



# Insurance Requirement Manual



California Schools JPA

RISK MANAGEMENT | EMPLOYEE BENEFITS

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## INSURANCE REQUIREMENTS MANUAL

### Executive Summary

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

An initial analysis indicated a need for this type of manual to assist public schools and community college districts with entering into contractual relationships with consultants, contractors and vendors in addition to allowing use of district facilities and grounds by outside individuals or groups. There are seven chapters that address building, trades, and environmental contractors; consultants, professional service providers, suppliers; transportation and other vendors; and, use of facilities agreements by private citizens, organizations or non-business groups.

Members will benefit from the glossary of terms, forms and sample checklists contained in the manual. There is also a section containing the most frequently asked questions as a resource for the user. This section further illustrates that risk management is a continually evolving process.

It is our belief that the Insurance Requirements Manual will provide guidance in almost all cases encountered by the users, however there could be exceptions to the rules contained herein. In this event, the California Schools Risk Management JPA (CSRM) will provide additional support should users encounter situations that fall outside of the manual's recommendations. Additional updates to this manual will be made annually and provided to CSRM risk management members to ensure that they remain current on insurance requirements in contracts.

## FOREWORD

It should be noted that Risk Management is more of an art than a science. Therefore, this manual will provide guidance in 90% of the cases encountered by the user; however, 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 contact CSRM risk management for guidance.

1. Non-insurance sections of the contract are also very important to the risk management process. If the contractor's insurance does not cover all of their indemnity exposures with the district, it may be necessary for them to resolve.
2. 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.
3. 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 and to encourage the user to contact their insurance advisor when they encounter an abnormal situation.



Javier Gonzales  
Chief Executive Officer



## 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 CSRM risk management. 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 District as much protection as legally possible, and it has been tested in court. Altering the language would weaken your District's protection.

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

**Yes;** and of special note is that there is a special legal requirement that public entities, both state and local, may not impose a bond standard greater than being "California admitted." If it is a federally approved Surety, you are obligated to accept that Surety. This can be seen on the Internet at <http://www.fms.treas.gov/c570/index.html>.

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

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

**No;** the insurance requirements language has been carefully worded to afford your District as much protection as legally possible. Altering the language would weaken your District's protection. It is not the responsibility of your District 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.

**5. Does the “edition date” on the suggested ISO endorsements matter?**

**Yes;** there have been significant reductions in the coverage afforded to additional insured’s by “updated” versions of these endorsements. A further discussion regarding these changes is contained in Appendix C describing endorsements.

**6. 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 District. 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 burden 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.

**7. 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 District and the cost of obtaining 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 vendor’s financial capacity to purchase coverage at reasonable rates. The dollar amount of an agreement would never be the sole determining factor on the insurance.

**8. The contractor’s agent says that we cannot get the endorsements as required by the Insurance Requirements Manual 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 CSRM risk management for confirmation of the unavailability of endorsements from the contractor’s company.

**9. 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. You should also consider losses or harm that may arise from third party claims. The cost/value of the job should not be the sole determining factor in assessing proper limits; e.g. a \$500 job could generate a \$2,000,000 claim.

**10. Can we accept an insurer with less than an A.M. Best Rating A- VII or Standard & Poor's BBB?**

**Yes;** but keep in mind that the rating gives your District 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 & Poor's Ratings, you are exposing your District 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 & Poor's Ratings, as a way of protecting themselves against potential E&O claims from their clients.

**11. 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 CSRM JPA, and they will look it up for you. 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 Standard & Poor's website to obtain the rating of a specific insurance company. You must register for access, although this is free of charge. Go to [www.standardandpoors.com](http://www.standardandpoors.com) and look for a "Find a Rating" link in the margin or header.

**12. What do the Standard & Poor's or Best's Ratings mean?**

See Appendix C, page 4, for a discussion of this question. Simply, the Standard & Poor's or Best's Ratings give your District 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 District in case of a loss where they are at fault.

**13. Does a contractor need Professional Liability coverage?**

Only if the contractor is expected to do so under their contract with your District to provide your District 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; therefore, 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 brain work and they would then need

Professional Liability coverage to cover a subsequent loss due to that change in the blueprints.

**14. 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 District 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 13) will be covered by the responsible party. Keep in mind that your regular liability policy may not cover professional liability losses, and therefore your District 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 length of “tail” in your contract, do so.

**15. 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 District’s behalf when they are involved in an automobile accident, then your District may be held liable under the legal theory of respondent superior (Latin term: “Let the Master answer.”). In that case, the contractor’s automobile insurance would respond if your District has been properly named as an additional insured.

**16. 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 District’s professional liability exposures (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 District’s professionals, and therefore will not add your District.

**17. 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.

**18. Why can’t we accept a Certificate of Insurance as proof of the District being named as an additional insured?**

It is really rather simple; in the upper right-hand corner of the ACORD CERTIFICATE OF INSURANCE (sample shown in Appendix D, page D-6) 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 policies 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.

**19. 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 District. If you have an indemnity provision in your contract with the contractor, that contractor is obligated to indemnify your District whether their insurance covers the loss or not. This puts the burden on the contractor rather than your District 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 District, they do have the assets to indemnify those uninsured or underinsured exposures.

**20. Should we ask for a Waiver of Subrogation from the contractor’s insurer?**

There are two responses, depending on the program:

**Yes;** in the case of Workers’ Compensation and Property insurers; if your District does not do so, the contractor’s insurance company can look to your District 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 District. Although you may have protected your District from the contractor looking to your District’s indemnification, you have not protected your District 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 District 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 District 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.

Note: A contractor/vendor may present a “blanket waiver of subrogation.” Typically, these “blanket waivers” contain language stating that the waiver is effective as respects “any person or organization for whom the named insured has agreed by written contract to furnish this waiver.” Blanket waivers, unlike individual endorsements, will not state the specific name of your School/District; however, this is acceptable as long as the language in the waiver is equivalent to the example provided hereinabove.

**21. 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 District of legal liability for your District’s own negligence, but it does relieve your District of legal obligations arising out of the contractor’s negligence. Without the hold-harmless agreement, your District’s ability to be protected by your additional insured status is weakened.

**22. 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.

**23. 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 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.

**24. 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.

**25. 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.



## Insurance Requirements Matrix

(Recommended Minimum Amounts)

Chap	Description	Pg. of Insurance	Certificate Insured	Add'l Insured
1	<b>Building Contractors</b>	1		
	General Liability	\$5,000,000	X	X
	Automobile Liability	\$1,000,000	X	
	Workers' Compensation	Statutory	X	*
	Employer's Liability	\$1,000,000	Included	
	Professional Liability (Architects/Engineers)	\$1,000,000	X	
	Builder's Risk/Install. Floater (Consult CSRM)			
2	<b>Contractors: Painters, Plumbers, Landscapers, etc.</b>	8		
	General Liability	\$1,000,000	X	X
	Automobile Liability	\$1,000,000	X	
	Workers' Compensation	Statutory	X	*
	Employer's Liability	\$1,000,000	Included	
3	<b>Environmental Contractors or Consultants</b>	12		
	General Liability	\$1,000,000	X	X
	Automobile Liability	\$1,000,000	X	
	Workers' Compensation	Statutory	X	*
	Employer's Liability	\$1,000,000	Included	
	Pollution Liability and/or Asbestos Pollution Liability and/or Professional Liability	\$1,000,000 (occurrence); \$2,000,000 (aggregate)	X	X
4	<b>Consultants/Professional Service Providers: auditor, engineer, insurance broker, specified medical practitioners, etc.</b>	18		
	General Liability	\$1,000,000	X	X
	Automobile Liability	\$1,000,000	X	
	Professional Liability (other than physicians)	\$1,000,000	X	
	Medical Malpractice (doctors, dentists, psychologists)	\$1,000,000	X	
	Workers' Compensation	Statutory	X	*
	Employer's Liability	\$1,000,000	Included	
	Childhood Sexual Assault	*\$3,000,000	X	X
	Cyber Liability/Tech. Errors & Omissions	\$1,000,000	X	

