offered to pay, or deposited in court the party of the judgment that is within the applicable limit of insurance.
- 8. Expenses incurred by the insured for first aid administered to others at the time of an accident, for "bodily injury" to which this insurance applies.

These payments will not reduce the limits of insurance.

### SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to their duties as partners or members of a joint venture.
  - c. An organization other than a partnership, joint venture, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your shockholders are also insureds, but only with respect to their liability as stockholders.
- 2. Each of the following is also an insured:
  - a. Any person (other than your "employee") or any organization while acting as your real estate manager.
  - b. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

No person or organization is an insured with respect to

## APPENDIX B

the conduct of any current or past partnership, joint venture that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits."
2. The Aggregate Limit is the most we will pay for the sum of damages because of all "bodily injury" and "property damage."
3. Subject to 2. above, the Each Occurrence Limit is the most we will pay for the sum of damages because of all "bodily injury" or "property damage" arising out of any one "occurrence."

If you designate more than one project in the Declarations, the Aggregate Limit shall apply separately to each project.

The limits 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 policy period shown in the Declarations, unless the policy 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 Insurance.

### SECTION IV - CONDITIONS

1. **Bankruptcy**  
Bankruptcy or insolvency of the insured will not relieve us of our obligation under this Coverage Part.
2. **Cancellation**
  - a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - b. We may cancel this policy by mailing or delivering to the first Named Insured and the "contractor" written notice of cancellation at least:
    - (1) 10 days before the effective date of

cancellation if we cancel for nonpayment of premium; or

- (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notices to the first Named Insured's and the "contractor's" last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is canceled, we will send the "contractor" any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

### 3. Changes

This policy contains all the agreements between you, the "contractor" and us concerning the insurance afforded. The first Named Insured shown in the Declarations and the "contractor" are authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made part of this policy.

### 4. Duties In The Event Of Occurrence, Claims Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence."
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.  
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal

## APPENDIX B

papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, without our consent.

### 5. Examination Of Your Books And Records

We may examine and audit your books and records, as well as the "contractor's" books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### 6. Inspections And Surveys

We have the right but are not obligated to:

- a. Make inspections and surveys at any time;
- b. Give you reports on the conditions we find; and
- c. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. Any we do not warrant that conditions:

- a. Are safe and healthful; or
- b. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

### 7. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we 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 insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 8. Other Insurance

The insurance afforded by this Coverage Part is primary insurance, and we will not seek contribution from any other insurance available to you unless the other insurance is provided by a contractor other than the designated "contractor" for the same operation and job location designated in the Declarations. Then we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 9. Premiums

The "contractor":

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

### 10. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable on notice to the "contractor." If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return

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the excess to the "contractor."

- c. The "contractor" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

### 11. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and  
b. Separately to each insured against whom claim is made or "suit" is brought.

### 12. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### 13. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mail, proof of mailing will be sufficient proof of notice.

## SECTION V - DEFINITIONS

1. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
3. "Contractor" means the contractor designated in the Declarations.
4. "Impaired property" means tangible property, other than work performed for you, that cannot be used or is less useful because:
  - a. It incorporates work performed for you that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of the work performed for you; or
- b. Your fulfilling the terms of the contract or agreement.

### 5. "Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
- e. An elevator maintenance agreement.

### 6. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in 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:
  - (1) Air compressors, pumps and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. 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":

## APPENDIX B

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- (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning.
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
7. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
8. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
9. "Suit" means a civil proceeding, brought in the United States of America (including its territories and possessions), Puerto Rico or Canada, in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" include:
- a. An arbitration which such damages are claimed and to which you must submit or submit with our consent; or
  - b. Any other alternative dispute resolution process in which such damages are claimed and to which the insured submits with our consent.
10. "Work" includes materials, parts or equipment furnished in connection with the operations.

*(continued)...*

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## APPENDIX B

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Reproduction of Insurance Services Office, Inc. Form

COMMERCIAL GENERAL LIABILITY

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### OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM - COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II).