*\*Waiver of Subrogation Required*

**To protect all of the district's interests, always require both District and California Schools Risk Management named as "Additional Insured" in Certificates of Insurance to protect all your interests.**



Chap	Description		Pg. of Insurance	Certificate Insured	Add'l Insured
5	<b>Suppliers and/or Vendors</b>		23		
	General Liability	\$1,000,000		X	X
	Automobile Liability	\$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Property Insurance	Replacement Value		X	
	Cyber Liability/Technology E&O	\$1,000,000		X	
6	<b>Bus Transportation and/or Contractors</b>		26		
	General Liability	\$2,000,000		X	X
	Automobile Liability	\$5,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	\$1,000,000		Included	
	Childhood Sexual Assault	*\$3,000,000		X	X
7	<b>Use of Facilities: Private Citizens, Organizations or Non-business groups, etc.</b>		30		
	General Liability	\$1,000,000		X	X
8	<b>Independent Charter Schools</b>		33		
	General Liability	\$5,000,000		X	X
	Automobile Liability	\$5,000,000		X	
	School Board Legal Liability	\$5,000,000		X	
	Workers' Compensation	Statutory		X	*
	Childhood Sexual Assault	\$3,000,000		X	X
9	<b>Security Personnel</b>		37		
	General Liability	\$1,000,000		X	X
	Automobile Liability	\$1,000,000		X	
	Workers' Compensation	Statutory		X	*
	Employer's Liability	\$1,000,000		Included	
	Professional Liability	\$1,000,000		X	X
		Childhood Sexual Assault		\$3,000,000	X
10	<b>Cyber Liability and Technology Errors &amp; Omissions</b>		41		
	Cyber Liability	\$1,000,000		X	
11	<b>Unmanned Aerial Vehicles (aka Drones)</b>		51		
	Aviation Liability/General Liability	\$1,000,000		X	X
	Workers' Compensation	Statutory		X	*
	Employer's Liability	\$1,000,000		Included	

*\*Waiver of Subrogation Required*

**To protect all of the district's interests, always require both District and California Schools Risk Management named as "Additional Insured" in Certificates of Insurance to protect all your interests.**

## CHAPTER 1

### BUILDING CONTRACTORS

(Contractors performing structural improvements or renovations)

#### MINIMUM REQUIREMENTS

##### I. General Liability:

- A. Commercial General Liability with limits of not less than \$5,000,000 per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability, Products- Completed Operations and all Broad Form Comprehensive General Liability enhancements. For questions concerning coverage, contact CSRM JPA.
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM to be covered as Additional Insured by endorsement for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

##### II. Automobile Liability:

- A. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

##### III. Workers' Compensation/Employers Liability:

- A. Workers' Compensation coverage as required by the State of California with a Certificate of Insurance indicating "statutory" limits.
- B. Employer's Liability with limits not less than \$1,000,000 per accident for bodily injury or disease.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

**IV. Builder's Risk Insurance/Installation Floater:** (Contact CSRM risk management Prior to Requiring this Coverage)

Special Form ("All Risks") property coverage for direct physical loss, including but not limited to, fire, theft, water, explosion, vandalism, mechanical breakdown, electrical arcing, ordinance or law, in an amount sufficient to cover the total value of the project, without co-insurance penalties. Such coverage shall include materials, items of labor, and soft costs.

Installation Floater (if applicable)

Installation Floaters are similar to Builder's Risk insurance policies in that they are designed to cover damage to material and equipment to be installed in an existing building. Installation Floaters are required from contractor's performing specialized jobs on an existing building or installing equipment or materials that are not included in a construction project contract. An example would be a contract to replace the plumbing/fixtures in the bathroom of an existing building. Limits shall be for the full replacement value of the project.

**V. Professional Liability (Errors and Omissions):**

The Professional Liability coverage is necessary where the contractor is expected to provide professional services such as engineering or architectural work.

- A. \$1,000,000 per claim.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the contract.

NOTE: Indemnity Agreement for Architects, Engineers and Landscape Design is Type III Indemnity only (limited type indemnity agreement) per California Civil Code section 2782.8.

Sample Type III Indemnity Provision (Indemnity provisions should be reviewed by legal counsel). To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the School/Community College District, its officials, officers, directors, employees, agents and volunteers from all liability arising out of, pertaining to or relating to, the negligent acts and/or omissions, or willful misconduct of Contractor.

Contractor's responsibility for such defense and indemnification shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this Agreement are to be undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

"Additional Insured" is not required.

## Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) or Insurance Services Office Form (CG 00 09 Owners and Contractor's Protective Liability Coverage Form - Coverage for Operations of Designated Contractor). (See Appendix A for form language.) Additional Insured endorsements shall provide coverage as broad as Insurance Services Office (ISO) Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations)
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Builder's Risk (Course of Construction) insurance covering all risks of loss less policy exclusions. Please check with CSRM prior to requiring this coverage.
5. Professional Liability (if Design/Build).
6. Surety bonds as described on page 5 – recommended where the total cost of the project exceeds \$50,000.

## Minimum Limits of Insurance

Contractor shall maintain limits no less than:

<b>1. General Liability:</b>	<b>\$5,000,000</b>	Per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations. 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.
<b>2. Automobile Liability:</b>	<b>\$1,000,000</b>	Combined single limit per accident for bodily injury and property damage.
<b>3a. Workers' Compensation:</b>		As required by the State of California.
<b>3b. Employer's Liability:</b>	<b>\$1,000,000</b>	Per accident for bodily injury or disease.
<b>4. Note – Course of Construction (Builder's Risk):</b>		Completed value of the project with no coinsurance penalty provisions. (Contact CSRM prior to requiring this Coverage.)
<b>5. Note – Professional Liability:</b>	<b>\$1,000,000</b>	As needed for design/build (Engineers, Architects, Land Surveyors, etc.).

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, its officers, officials, employees, and volunteers are to be covered as additional 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 and ongoing and completed operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
5. Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
6. If any policy is written on a claims-made form, the following shall apply:
  - a. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
  - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of contract work.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must

purchase an extended reporting period for a minimum of three (3) years after completion of the contract work.

- d. Optional: A copy of the claims reporting requirements must be submitted to the District for review.

## 7. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District, and admitted to do business in California or accepted by the Surplus Lines Association to do business in California. A non-admitted company should have an A.M. Best rating of A- X or higher<sup>1</sup>. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

## 8. Verification of Coverage

Contractor shall furnish the District with original certificates and amendatory endorsements effecting coverage required by these insurance provisions. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## 9. Waiver of Subrogation

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

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<sup>1</sup> **California Admitted Surety Standard:** Without a doubt one of the more important legislative enactments California Surety Federation (CSF) was able to accomplish many years ago is the requirement that public entities, both state and local, may not impose a bond standard greater than being "California admitted." Without this provision in law, local agencies, especially school districts, would be attempting to impose arbitrary standards such as (Triple A) A.M. Best Ratings of A or A+, thinking that somehow the public agency will have greater protection from default.

## 10. Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein or ensure that subcontractor's insurance is appropriate based on the nature and scope of the work to be performed by subcontractor.

## 11. Course of Construction (Builder's Risk) Insurance

**NOTE: Please contact CSRM JPA for Course of Construction (Builder's Risk) Insurance prior to requiring it from the Contractor.**

Contractor may submit evidence of Builder's 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 contractor. You must review the policy language provided for termination events such as 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.

Builder's Risk policies shall contain the following provision:

- **The District shall be named as loss payee.**

## 12. Surety Bonds - for Construction Contracts

Contractor shall provide the following Surety Bonds:

**Sample Language:** Contractor shall furnish bonds covering the faithful performance of the contract and payment of all obligations thereunder in the following amounts:

Bid Bond: 10% of the contract value.

Performance Bond: 100% of the contract value, including change orders.

Payment Bond: 100% of the contract value, including change orders.

1. A bid bond. – provides a guarantee to [Name of School/District] that the contractor will honor its bid and sign all contract documents if awarded the contract. If the contractor fails to honor the bid, then he/she and the bond issuer (the surety) are liable on the bond for any additional costs [Name of School/District] incurs in a subsequent contract for the job.
2. A performance bond. – provides a guarantee to CSRM that the contractor will complete the contract in accordance with the contract terms, including price. A Performance Bond is typically issued in conjunction with a Bid Bond.
3. A payment bond - also known as a "Labor and Material Bond," provides funds for the payment of any labor and material suppliers should the Contractor fail to pay for such costs. The person making a claim on a payment bond is typically a subcontractor or supplier of goods/materials.



## CHAPTER 2

### CONTRACTORS

(i.e., painters, plumbers, landscapers, etc.)

Any other business doing work involving the School/

Community College District

(i.e., vehicle repairs, maintenance, etc.)

### MINIMUM REQUIREMENTS

#### I. General Liability:

- A. Commercial General Liability with limits of not less than \$1,000,000 per occurrence for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. D. School/Community College District and CSRM JPA to be covered as Additional Insured by endorsement for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

#### II. Automobile Liability:

- A. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

#### III. Workers' Compensation/Employer's Liability:

- A. Worker's Compensation coverage as required by the State of California with a Certificate of Insurance indicating "statutory" limits.
- B. Employer's Liability insurance with limits of not less than \$1,000,000 per accident or disease.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

#### IV. Installation Floater (if applicable) – see description under Chapter 1.

## Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
2. Insurance Services Office Form Number CA 00 01 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:

<b>1. General Liability:</b>	<b>\$1,000,000</b>	Per occurrence for Bodily Injury, Personal and Advertising Injury, and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
<b>2. Automobile Liability:</b>	<b>\$1,000,000</b>	Combined single limit per accident for Bodily Injury and Property Damage.
<b>3a. Workers' Compensation:</b>		As required by the State of California.
<b>3b. Employer's Liability:</b>	<b>\$1,000,000</b>	Per accident for bodily injury or disease.
<b>4. Installation Floater</b>		In an amount sufficient to cover the full value of the contract/project.

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, its officers, officials, employees, and volunteers are to be covered as additional 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 the ongoing and completed operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. The Additional Insured endorsement shall be as broad as (CG 20 10 and CG 20 37 or their equivalent).

3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
5. Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.

### 6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII unless otherwise acceptable to the District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

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## **7. Verification of Coverage**

Contractor shall furnish the District with original certificates and endorsements effecting coverage required by this clause.

All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **8. Waiver of Subrogation**

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

## **9. Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein or ensure that subcontractors' insurance is appropriate based on the nature and scope of the work to be performed by them.

## CHAPTER 3

### ENVIRONMENTAL CONTRACTORS AND/OR CONSULTANTS

#### MINIMUM REQUIREMENTS

#### I. General Liability:

- A. Commercial General Liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM risk management to be covered as Additional Insured by endorsement for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

#### II. Automobile Liability:

- A. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

#### III. Workers' Compensation/Employer's Liability:

- A. Workers' Compensation insurance as required by the State of California with a Certificate of Insurance indicating "statutory" limits.
- B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- C. Employer's Liability, \$1,000,000 per accident for bodily injury or disease.

#### IV. Contractor's Pollution Liability and/or Asbestos Pollution Liability (applicable where the scope of services carries the risk of pollution exposure):

- A. \$1,000,000 each occurrence or claim with \$2,000,000 policy aggregate.

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V. **Professional Liability** (if environmental consultant, engineer, or architect, is performing services under the contract.)

- A. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- B. Executed Indemnity and Hold Harmless agreement or similar provision should be included in the service contract.

**NOTE:** Indemnity Agreement for Architects, Engineers and Landscape Design is Type III Indemnity only (limited type indemnity agreement) per California Civil Code section 2782.8.

Sample Type III Indemnity Provision. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the School/Community College District, its officials, officers, directors, employees, agents and volunteers from all liability arising out of, pertaining to or relating to, the negligence, acts, omissions, or willful misconduct of Contractor. Contractor's responsibility for such defense and indemnification shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are to be undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

"Additional Insured" is not required. Legal counsel should be consulted to review all Indemnity Provisions.

- C. 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, Contractor's Pollution Liability 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 00 01 or Claims Made Form CG 00 02).
2. Insurance Services Office Form No. CA 00 01 covering Automobile Liability, Code1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Professional Liability.

### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

<p><b>1. General Liability:</b></p> <p>(Including products and completed operations)</p>	<p><b>\$1,000,000</b></p>	<p>Per occurrence and \$2,000,000 in the aggregate for Bodily injury, Personal and Advertising Injury, and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.</p>
<p><b>2. Automobile Liability:</b></p>	<p><b>\$1,000,000</b></p>	<p>Combined single limit per accident for bodily injury and property damage.</p>
<p><b>3a. Workers' Compensation:</b></p>		<p>As required by the State of California.</p>
<p><b>3b. Employer's Liability:</b></p>	<p><b>\$1,000,000</b></p>	<p>Each accident, <b>\$1,000,000</b> policy limit bodily injury by disease, <b>\$1,000,000</b> each employee bodily injury by disease.</p>
<p><b>4. Note - Contractor's Pollution</b> (Not all apply, check with JPA for assistance on which specific forms of Liability apply:            (1) Professional Liability            (2) Pollution Liability;            (3) Contractor's Pollution;            (4) Asbestos Pollution; or</p>	<p><b>\$1,000,000</b></p>	<p>Each occurrence/<b>\$2,000,000</b> policy aggregate if Pollution/Professional services /Asbestos related services apply under the contract.</p>

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

### 2. The General Liability, Automobile Liability, Contractor's Pollution Liability and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, 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 the ongoing and completed operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. No policy shall contain an "Insured v Insured" exclusion.

3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
5. Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
6. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the Contractor's Pollution Liability policy.



7. If General Liability, Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Professional Liability coverages are written on a claims-made form:
- a. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
  - b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting for a minimum of five (5) years after completion of contract work.
  - d. Optional: A copy of the claims reporting requirements must be submitted to the District for review.
  - e. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

## 8. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable to the District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

## 9. Verification of Coverage

Contractor shall furnish the District 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. All endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves to the right to request and receive complete copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

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## **10. Waiver of Subrogation**

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

## **11. Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein or ensure that subcontractors' insurance is appropriate based on the nature and scope of the work to be performed by them.

## CHAPTER 4

### CONSULTANTS

**Professional Service Providers (i.e., psychologists/therapists, IEP examiners, solicitor, auditor, engineer, district insurance broker, specified medical practitioners, etc.)**

#### MINIMUM REQUIREMENTS

##### I. General Liability:

- A. Commercial General Liability with limits of not less than \$1,000,000 per occurrence or claim, and \$2,000,000 Aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage.
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM JPA to be covered as Additional Insured for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

##### II. Automobile Liability:

- A. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

##### III. Professional Liability (Errors & Omissions): psychologists/therapists, IEP examiners, and others listed above

- A. \$1,000,000 per claim.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or similar provision should be included in the Service Contract.

**NOTE: Indemnity Agreement for architects, engineers and landscape design is Type III only (AB 573) (see Appendix H, "Special Situations").**

- D. "Additional Insured" is not required.

**IV. Medical Malpractice: (physicians, dentists, psychiatrists)**

- A. \$1,000,000 per claim; \$2,000,000 aggregate.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
  - a. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or similar provisions should be included in the service contract.
  - b. Additional Insured Agreement is not required.
  - c. In certain circumstances the following applies: General Liability \$1,000,000 per occurrence; \$1,000,000 aggregate, and Automobile Liability with Combined Single Limits of Liability of \$1,000,000 per accident.

**V. Workers' Compensation/Employer's Liability:**

- A. Workers' Compensation insurance as required by the state of California with a Certificate of Insurance indicating "statutory" limits.
- B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- C. Employer's Liability, \$1,000,000 per accident for bodily injury or disease.