Other word and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

#### SECTION I - COVERAGES BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (Section III); and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" and arises out of:

- (a) Operations performed for you by the "contractor" at the location specified in the Declarations; or
- (b) Your acts or omissions in connection with the general supervision of such operations; and

(2) The "bodily injury" or "property damage" occurs during the policy period.

- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss or services or death resulting at any time from the "bodily injury."

##### 2. Exclusions

This insurance does not apply to:

###### (a) Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

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### **(b) Contractual Liability**

"Bodily injury" or "property damage" for which the insured 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.

- (1) That insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract," reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because "bodily injury" or "property damage," provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### **c. Work Completed or Put to Intended Use**

"Bodily injury" or "property damage" which occurs after the earlier of the following times:

- (1) When all "work" on the project (other than service, maintenance or repairs) to be performed for you by the "contractor" at the site of the covered operations has been completed; or
- (2) When that portion of the "contractor's" "work," out of which the injury or damage arises, has been put to its intended use by any person or organization, other than another contractor or subcontractor working directly or indirectly for the "contractor" or as part of the same project.

### **d. Acts or Omissions by You and Your Employees**

"Bodily injury" or "property damage" arising out of your, or your "employees," acts or omission other than general supervision of "work" performed by you by the "contractor."

### **e. Workers' Compensation and Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### **f. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract."

### **g. Damage to Property**

"Property damage" to:

- (1) Property you own, rent or occupy;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured; or
- (4) "Work" performed for you by the "contractor."

### **h. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident of war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to:

- (1) Liability assumed under an "insured contract"; or
- (2) Expenses for first aid.

### **i. Mobile Equipment**

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

### **j. Pollution**

- (1) "Bodily injury" or "property damage" arising

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out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any item transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
  - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to

the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraphs (a) and d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b) 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 pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

### k. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "work" performed for you by the "contractor"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "work" performed

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by you by the "contractor."

### SUPPLEMENTARY PAYMENTS

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
5. All costs taxed against the insured in the "suit."
6. Prejudgment interest awarded against the insured on that party of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid offered to pay, or deposited in court the party of the judgment that is within the applicable limit of insurance.
8. Expenses incurred by the insured for first aid administered to others at the time of an accident, for "bodily injury" to which this insurance applies.

These payments will not reduce the limits of insurance.

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit," we will defend that indemnitee if all of the following conditions are met.

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit."

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph **2.b.(2)** of **BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I - Coverages), such payments will not be deemed to be damages for "bodily injury" or "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have use up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph **f.** above, are no longer met.

### SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

## APPENDIX B

- a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to their duties as partners or members of a joint venture.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to their duties as members of a limited liability company. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
- a. Any person (other than your "employee") or any organization while acting as your real estate manager.
  - b. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits."
2. The Aggregate Limit is the most we will pay for the

sum of damages because of all "bodily injury" and "property damage."

3. Subject to 2. above, the Each Occurrence Limit is the most we will pay for the sum of damages because of all "bodily injury" or "property damage" arising out of any one "occurrence."

If you designate more than one project in the Declarations, the Aggregate Limit shall apply separately to each project.

The Limits of Insurance 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 policy period shown in the Declarations, unless the policy 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 Insurance.

### SECTION IV - CONDITIONS

1. **Bankruptcy**  
Bankruptcy or insolvency of the insured will not relieve us of our obligations under this Coverage Part.
2. **Cancellation**
  - a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - b. We may cancel this policy by mailing or delivering to the first Named Insured and the "contractor" written notice of cancellation at least:
    - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
    - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - c. We will mail or deliver our notices to the first Named Insured's and the "contractor's" last mailing address known to us.
  - d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  - e. If this policy is canceled, we will send the "contractor" any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

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- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

### 3. Changes

This policy contains all the agreements between you, the “contractor” and us concerning the insurance afforded. The first Named Insured shown in the Declarations and the “contractor” are authorized to make changes in the terms of this policy with our consent. This policy’s terms can be amended or waived only by endorsement issued by us and made part of this policy.