**VI. Childhood Sexual Assault: Applicable when Consultants/Professionals are working with minors on a one-on-one basis without supervision, or if left alone with minors for any reason.**

- A. \*\*\$3,000,000 per occurrence or claim
- B. All other requirements as provided under "General Liability (B through E)" above.
- C. CSRM JPA and Arthur J Gallagher have worked together to make this coverage more accessible and affordable for Independent Contractors/Consultants through the Jigsaw program at [www.jigsawrisk.com](http://www.jigsawrisk.com). Please contact CSRM's Risk Management Department for more information.
- D. **NOTE:** \*\* The specified limit of \$3,000,000 for Childhood Sexual Assault per occurrence or claim may be reduced after consultation with, and approval by, CSRM's Risk Management. The decision to reduce limits should apply to independent contractors only and not to large entities or organizations. Exceptions to this coverage may be made for Contractors/Consultants who do not have access to students.

**VII. Cyber Liability:** Recommended for Suppliers/Vendors who have access to District's electronic data, Personally Identifiable Information (PII), and/or Protected Health Information (PHI). See Chapter 10 for more information on this coverage.

- A. \$1,000,000 per occurrence or claim.
- B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

**VIII. Technology Errors and Omissions:** Recommended for Vendors/Suppliers providing hosting and/or web services, or are providing software for the performance of their services under the contract.

- C. \$1,000,000 per occurrence or claim.

- D. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the consultant's profession.
5. Childhood Sexual Assault policy to be endorsed to cover the District, its officers, officials, employees and volunteers as additional insured.

**Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

<b>1. General Liability:</b> (Including products and completed operations)	<b>\$1,000,000</b>	Per occurrence for Bodily Injury, Personal and Advertising Injury and Property Damage.
<b>2. Automobile Liability:</b>	<b>\$1,000,000</b>	Combined single limit per accident for bodily injury and property damage.
<b>3a. Workers' Compensation:</b>		As required by the State of California.
<b>3b. Employer's Liability:</b>	<b>\$1,000,000</b>	Per accident for bodily injury or disease.
<b>4. Professional Liability or Medical Malpractice:</b> (Based on profession)	<b>\$1,000,000</b>	Per occurrence.
<b>5. Note – Childhood Sexual Assault:</b> The stated limit may be reduced after consultation with, and approval by, CSRM's Risk Management. This decision to reduce limits should apply to independent contractors/consultants only and not to large entities or organizations. Exceptions may be made for consultants who do not have access to students	<b>**\$3,000,000</b>	Per occurrence or claim and in the aggregate.
<b>6. Cyber Liability*</b> Recommended for Vendors/Suppliers with access to the District's electronic data or Personally Identifiable Information (PII) and/or Protected Health Information (PHI)	<b>\$1,000,000</b>	Per occurrence or claim.
<b>7. Technology E&amp;O</b> **Recommended for Vendors/Suppliers providing hosting and/or web services, hosting services, or are providing software for the performance of their services under the contract.	<b>\$1,000,000</b>	Per occurrence or claim.

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The Commercial General Liability and Childhood Sexual Assault coverages are to contain, or be endorsed to contain, the following provision:

To the fullest extent permitted by law, the District, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of Contractor/Consultant's acts or omissions and ongoing and completed operations performed by or on behalf of the Contractor/Consultant.

3. For any claims related to this project, the Contractor/Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
4. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
5. **Optional:** A copy of the claims reporting requirements must be submitted to the District for review.
6. If Professional Liability (Errors & Omissions) or Childhood Sexual Assault coverages are written on a claims-made form, the following shall apply:
- A. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
  - B. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
  - C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of contract work.

7. Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.

## **8. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

## **9. Verification of Coverage**

Consultant shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause.. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **10. Waiver of Subrogation**

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

## **11. Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, or ensure that its subcontractor's insurance is appropriate based upon the nature and scope of the work to be performed by subcontractor.



## CHAPTER 5

### SUPPLIERS AND/OR VENDORS

#### MINIMUM REQUIREMENTS

- I. General Liability:**
  - A. Commercial General Liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 Aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
  - B. Contractor's insurance to be primary and non-contributory.
  - C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
  - D. School/Community College District and CSRM JPA to be covered as Additional Insured by endorsement for all ongoing and completed operations.
  - E. Executed Indemnity and Hold Harmless Agreement (See Appendix H) or substantially similar provisions should be included in bid specifications or contract.
- II. Automobile Liability:**
  - A. \$1,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
  - B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
  - C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- III. Workers' Compensation/Employer's Liability:**
  - A. Workers' Compensation coverage as required by the State of California with a Certificate of Insurance indicating "statutory" limits.
  - B. 30-day notice of intent to cancel, non-renew or make material changes in coverage.
  - C. Employer's Liability with limits of not less than \$1,000,000 per accident or disease.
- IV. Cyber Liability:** Recommended for Suppliers/Vendors who have access to District's electronic data, Personally Identifiable Information (PII), and/or Protected Health Information (PHI). See Chapter 10 for more information on this coverage.
- V. Technology Errors and Omissions:** Recommended for Vendors/Suppliers providing hosting and/or web services or are providing software for the performance of their services under the contract.
  - A. \$1,000,000 per occurrence or claim.
  - B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

**VI. Note – Property Insurance:**

- A. Certificate of Insurance evidencing coverage for all property owned and controlled by the Contractor which is located on or services the District’s premise(s).
- B. Vendor, at its sole cost and expense, shall procure and maintain for the duration of the contract property insurance covering equipment, machinery, and/or materials in Vendor’s care, custody or control used in connection with performance of Vendor’s services.

**Minimum Scope of Insurance**

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and including products coverage.

**Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

<b>1. General Liability:</b>	<b>\$1,000,000</b>	With limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage, including Broad Form Contractual Liability and Products-Completed Operations.
<b>2. Automobile Liability:</b>	<b>\$1,000,000</b>	Combined single limit per accident for bodily injury and property damage. Coverage to include “Owned, Non- Owned, and Hired” automobiles.
<b>3a. Workers’ Compensation:</b>		As required by the State of California.
<b>3b. Employer’s Liability:</b>	<b>\$1,000,000</b>	<b>Per accident for bodily injury or disease.</b>
<b>4. *Cyber Liability:</b>	<b>\$1,000,000</b>	Per occurrence or claim. <b>*Recommended for Vendors/Suppliers with access to the District’s electronic data or Personally Identifiable Information (PII) and/or Protected Health Information (PHI).</b>
<b>5. **Technology E &amp; O:</b>	<b>\$1,000,000</b>	Per occurrence or claim. <b>**Recommended for Vendors/Suppliers providing hosting and/or web services, or are providing software for the performance of their services under the contract.</b>
<b>6. . Note – Property Insurance</b>	<b>Replacement Value</b>	Certificate of Insurance evidencing coverage for all property owned or controlled by Vendor.

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, 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 acts and omissions of Vendor, and the ongoing and completed operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations.

3. The Vendor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.
4. Any insurance proceeds available to the Vendor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
5. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.

### 6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, and admitted to do business in California, or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

### 7. Verification of Coverage

Vendor shall furnish the District with original certificates and amendatory endorsements effecting

coverage required by this clause. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

8. If any policy is written on a claims-made form, the following shall apply:
  1. The retroactive 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 three (3) 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 retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of contract work.

### 9. Waiver of Subrogation

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

#### **NOTE: Vendor Exceptions**

There are a number of organizations/companies that provide services to your District 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 will 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 require specific limits of insurance.

## CHAPTER 6

### BUS TRANSPORTATION AND/OR CONTRACTORS

#### MINIMUM REQUIREMENTS

#### I. General Liability<sup>2</sup>:

- A. Commercial General Liability with limits of not less than \$2,000,000 per occurrence and in the aggregate, for Bodily Injury, Personal and Advertising Injury and Property Damage including Blanket Contractual Liability, Products Liability, Completed Operations.
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM JPA to be covered as Additional Insured by endorsement for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

#### II. Automobile Liability:

- A. \$5,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

#### III. Workers' Compensation/Employer's Liability:

- A. Workers' Compensation insurance as required by the State of California with Certificate of Insurance indicating "statutory" limits.
- B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- C. Employer's Liability, \$1,000,000 per accident or disease..

#### IV. Childhood Sexual Assault:

- A. \$3,000,000 per occurrence or claim..
- B. School/Community College District and CSRM JPA to be covered as Additional Insured by endorsement

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for all ongoing and completed operations.

- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

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<sup>2</sup>In those cases where a member district contracts for vehicle maintenance or repairs, Garage Liability at \$1,000,000 **AND** Garage Keepers Legal Liability (GKLL) at \$75,000 should also be maintained.

### 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 00 01 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:

<b>1. General Liability:</b>	<b>\$2,000,000</b>	Per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include Broad Form Contractual Liability and Products-Completed Operations coverage..
<b>2. Automobile Liability:</b>	<b>\$5,000,000</b>	Combined single limit per accident for Bodily Injury and Property Damage.
<b>3a. Workers' Compensation:</b>		As required by the State of California.
<b>3b. Employer's Liability:</b>	<b>\$1,000,000</b>	Per accident for bodily injury or disease.
<b>4. Childhood Sexual Assault:</b>	<b>*\$3,000,000</b>	Per Occurrence

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The General Liability, Childhood Sexual Assault Liability, and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, 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 Contractor's acts and omissions, the ongoing and completed operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations. The Additional Insured endorsements shall provide coverage as broad as (CG 20 10 and CG 20 37 or their equivalent).

3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
5. Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.

### 6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by the District and admitted to do business in California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.



## 7. Verification of Coverage

Contractor shall furnish the District with original certificates and endorsements effecting coverage required by this clause.

The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

8. If any policy is written on a claims-made form, the following shall apply:

- D. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
- E. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
- F. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of contract work.

## 9. Waiver of Subrogation

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

## 10. Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

## CHAPTER 7

### USE OF FACILITIES

(Private Citizens, organizations or non-business groups

Who may use school/community college district facilities, i.e., garden clubs, sports associations/groups, local citizen groups, etc.)<sup>3</sup>

### MINIMUM REQUIREMENTS

#### I. General Liability:

Lessee/Applicant shall procure and maintain for the duration of the contract Commercial General Liability insurance against claims for Bodily Injury, Personal and Advertising Injury, and Property Damage which may arise from or in connection with the Lessee's/Applicant's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee/Applicant. Lessee/Applicant shall furnish liability insurance providing coverage for District for all activities of Lessee/Applicant conducted on District property. The liability insurance shall include broad form contractual liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the Aggregate.

#### II. Childhood Sexual Assault Liability: Applicable to Use of Facilities involving minors.

- a. \$3,000,000 per occurrence or claim.
- b. **NOTE:** \*\* The specified limit of \$3,000,000 per occurrence or claim may be reduced after consultation with, and approval by, CSRM's Risk Management. The decision to reduce limits should apply to independent contractors only and not to large entities or organizations. Exceptions to this coverage may be made for Contractors/Consultants who do not have access to students.

#### III. School/Community College District and CSRM JPA named as Additional Insured on all liability policies required hereunder.

#### IV. Executed Indemnity and Hold Harmless Agreement (See Appendix H). PRIOR TO APPROVAL OF EVENT OR ACTIVITY THE DISTRICT MUST RECEIVE A CERTIFICATE OF INSURANCE AND APPROPRIATE ENDORSEMENT(S) NAMING THE DISTRICT AND CSRM JPA AS AN ADDITIONAL INSURED (At least two (2) weeks before Lessee uses District property).

**Sports Associations must show evidence that their General Liability Policy will respond to injuries sustained by athletic participants, and/or show a Certificate of Insurance evidencing an Athletic Participant's Medical Policy.**

#### V. Fireworks and Pyrotechnics are not allowed on school/community college district property.

#### VI. Lessee/Applicant shall state that to the best of its knowledge, the District property will not be used for the commission of any crime or act which is prohibited by law.

#### VII. Lessee/Applicant may not subcontract for services on school/community college district property without advance written approval of the District. Any outside group hired by the organization must fill out their own application and include insurance and endorsement.

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### Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
2. Childhood Sexual Assault Liability coverage.

3 CSR supports current efforts to promote alcohol and substance abuse awareness. With this in mind, CSR discourages the presence or distribution of alcoholic beverages on any CSR member property.

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### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- |                                    |                    |  |
|------------------------------------|--------------------|--|
| <b>1. General Liability:</b>       | <b>\$1,000,000</b> | Per occurrence and \$2,000,000 for Bodily Injury, Personal and Advertising Injury, and Property Damage Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations. |
| <b>2. Childhood Sexual Assault</b> | <b>\$3,000,000</b> | Per occurrence or claim limit.   |

**NOTE: \*\*** The specified limit of \$3,000,000 per occurrence or claim for Childhood Sexual Assault may be reduced after consultation with, and approval by, CSRM's Risk Management. The decision to reduce limits should apply to independent contractors only and not to large entities or organizations. Exceptions to this coverage may be made for Contractors/Consultants who do not have access to students.

## Provisions Applicable to All Facilities Use Agreements

### VIII. Deductibles and Self-Insured Retentions

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

### IX. The General Liability and Sexual Abuse and Molestation policies shall contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, CSRM JPA, the District, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of Lessee's/Applicant's ongoing and completed operations, its acts, omissions, and/or the acts and omissions of its employees, invitees, and agents, and from Lessee's/Applicant's maintenance or use of the premises.

### X. The Lessee's/Applicant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the Lessee's/Applicant's insurance.

### XI. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by the District and admitted to do business in California or accepted by the Surplus Lines Association to do business in California. A Non-admitted company should have an A.M. Best's rating of A- X or higher.

### XII. Verification of Coverage

Lessee/Applicant shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

All activities conducted on District property by Lessee/Applicant shall be at the risk of the Lessee/Applicant exclusively. Lessee/Applicant shall indemnify and hold District, its officers, officials, agents, employees and volunteers harmless against any and all losses, damages, liability, claims, demands and causes of action arising out of or in any way connected with the use

by the Lessee/Applicant of District property, including premises liability. Lessee/Applicant shall owe this indemnity obligation to District, its officers, agents and employees even if loss, damage, liability, claim, demand or cause of action resulted from District's alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive. However, Lessee/Applicant shall not obligate under this agreement to indemnify District with respect to the gross negligence or willful misconduct of District, its officers, agents or employees.

- XIII.** Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
- XIV.** Any insurance proceeds available to the contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum limits specified in the contract/agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
- XV.** Lessee/Applicant may not subcontract for services on school/community college district property without advance written approval of the District. Any outside group hired by the organization must fill out their own application and include insurance and endorsement.
- XVI.** If any policy is written on a claim-made form, the following shall apply:
- A. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
  - B. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
  - C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of contract work.

## CHAPTER 8

### INDEPENDENT CHARTER SCHOOLS

#### MINIMUM REQUIREMENTS

##### I. General Liability:

- A. Commercial General Liability with limits of not less than \$5,000,000 per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
- B. Charter School's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM JPA to be covered as Additional Insured for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or substantially similar provisions should be included in the bid specifications or contract.

##### II. Automobile Liability:

- A. \$5,000,000 Combined Single Limit of Liability for Bodily Injury and Property Damage per accident.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

##### III. School Board Legal Liability

- A. \$5,000,000 per occurrence or claim.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Executed Indemnity and Hold Harmless Agreement (see Appendix H) or similar provision should be included in the Service Contract.
- D. "Additional Insured" is not required.

##### IV. Workers' Compensation/Employer's Liability:

- A. Workers' Compensation insurance as required by the State of California with a Certificate of Insurance indicating "statutory" limits.

- B. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- C. Employer's Liability, \$1,000,000 per accident or disease.

**V. Childhood Sexual Abuse :**

- A. \$5,000,000 per occurrence or claim.
- B. All other requirements as provided under "General Liability (B through E)" above.