### 4. Duties In The Event Of Occurrence, Claims Or Suit

- a. You must see to it that we are notified as soon as practicable of an “occurrence” which may result in a claim. To the extent possible, notice should include:
- (1) How, when and where the “occurrence” took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the “occurrence.”
- b. If a claim is made or “suit” is brought against any insured, you must:
- (1) Immediately record the specifics of the claim or “suit” and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or “suit” as soon as practicable.

- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or “suit”;
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the “suit”; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured’s own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for

### 5. Examination Of Your Books And Records

We may examine and audit your books and records, as well as the “contractor’s” books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### 6. Inspections And Surveys

We have the right but are not obligated to:

- a. Make inspections and surveys at any time;
- b. Give you reports on the conditions we find; and
- c. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. Any we do not warrant that conditions:

- a. Are safe and healthful; or
- b. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

### 7. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a “suit” asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we 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 insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant’s legal representative.

### 8. Other Insurance

The insurance afforded by this Coverage Part is primary insurance, and we will not seek contribution from any other insurance available to you unless

## APPENDIX B

other than the designated "contractor" for the same operation and job location designated in the Declarations. Then we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 9. Premiums

The "contractor":

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

### 10. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable on notice to the "contractor." If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the "contractor."
- c. The "contractor" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

### 11. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

### 12. Transfer Of Rights Of Recovery Against Others

### To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### 13. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mail, proof of mailing will be sufficient proof of notice.

## SECTION V - DEFINITIONS

1. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
3. "Contractor" means the contractor designated in the Declarations.
4. "Employee" includes a "leased worker." "Employees" does not include a "temporary worker."
5. "Executive officer" means a person holding any of the officer positions created by our charter, constitution, by-laws or any other similar governing document.
6. "Impaired property" means tangible property, other than work performed for you, that cannot be used or is less useful because:
  - a. It incorporates work performed for you that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of the work performed for you; or
  - b. Your fulfilling the terms of the contract or agreement.
7. "Insured contract" means:
  - a. A lease of premises;
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

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- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
  - e. An elevator maintenance agreement.
8. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
9. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in 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:
    - (1) Air compressors, pumps and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
10. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
11. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
12. "Suit" means a civil proceeding, brought in the United States of America (including its territories and possessions), Puerto Rico or Canada, in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
13. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
14. "Work" includes materials, parts or equipment furnished in connection with the operations.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning.
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

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Form Approved  
OMB No. 2125-0074

**ENDORSEMENT FOR  
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY  
UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980**

Issued to: \_\_\_\_\_ Of: \_\_\_\_\_

Dated at: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Amending Policy No. \_\_\_\_\_ Effective Date: \_\_\_\_\_

Name of Insurance Company \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Countersigned by: \_\_\_\_\_

Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "[X]" for the limits shown:

- This insurance is primary and the company shall not be liable for amounts in excess of: \$ \_\_\_\_\_ for each accident
- This insurance is excess and the company shall not be liable for amounts in excess of: \$ \_\_\_\_\_ for each accident in excess of the underlying limit of \$ \_\_\_\_\_ for each accident.

Whenever required by the Federal Highway Administration (FHWA) or the Interstate commerce Commission (ICC), the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: \_\_\_\_\_.

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

**DEFINITIONS AS USED IN THIS ENDORSEMENT ACCIDENT**

**ACCIDENT** includes continuous or repeated exposure to conditions, which results in bodily injury, property damage or environmental damage, which the insured neither expected nor intended.

**MOTOR VEHICLE** means a land vehicle, machine, truck, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used on a highway for transporting property or any combination thereof.

**BODILY INJURY** means injury to the body, sickness or disease to any person, including death resulting from any of these.