**Minimum Scope of Insurance**

1. Coverage shall be at least as broad as:
2. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
3. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
4. 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:

- |   |                    |   |
|---|--------------------|---|
| <b>1. General Liability:</b><br>(Including products and completed operations) | <b>\$5,000,000</b> | Per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury, and Property Damage Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations. |
| <b>2. Automobile Liability:</b>   | <b>\$5,000,000</b> | Combined single limit per accident for bodily injury and property damage.   |
| <b>3a. Workers' Compensation:</b>   |                    | As required by the State of California.   |
| <b>3b. Employer's Liability:</b>  | <b>\$1,000,000</b> | Per accident for bodily injury or disease.  |
| <b>4. School Board Legal Liability:</b>                                       | <b>\$5,000,000</b> | Per Occurrence  |
| <b>5. Childhood Sexual Assault:</b>   | <b>\$3,000,000</b> | Per occurrence or claim   |



## Deductibles and Self-Insured Retentions

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

## Other Insurance Provisions

1. The Commercial General Liability, Childhood Sexual Abuse Liability, and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, CSRM JPA, the District, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Independent Charter School; and with respect to liability arising out of Independent Charter School's ongoing and completed operations, including work or operations performed by or on behalf of the Independent Charter School, and the acts and/or omissions of the Independent Charter School's officers, employees, invitees, agents, and volunteers.

2. For any claims related to this project, the Independent Charter School's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of the Independent Charter School's insurance and shall not contribute with it.
3. Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.
4. Any insurance proceeds available to Independent Charter School that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
5. If any coverages are written on a claims-made form, the following shall apply:
  - a. The retroactive date must be shown and must be before the date of the contract or agreement.
  - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after termination of the contract or agreement.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Charter School must

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purchase an extended reporting period for a minimum of three (3) years.

- d. **Optional:** A copy of the claims reporting requirements must be submitted to the District for review.

## 6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

## 7. Verification of Coverage

Charter School shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by the Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before Charter School is approved by School Board. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## 8. Waiver of Subrogation

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

## CHAPTER 9

### SECURITY PERSONNEL

#### MINIMUM REQUIREMENTS

##### I. General Liability:

- A. Commercial General Liability with limits of not less than \$1,000,000 each occurrence, \$2,000,000 in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Such policy shall include Broad Form Contractual Liability and coverage for assault and battery, false arrest and use of firearms (where applicable).
- B. Contractor's insurance to be primary and non-contributory.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- D. School/Community College District and CSRM JPA to be covered as Additional Insured by endorsement for all ongoing and completed operations.
- E. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications or contract.

##### II. Automobile Liability:

- A. \$1,000,000 Combined single limit per accident for Bodily Injury and Property Damage.
- B. Coverage to include "Owned, Non-Owned, and Hired" automobiles.
- C. 30-day notice of intent to cancel, non-renew or make material change in coverage.

##### III. Workers' Compensation and Employer's Liability:

- A. Workers' Compensation coverage as required by the State of California with a Certificate of Insurance indicating "statutory" limits.
- B. Employer's Liability, \$1,000,000 per accident or disease.
- C. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

##### IV. Professional Liability (Errors & Omissions):

- A. \$1,000,000 per occurrence or claim.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the Service Contract.

## V. Childhood Sexual Assault: Applicable when Security Personnel or Contracted Resource Officer Performs Services when Minors are on Campus

- A. \*\$3,000,000 per occurrence or claim.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Contractors' insurance to be primary and non-contributory.
- D. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the Service Contract.

**NOTE:** \*\* The specified limit of \$3,000,000 per occurrence or claim for Childhood Sexual Abuse may be reduced after consultation with, and approval by, CSRM's Risk Management. The decision to reduce limits should apply to independent contractors only and not to large entities or organizations. Exceptions to this coverage may be made for Contractors/Consultants who do not have access to students.

### Minimum Scope of Insurance

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and including products coverage.

### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

<b>1. General Liability:</b>	<b>\$1,000,000</b>	Per occurrence and \$2,000,00 aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage. Policy shall include coverage for Broad Form Contractual Liability and Products-Completed Operations.
<b>2. Automobile Liability:</b>	<b>\$1,000,000</b>	Combined single limit per accident for bodily injury and Property Damage.
<b>3a. Workers' Compensation:</b>	<b>Statutory</b>	As required by the State of California.
<b>3b. Employer's Liability:</b>	<b>\$1,000,000</b>	Each accident, <b>\$1,000,000</b> policy limit bodily injury by disease, <b>\$1,000,000</b> each employee bodily injury by disease
<b>4. Professional Liability</b>	<b>\$1,000,000</b>	Per Occurrence
<b>5. Childhood Sexual Assault</b>	<b>\$3,000,000</b>	Per Occurrence or Claim

**NOTE:** \*\* The specified limit of \$3,000,000 per occurrence or claim for Childhood Sexual Assault may be reduced after consultation with, and approval from, CSRM Risk Management. The decision to reduce these limits should apply to independent contractors only and not to large entities or organizations. Exceptions to this coverage may be made for Contractors/Consultants who do not have access to students.

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

2. The General Liability, Childhood Sexual Assault, and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, 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 Contractor's acts and/or omissions, and the ongoing and completed operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. The Additional Insured endorsement shall be as broad as coverage provided by (CG 20 10 and CG 20 37 or their equivalent).

3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. Any insurance proceeds available to Contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.

### 5. Notice of Cancellation

Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.

### 6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in the state of California or accepted by

the Surplus Lines Association to do business in California. A Non-admitted 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.

## **7. Verification of Coverage**

Contractor shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by the Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before Contractor commences services to be performed under the agreement. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **8. Waiver of Subrogation**

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

**9.** If any policy is written on a claims-made form, the following shall apply:

1. The retroactive 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 three (3) 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 retroactive date prior to the contract effective date, the Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of contract work.

## **10. Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein or ensure that its subcontractors maintain appropriate insurance based on the nature and scope of the services being performed by the subcontractors.

**CHAPTER 10 – PART I**  
**CYBER LIABILITY**  
**(Payroll Personnel, Companies and/or Vendors**  
**Performing Services with Access to Confidential and/or**  
**Personally Identifiable Information)**

**MINIMUM REQUIREMENTS**

- I. **Cyber Liability:** Coverage shall be broad enough to respond to the duties and obligations to be undertaken by Contractor under this agreement, and shall include, but not be limited to, the following:
- A. Limits in an amount not less than \$,1,000,000 per claim and annual aggregate for Data Security & Privacy coverage, including coverage for unauthorized access and use, failure of security, breach of confidential information, of privacy perils, introduction of viruses, as well as breach mitigation costs (including notification costs and credit monitoring) and regulatory coverage. Such insurance shall be maintained in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement
  - B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
  - C. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the Service Contract.

**NOTE: Where Contractors/Vendors will have an extended presence on the District's premises, we recommend including: Commercial General Liability, Automobile Liability, and Workers' Compensation/Employer's Liability insurance which may be taken from any of the preceding insurance sections in this Insurance Requirements Manual.**

**Other Insurance Provisions**

1. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
2. Any insurance proceeds available to Contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District. Furthermore, the requirements for coverage and limits shall be
  - (1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
3. **Notice of Cancellation**  
Coverage required under this Agreement shall not be canceled or non-renewed without 30 days



prior written notice from contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.

#### **4. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

#### **5. Verification of Coverage**

Contractor shall furnish the District with original certificates and any applicable amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by the Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before Contractor commences services to be performed under the agreement. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

#### **6. Claims-Made Coverage.**

If any coverage is maintained on a claims-made basis, the following shall apply:

- a. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least ~~two~~ (3) years after completion of the contract services.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of the contract services.