**ENVIRONMENTAL RESTORATION** means restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

**PROPERTY DAMAGE** means damage to or loss of use of tangible property.

**PUBLIC LIABILITY** means liability for bodily injury, property damage and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

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The Motor carrier Act of 1980 requires limits of financial responsibility according to the type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

Form MCS-90

## APPENDIX B

### SCHEDULE OF LIMITS

Public Liability		
Type of Carriage	Commodity Transported	Minimum Insurance
(1) For-hire (in interstate or foreign commerce)	Property (nonhazardous),	\$750,000
(2) For-hire and Private (in interstate, foreign or intrastate commerce).	Hazardous substances transported in cargo tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantity radioactive materials.	5,000,000
(3) For-hire and private (in interstate or foreign commerce: in any quantity) or (in intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101, hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4) For-hire and Private (in interstate or foreign commerce).	Any quantity of Class A or B explosives, any quantity of poison gas (Poison A), or highway route controlled quantity radioactive materials.	5,000,000

Note: The type of carriage listed under (1), (2) and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with gross vehicle weight rating of less than 10,000 pounds.

### SCHEDULE OF LIMITS

#### Public Liability

#### For-hire motor carriers of passengers operating in Interstate or foreign commerce

Vehicle Seating Capacity	Minimum Insurance
(1) Any vehicle with a seating capacity of 16 passengers or more.	\$5,000,000
(2) Any vehicle with a seating capacity of 16 passengers or less.	1,500,000



## APPENDIX C

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### SAMPLE HOLD HARMLESS AGREEMENTS

The following hold harmless agreement wordings are provided as examples only. Innumerable alternatives to these forms are possible, each alternative having a different purpose depending on the wishes of the parties. **Drafting hold harmless language in contracts is a crucial part of the risk-transfer process and should not be undertaken without the advice and assistance of legal counsel.**

Indemnity and hold harmless provisions are regulated by the California Civil Code and case law interpreting the Code Sections. Under Civil Code Section 1668,

All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Under Civil Code Section 2773,

An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

Civil Code Section 2782(b) provides that

Except as provided in Sections 2782.1, 2787.2, and 2782.5, provisions, clauses, covenants or agreements contained in, collateral to or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

Section 2782.1 makes an exception where the contract is not being performed for the public agency, but the public agency as an accommodation allows the contractor to enter upon its property or adjacent to its property. Section 2782.2 permits the owner of a project to indemnify a professional engineer if certain conditions are met. Section 2782.5 permits parties to a construction contract to negotiate and expressly agree with respect to the allocation, release, liquidation, exclusion, or limitation as between the parties of any liability (a) for design defects, or (b) of the promisee to the promisor arising out of or relating to the construction contract.

California case law has analyzed indemnity clauses as falling under three classifications. (However, some cases indicate that intent of the parties controls the case regardless of these classification cases.)

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### Example 1 - Strict or Type I Indemnity Language

Contractor shall hold harmless, defend and indemnify Entity and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Entity.

In the first example, the contractor promises your Entity to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your Entity and the contractor or its subcontractors. **Caution: While this type of agreement provides the broadest protection for the Entity, it would be subject to challenge under Civil Code Section 2782(b) because it purports to indemnify the Entity for losses for its active negligence. If you have a construction contract (defined in Civil Code Section 2783), Example 2 (below) should be used instead.**

### Example 2 - Intermediate Form

Contractor shall hold harmless, defend and indemnify Entity and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Entity.

In this second example, the Entity receives indemnity if it was not negligent or if its negligence was only passive. (There is a great deal of case law on the active/passive distinction, but essentially active negligence is affirmative participation in causing the harm, or failure to prevent a known danger, whereas passive negligence is failure to detect a danger which the Entity is under a duty to detect, such as a dangerous condition on its property created by the contractor.) There is a great variety of language used to arrive at this type of intermediate form, because any indemnity contract which does not specifically refer to the indemnitee's negligence will be construed as this type of general clause, not providing indemnity for active negligence. So, if the contract promises indemnity for losses howsoever may be caused, regardless of responsibility for negligence, arising from use of the premises, facilities or services, or caused by any person or persons whomsoever, the wording will be interpreted as a general indemnity clause.