**CHAPTER 10 - PART II**  
**TECHNOLOGY ERRORS & OMISSIONS COVERAGE**  
**(IT Consultants, Systems Analysts, Website Designers,**  
**Cloud Based Providers, Programmers, Software or**  
**System Installation Personnel)**

**MINIMUM REQUIREMENTS**

**I. Technology Errors and Omissions Liability (aka Technology Professional Liability).**

- A. Limits of not less than \$1,000,000 per occurrence or claim and annual aggregate. Coverage shall be broad enough to respond to the duties and obligations to be undertaken by Contractor under this agreement, and shall include, but not be limited to the following coverages:
- i. The acts, errors, omissions, negligence, and including infringement of intellectual property, the failure of technology products required by Contractor to properly perform the services intended, and electronic media liability. Vendor's policy will provide for Data Security & Privacy "Cyber" coverage (including coverage for unauthorized access and use, failure of security, breach of confidential information, of privacy perils, as well as breach mitigation costs and regulatory coverage). Such insurance shall be maintained in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement.
- B. 30-day notice of intent to cancel, non-renew or make material change in coverage.
- C. Executed Indemnity and Hold Harmless Agreement or similar provision should be included in the Service Contract.

**NOTE: Where Contractors/Vendors will have an extended presence on the District's premises, we recommend including: Commercial General Liability, Automobile Liability, and Workers' Compensation/Employer's Liability insurance which may be taken from any of the preceding insurance sections in this Insurance Requirements Manual.**

**Other Insurance Provisions**

7. Any insurance proceeds available to Contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District. Furthermore, the requirements for coverage and limits shall be
- 1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.
8. **Notice of Cancellation**  
Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from contractor to the District, except where cancellation is for non-payment of

premium, then 10 days' prior written notice shall be given.

### **9. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

### **10. Verification of Coverage**

Contractor shall furnish the District with original certificates and any applicable amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by the Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before Contractor commences services to be performed under the agreement. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

### **11. Claims-Made Coverage.**

If any coverage is maintained on a claims-made basis, the following shall apply:

- A. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.
- B. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract services.
- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of the contract services.

## CHAPTER 11

### UNMANNED AERIAL SYSTEMS (aka DRONES)

#### MINIMUM REQUIREMENTS

##### I. Aviation Liability Insurance

- a. \$1,000,000 each occurrence, \$2,000,000 in the aggregate for Bodily Injury and Property Damage, including Products Liability. Coverage may also be provided by an endorsement to a Commercial General Liability policy, in which event the following shall apply:

Commercial General Liability insurance on an “occurrence” form with coverage as broad as Insurance Services Office (ISO) Form CG 00 01, including Products-Completed Operations and broad form Contractual Liability coverage.

- b. Contractor’s insurance to be primary and non-contributory.
- c. 30-day notice of intent to cancel, non-renew, or make material change in coverage.
- d. School/Community College District and CSRM JPA to be covered as Additional Insured by separate endorsement for all ongoing and completed operations.
- e. Executed Indemnity and Hold Harmless Agreement or substantially similar provisions should be included in the bid specifications or contract.

##### II. Workers’ Compensation and Employer’s Liability (where applicable):

- a. Workers’ Compensation coverage as required by the State of California with a Certificate of Insurance indicating “statutory” limits.
- b. Employer’s Liability with limits of not less than \$1,000,000 per accident or disease.
- c. 30-day notice of intent to cancel, non-renew, or make material change in coverage.

### Minimum Scope of Insurance

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and including products coverage.

### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

<b>1. General Liability:</b> (Including products and completed operations)	<b>\$1,000,000</b>	Per occurrence and in the aggregate for Bodily Injury, Personal and Advertising Injury and Property Damage.
<b>2a. Workers' Compensation:</b>	<b>Statutory</b>	As required by the State of California.
<b>2b. Employer's Liability:</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b> Each accident, policy limit bodily injury by disease, <b>\$1,000,000</b> each employee bodily injury by disease.

## Provisions Applicable to All Insurance Requirements

### 1. Deductibles and Self-Insured Retentions

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

### 2. The General Liability and/or Aviation Liability policies are to contain, or be endorsed to contain, the following provisions:

To the fullest extent permitted by law, the District, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ongoing and completed operations and/or services performed by or on behalf of the Contractor. The Additional Insured endorsement shall be as broad as coverage provided by CG 20 10 and CG 20 37 or their equivalent.

### 3. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

### 4. Any insurance proceeds available to Contractor that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, whichever is greater.

### 5. Claims-Made Coverage.

If any coverage is maintained on a claims-made basis, the following shall apply:

(a). The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.

(b). Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract services.

(c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a

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retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of the contract services.

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## 6. Notice of Cancellation

Coverage required under this Agreement shall not be canceled or non-renewed without 30 days prior written notice from Contractor to the District, except where cancellation is for non-payment of premium, then 10 days' prior written notice shall be given.

## 7. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by District and admitted to do business in the state of California or accepted by the Surplus Lines Association to do business in California. A Non-admitted 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.

## 8. Verification of Coverage

Contractor shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements are to be signed by the person authorized by the Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the District before Contractor is permitted to perform any operations under the agreement.

However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.



## GLOSSARY

For descriptions of common forms of insurance, see Appendix F.

**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 D. This form does not provide insurance coverage. An endorsement or insurance policy is needed for that purpose.

**Additional Insured:** A person or organization not automatically included as an insured under an insurance policy, but for whom insured status is arranged, usually by endorsement. A named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (e.g., customers or owners of property leased by the named insured).

**Additional Insured Endorsement:** Policy endorsement used to add coverage for additional insureds by name, e.g., mortgage holders or lessors. There are a number of different forms intended to address various situations, some of which afford very restrictive coverage to additional insureds. (Rather than naming each additional insured, a blanket additional insured endorsement sometimes is available.)

**Additional Named Insured:** The first Named Insured is the purchaser or owner of a liability policy. An additional Named Insured is generally an entity that is closely tied or affiliated with the First Named Insured, i.e., Joint Venture, Consultant, Independent Contract, Financing Authorities, Special Districts, etc. This Additional Named Insured enjoys the rights of coverage for its overall operations. Please note that this status does not provide the ability to change or cancel coverage nor is the Additional Named Insured responsible for paying premiums.

**Agent:** One who has authority to act for another, i.e., 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.

**Bailee (custodian):** a person with whom some article is left, usually pursuant to a contract (called a "contract of bailment"), who is responsible for the safe return of the article to the owner when the contract is fulfilled. These can include banks holding bonds, storage companies where furniture or files are deposited, a parking garage, or a kennel or horse ranch where an animal is boarded.

**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.

**Certificate Holder:** An entity which is provided with an insurance certificate as evidence of the insurance maintained by another entity.

**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 District'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.

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 District's protection is to be preserved under this policy form, claims made against your District, 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, 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 District 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.

**Endorsement:** An insurance policy form that either changes or adds to the provisions included in one or more other forms used to construct the policy, such as the declarations page or the coverage form. Insurance policy endorsements may serve any number of functions, including broadening the scope of coverage, limiting or restricting the scope of coverage, clarifying the application of coverage to some unique loss exposure, adding other parties as insureds, or adding locations to the policy. They often effect these changes by modifying the existing insuring agreement, policy definitions, exclusions, or conditions in the coverage form or adding additional information, such as insured locations, to the declarations page.

**Excess Insurance: (1)** A policy or bond covering the insured against certain hazards and applying only to loss or damage in excess of a stated amount or specified primary or self-insurance. **(2)** That portion of the amount insured that exceeds the amount retained by an entity for its own account.

**Excess Liability "follow form" policy**—Excess insurance that is subject to all of the terms and conditions of the policy beneath it. In the event of a conflict, it is the underlying policy provisions that take precedence. Many excess liability policies state that they are follow form except with respect to certain terms and conditions. When this is the case, the excess liability policy is not truly on a follow form basis.

**Excess Liability Policy**—A policy issued to provide limits in excess of an underlying liability policy. The underlying liability policy can be, and often is, an umbrella liability policy. An excess liability policy is no broader than the underlying liability policy; its sole purpose is to provide additional limits of insurance.

**Named-Insured/Insured/Co-Insured:** The terms named-insured, and insured are defined in the 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.

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 District 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 District 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.