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### Example 3 - Limited Form

Contractor agrees to protect, indemnify and save harmless Entity and its officers, officials, employees and volunteers from and against all claims, demands and causes of action by contractor's employees or third parties on account of personal injuries or death or on account of property damages arising out of the work to be performed by contractor hereunder and resulting from the negligent act or omissions of contractor, contractor's agents, employees or subcontractors.

This example is the most limited type of indemnity agreement because it only provides indemnity to the extent of the contractor's negligence, or negligence of subcontractors. Under this type of agreement, any negligence on the part of the Entity, either active or passive, will bar indemnification under the contract, even if the contractor was also negligent. **This type of clause is not recommended because it does not provide protection to the Entity.**

### Release Agreement

If you have a defined group of persons who might be exposed to the harm (for example, participants in an athletic event on Entity property), a release agreement can be prepared. Generally, a release agreement must be prominently displayed, no smaller than 8- to 10-point type. The language cannot be overly complex, nor can it be buried in other verbiage. A standard release might read as follows:

In consideration of the acceptance of my application for entry into the above event, I hereby waive, release and discharge any and all claims for damages for death, personal injury or property damage which I may have, or which hereafter accrue to me, against the Entity as a result of my participation in the event. This release is intended to discharge the Entity, its officers, officials, employees and volunteers, any other involved municipalities or public agencies from and against any and all liability arising out of or connected in any way with my participation in the event, even though that liability may arise out of the negligence or carelessness on the part of persons or Entities mentioned above. I further understand that accidents and injuries can arise out of the event; knowing the risks, nevertheless, I hereby agree to assume those risks and to release and to hold harmless all of the persons or agencies mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages. It is further understood and agreed that this waiver, release and assumption of risk is to be binding on my heirs and assigns.

The above language was adapted from a case which cited release language with approval. However, note that the release might still be avoided by a plaintiff if the injury occurs in an unforeseeable way, not typical or common to the activity.

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### GLOSSARY

**ACORD Insurance Certificate:** A certificate of insurance commonly issued by insurance agents on behalf of their clients to indicate to other interested parties the nature and amounts of insurance purchased by the client. The ACORD certificate form was developed by the insurance industry in an attempt to standardize and simplify this type of insurance documentation. A sample form appears in Appendix B. This form does *not* provide insurance coverage. An endorsement or insurance policy is needed for that purpose.

**Agent:** One who has authority to act for another. An insurance agent acts for an insurer by soliciting buyers of insurance and providing them service on behalf of the insurer. See Broker.

**Aggregate Limit:** A cumulative limit that applies to all claims within a given period of time, such as within one year, or within the policy term. For example, if a policy has an occurrence limit of \$1 million and an aggregate limit of \$1 million, the policy could be exhausted by a sequence of losses totaling \$1 million, or by one big loss of that amount.

**Bodily Injury:** Bodily injury, sickness or disease, including death.

**Broker:** One who, for a commission from the insurance company, solicits, negotiates and services insurance policies on behalf of the insurance buyer. From a practical standpoint, there is little or no difference between a broker and an agent in terms of providing insurance to a California insured.

**Claims-Made Coverage:** A type of liability coverage which imposes strict deadlines regarding timing of claims by plaintiffs and reporting of accidents and claims to the insurer. Although not widely used for General Liability coverage, it is common enough that you can expect to encounter some of your Entity's contractors' and vendors' insurance written on these forms.

In its most fundamental form, Claims-Made coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. In the case of an injured child, for example, the policy that would respond would be the policy in effect at the time that the child made a formal claim, even if years after the event (minors may present claims after reaching their majority). However, most Claims-Made policies have a retroactive date. Claims arising from events that occurred before the retroactive date are not covered. Usually the retroactive date is the first date that the insurer began providing Liability insurance for that insured. Renewal policies often keep the same retroactive date as the expiring policy.

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While the restrictions may vary somewhat from insurer to insurer, and the forms allow some exceptions, one common version of Claims-Made coverage applies only to claims that are submitted to the insurer during the policy term or within sixty (60) days thereafter. Therefore, if your Entity's protection is to be preserved under this policy form, claims made against your Entity, either orally or in writing, must be reported immediately to the insurer at the address on the endorsement form. If the coverage has expired, or is about to do so, send notice by the fastest possible means, to reduce the possibility of missing a deadline.

A common Claims-Made version also makes an exception for claims arising out of incidents that have been reported to the insurer during the policy term or within sixty (60) days thereafter provided that the claim is made within five (5) years after the policy term. In other words, if an incident is reported to the insurer that may generate a future claim, coverage is locked in for five years. If the incident is not reported (e.g., if you don't know about it), then if the claim is submitted after the policy term, the policy does not cover it. Therefore, you should also report incidents that might result in claims to the insurer immediately.

Clearly, when your Entity arranges to be protected under a Contractor's Liability insurance for claims arising out of a particular project, occurrence coverage is preferred, as the needed coverage can be arranged and the full cost known in advance of the project.

Professional Liability risks are almost always written on a Claims-Made basis, especially Professional Liability of architects, engineers, medical professionals and consultants. Also, hazardous products or activities, such as asbestos removal contracting, may be written on a claims-made form. However, most types of commercial business insurance are usually written on an Occurrence form.

**Cross Liability Clause/Separation of Insureds Clause/Severability of Interest Clause** are various names for language found in Liability policies which states that the terms of the policy apply separately to each insured, as though a separate policy had been issued to each. An exception is made for policy limits: the policy limits apply collectively to all insureds.

**Deductible (clause):** A provision in an insurance policy whereby the insured is required to pay a specific amount or percentage of a loss, with the insurance company paying over the deductible amount.

**Named Insured/Insured/Co-Insured:** The terms named insured and insured are defined in Liability policies. The term coinsured is not commonly used in insurance policies and is a misnomer. Insurance specifications should use the two terms which have specific meaning in insurance policies.

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Named insured is the person or organization named as such in the declarations of the policy. That item is usually typed in on the front page, or if lengthy, added by endorsement. The named insured has the duty to pay premium. Also, the first named insured generally receives notices from the insurer, such as Notice of Cancellation. Such notices are sent to the address shown for the named insured.

An insured is any party protected by the insurance, as defined by the policy, or specifically added. For example, your Entity could be an insured for losses arising out of a contractor's work if:

- The contractor's policy states that it automatically includes as insureds any other parties for whom the contractor is required to provide such insurance, AND the contractor has signed a contract with such a requirement; or
- The contractor's insurance, has been specifically endorsed to add your Entity as an insured as respects the contractor's work.

Named Insureds are generally not required to pay premium, if the named insured fails to do so. Insureds do not automatically receive Notice of Cancellation; any such requirement must be specifically stated and must include the name and address of the party to whom notice is to be sent.

**Occurrence-Based Coverage:** A way of writing liability insurance that covers accidents or events that happen during the policy term, even if the plaintiff does not make a formal claim until months or years later. For example, a child injured in an accident may, under certain circumstances, be allowed to make a formal claim for damages years later, after reaching age eighteen. The insured (e.g., the Contractor or your Entity) would be protected against this claim by the policy in effect at the time of the accident.

**Personal Injury:** As used in insurance policies, this term usually applies to injuries of a nonphysical nature, such as:

- False arrest, detention or imprisonment,
- Libel, slander or defamation, and
- Wrongful entry or eviction.

Personal Injury Liability insurance should always be required of anyone who may deal with the public, such as contract security guards. It is typically included in the Commercial General Liability coverage and in the older Broad Form Comprehensive General Liability Endorsement, or it can be written as a separate coverage.

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**Products and Completed Operations:** As used in insurance policies, applies to coverage that insures against liability for bodily injury or property damage resulting from:

- A product which is sold, handled or distributed by a supplier, or
- Faulty work completed by a contractor.

Your Entity should require Products and Completed-Operations Liability coverage from all contractors and from suppliers of hazardous products, such as guns and ammunition. Typically, this coverage is included in Comprehensive General Liability coverage and in Commercial General Liability coverage.

**Self-Insured Retention:** The amount of loss for which the insured agrees to be responsible before the insurer begins to participate in a loss. Unlike a deductible, the insured is usually responsible for handling claims within the self-insured retention.

**Waiver of Subrogation:** An agreement between two parties to a contract whereby one or both agrees not to (or obligates their insurer not to) pursue legal rights to recovery of a loss. When an insurer pays a loss to its insured, and another party's negligence caused the loss, the insurer usually reserves the right to collect from the negligent party the amount it has paid on the loss. This right is called the right of subrogation. When your insurer pays you for damage to your car, then collects from the other party that caused the accident, your insurer is exercising its right of subrogation.

When two parties enter into a contractual agreement, they usually attempt to agree between them as to which party's insurance will cover each type of loss. This agreement may be defeated if the insurer can pay the loss, then collect from the party that intended to transfer the loss through the contract. To prevent this unintended result, contracts will sometimes contain a Waiver of Subrogation provision through which the insurer's right to subrogate will be waived. This requirement must be implemented by a policy endorsement. Liability and Workers' Compensation sample endorsements appear in Appendix B.

An example of such a waiver is sometimes found in lease agreements. The landlord and tenant may agree that the landlord's insurance should cover property losses. To make sure that the landlord's insurer does not attempt to charge the tenant for losses the insurer has paid, the contract may require that the landlord obtain a Waiver of Subrogation from the insurer, and provide evidence of the waiver to the tenant.

**Waivers should be used with caution.** Some insurance policies void the coverage if the insured agrees to waive the insurer's subrogation rights without prior approval. Other policies permit waivers. You should carefully review the policies and/or call your risk management advisor for assistance when dealing with waivers of subrogation.

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### **X, C, U Hazards:**

X = explosion

C = collapse

U = damage to underground property

Comprehensive General Liability and Commercial General Liability policies usually automatically insure liability for these risks, as defined in the policy. However, certain contractors must pay additional premiums to obtain these coverages or the underwriter will issue the policy excluding X, C and U perils.

## APPENDIX E

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### SAMPLE CHECKLISTS

These checklists are included in the manual as examples of how the user might wish to organize their contract and specifications review.

We would like to thank Joseph Risser of the California State University system for his self-designed checklist entitled “Project Name/Purchase.”

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**APPENDIX E**

**Project Name/Purchase** \_\_\_\_\_

Check One: Construction \_\_\_\_\_ Services (specify) \_\_\_\_\_

Purchase \_\_\_\_\_ Lease (specify) \_\_\_\_\_

**Insurance Company Ratings, Coverage and Limit Guidelines**



**BEST Secure Ratings  
RECOMMENDED**

**NOT**

Superior	A++	A+	Excellent	A	A-	Very Good	B++	B+
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**BEST Financial Size Categories**

**NOT RECOMMENDED**

Class XI – XV	Class VII – X	Class I - VI
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**Coverage Minimum Limit Guidelines**

Form	Basis	High Risk	Medium Risk	Low Risk	NOT RECOMMENDED		Approved Amount	N/A
CGL	Occurrence	\$5 million	\$2 million	\$1 million	\$500,000	\$250,000		
	Aggregate	\$10 million	\$5 million	\$2 million	\$1 million	\$500,000		
BAC	Occurrence		\$2 million	\$1 million	\$500,000	\$250,000		
WC and EL		Statutory Limits						
		\$1 million			\$500,000	\$250,000		
++++ Option for sole proprietors and excluded employees +++++								
	Health Ins	Employment related injuries not excluded						
	Disability	Comparable to Statutory limits						
CC/BR		Completed Project Value						
Property		Full Replacement-No Coinsurance						
E&O/PL	Occurrence*	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000		
	Aggregate	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000		
Pollution	Occurrence*	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000		
	Aggregate	\$10 million	\$5 million	\$1 million	\$500,000	\$250,000		
*Claims Made			5 year tail	3 year tail	1 year tail	no tail		

Indicate approved amount unless recommended coverage is not applicable

Recommendation \_\_\_\_\_ Date \_\_\_\_\_  
Project Manager/Purchasing Agent

Approval \_\_\_\_\_ Date \_\_\_\_\_  
Director Facilities Planning/Director Support Services

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**APPENDIX E**

**CONTRACT REVIEW CHECKLIST**

**HOLD HARMLESS / INDEMNIFICATION REVIEW**

1. **Contract Date/Parties:** \_\_\_\_\_
2. **Party(ies) Accepting Risk:** \_\_\_\_\_
3. **Type of Risk Accepted**       Negligence       Other
4. **Breadth of Risk Accepted**       Own       Joint       Sole
5. **Nature of Damage/Injury Accepted:**  Direct       Consequential
- Property Damage:**       Our property       Other party's property       Property of third persons
- Bodily injury/personal injury:**       Our employees       Other party's employees       Third party employees

**INSURANCE REVIEW**

*No answer means either it is not mentioned in the contract or it is specifically rejected.*

	Required of you		Required of Other Party	
	YES	NO	YES	NO
<b>1. Liability Insurance</b>				
a. Is it required?	_____	_____	_____	_____
b. Limits of liability	\$ _____	_____	\$ _____	_____
c. Special coverages required	_____	_____	_____	_____
d. Occurrence vs. claims made coverage	_____	_____	_____	_____
e. Named as additional insured	_____	_____	_____	_____
f. Cross liability	_____	_____	_____	_____
g. Contractual limits required	_____	_____	_____	_____
h. Cancellation notice	# days: _____	_____	# days: _____	_____
i. Certificate or other evidence	_____	_____	_____	_____
j. Other _____	_____	_____	_____	_____
<b>2. Workers' Compensation</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
a. Is it required?	_____	_____	_____	_____
b. Contractor's employee/borrowed servants	_____	_____	_____	_____
c. Waiver of subrogation	_____	_____	_____	_____
d. Federal acts	_____	_____	_____	_____
e. All states and employer's stop gap	_____	_____	_____	_____
f. Cancellation notice	# days: _____	_____	# days: _____	_____
g. Certificate of other evidence	_____	_____	_____	_____
h. Other _____	_____	_____	_____	_____
<b>3. Property Insurance</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
a. Is it required?	_____	_____	_____	_____
b. Valuation method required	ACV	RV	ACV	RV
c. Additional named insured/or additional insured	_____	_____	_____	_____
d. Waiver of subrogation	_____	_____	_____	_____
e. Cancellation notice	# days: _____	_____	# days: _____	_____
f. Certificate or other evidence	_____	_____	_____	_____
g. Other _____	_____	_____	_____	_____
<b>4. Automobile Liability Insurance</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
a. Is it required?	_____	_____	_____	_____
b. Limits of liability	\$ _____	_____	\$ _____	_____
c. Covered vehicles	_____	_____	_____	_____
d. Contractual liability	_____	_____	_____	_____
e. Cancellation notice	# days: _____	_____	# days: _____	_____
f. Certificate or other evidence	_____	_____	_____	_____
g. Other _____	_____	_____	_____	_____