**Loss Payee:** A Loss Payee relates to property insurance not liability insurance. It is typically requested by the owner of property or equipment that is either being purchased or leased. This can include finance companies, banks, lenders, etc., or, anyone that has an interest in the property. It simply provides that in the event of a loss to the subject property, the Loss Payee receives from the insurance carrier the value of the damages to the property, partial or full value. Because the property insurance policy is purchased by the insured, a carrier will typically put both names on the check, unless directed otherwise. This can sometimes be a point of contention when negotiating a lease, purchase or mortgage.

**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 District) 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.

**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 District 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.

**Umbrella Policy—**A policy designed to provide protection against catastrophic losses. It generally is written over various primary liability policies, such as the business auto policy, commercial general liability policy, watercraft and aircraft liability policies, and employers' liability coverage. The umbrella policy serves three purposes: it provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims; it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims; and it provides protection against some claims not covered by the underlying policies, subject to the assumption, by the named insured, of a 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 A.

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 CSRM JPA for assistance when dealing with waivers of subrogation.

**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 A

### CERTIFICATE OF INSURANCE GUIDELINES

In the practice of good risk management, your District often will attempt to transfer the risk of accidental loss through contracts. Usually, your District requires the other party (contractor) to assume some of your District'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 District contracts) to protect themselves and your District 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 District) is to require insurance. The insurance should also protect the District, its officers, officials, employees and volunteers.

Your District'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 District 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 District's requirements. As the insurance coverage does not become effective automatically, your District 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 District 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.

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 (on an 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
4. Description of Coverage
5. Policy Numbers
6. Policy Periods
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 Self-Insured Retentions)
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



**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 A.M. Best rating meets or exceeds the District’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. Any must be disclosed.
- The District has received evidence for each type of insurance required.
- Evidence provides for 30-day notification to District of changes or cancellation.
- Evidence is of proper form, (i.e. certificates, endorsements or policies as appropriate).
- Correct evidence forms (e.g., Form CG 20 10 with addition date prior to 1993 for endorsements and certificate with appropriately modified wording or the equivalent such as 1037).
- The District 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 or hired if the contractor has no autos).
- Required waivers of subrogation provided.
- Documents include proper signatures.
- Descriptions of operations, locations, etc. are correct.

**(Sample Follow-up Letter)**

District letterhead

Date of Letter

ABC Construction Company

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: \_\_\_\_\_

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

Sincerely,

## LIABILITY INSURANCE CERTIFICATES

### Certificate of General Liability Insurance

1. 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.
2. Limits – The certificate should specify amounts of coverage conforming to the requirements of your contract.
3. 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

1. 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.
2. Coverages – The certificate should indicate whether the Excess Liability coverage is provided on an excess form or an umbrella form.

### Additional Insured (Liability Policies)

If you are named as an Additional Insured, the endorsement should clearly state you are an Additional Insured and for what purpose. Contractors who work on numerous projects should issue endorsements for "Any and all work performed" also known as "blanket endorsements," to ensure that documents 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 a 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. fund raising, car wash, etc.) and utilizing your district'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:

1. Property Covered – The certificate should provide an appropriate description of all property for which insurance is required;
2. Limits – The certificate should evidence appropriate amounts of coverage for the property and applicable deductibles;
3. 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;
4. 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
5. 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.

## 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.

1. 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.
2. 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.

1. Limits - The certificate should indicate amounts of Automobile Liability insurance consistent with the contract requirements.
2. 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.

## **CONTRACTORS POLLUTION LIABILITY (ENVIRONMENTAL)**

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

1. Limits – The limits should be clearly stated. Many policies of this type have a significant deductible or SIR which should also be clearly stated.
2. 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.
3. 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.

Additional Note:

All vendors and contractors should undergo a "due diligence" scrutiny by the district prior to the district accepting a contract.

## APPENDIX B

### DRAFTING INSURANCE SPECIFICATIONS

#### Summary:

This Appendix describes basic considerations in drafting insurance specifications.

#### 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 District should implement a system that establishes procedures for developing and approving contracts. We recommend that your District create a template for all contracts that may be used by departments within your District. 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 District 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 boilerplate 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 District 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 District's legal counsel. 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.

**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 District to another is commonly referred to as the hold harmless clauses within contracts. This language should specifically spell out the responsibilities of your District 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 District collaborate to create hold harmless agreements that are acceptable to your District.

### **Insurance Requirements**

Insurance requirements in a contract guarantee 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 District 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. Appendix E describes specific types of insurance that may be needed for special situations.

In particular, your District 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.

**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 District 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 District or if the indemnification clause in the contract is set aside by a court, your District 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 District 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 District'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 District, its officials, employees and volunteers and CSRM as insureds to all required liability coverage.**

Standard contract conditions should specify that your District, its officials, employees and volunteers and CSRM should be added by endorsement as insureds to all Liability policies, except Workers' Compensation or Professional Liability (Errors & Omissions) policies. In projects involving the use of subcontractors, you should require that the contractor include all subcontractors as insureds under the contractor's policies. This is seen with construction WRAP UP projects mostly. In the alternative, the contractor must furnish your District with the required endorsements or insurance policies from each subcontractor which names the District, its officials, employees and volunteers as insureds. This is a common practice for an owner to require a contractor to furnish these endorsements.

**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 District, your District's standard requirements should state that the other party's insurance is to be primary protection, and that your District'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 District at least thirty (30) days' notice of cancellation of insurance coverage.**

Your District's standard insurance requirements should state that the policies are to be endorsed to require the insurer to provide at least thirty (30) day's written notice of cancellation. Sixty (60) days' notice is better.



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 District’s standard form should provide for at least thirty (30) day’s written notice of cancellation.

**Specify that the insurance is to be placed with insurers that meet a certain minimum rating, unless otherwise acceptable to your District.<sup>1</sup>**

The ratings given by A.M. Best & Co. and Standard & Poor’s 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 & Poor’s uses a single rating scheme measuring the company’s overall financial strength

The management rankings currently used by Best and the rankings used by Standard & Poor’s are:

Best Ratings		Standard & Poor’s	
A++, A+	Superior	AAA	Extremely Strong
A, A-	Excellent	AA+/-	Very Strong
B++, B+	Very Good	A+/-	Strong Adequate
B, B-	Good	BBB+/-	Less Vulnerable
C++,	Fair	BB+/-	More Vulnerable
C+ C,	Marginal	B+/-	Currently Vulnerable
C-	Below Minimum Standards	CCC+/-	Currently Highly Vulnerable
D	Under State Supervision	CC+/-	Under Regulatory
E	in Liquidation	R	Supervision
F			

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

The above analogy between Best ratings and Standard & Poor’s 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.

<sup>1</sup> **California Admitted Surety Standard:** Without a doubt one of the more important legislative enactments CSF was able to accomplish many years ago is the requirement that public entities, both state and local, may not impose a bond standard greater than being “California admitted.” Without this provision in law, local agencies, especially school districts, would be attempting to impose arbitrary standards such as (Triple A) A.M. Best Ratings of A or A+, thinking that somehow the public agency will have greater protection from default.

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. In the middle, Class VII surplus ranges from \$50,000,000 to \$100,000,000.

Your District should require that insurance be placed with companies that have a minimum Best's rating of at least A: VII and a Standard & Poor's Rating (if rated) of at least BBB unless specific approval for a lower rating has been granted by your District. 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 & Poor's 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

Standard & Poor's 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 District. In such cases, your District 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 District should only accept a non-admitted 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 District may then become responsible. Contact CSRM risk management 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 District 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. Checklists at the end of this manual 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 product 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 District. Therefore, you may wish to require:

- > 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 District'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 District 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 District's insurance requirements, the tenant may attempt to pass the cost along to your District. This form provides a separate aggregate limit for all locations occupied by the tenant. While this is desirable from your District'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 District.
- > **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 District does not own. Additional notation: There is only a general aggregate – not a products/completed aggregate. This is not commonly accepted by insured.
- > **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. This form appears intended 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.

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.

### **How much is enough?**

Note that increasing jury verdicts and recent changes to coverage forms make higher limits advisable. Studies have shown that jury verdicts against public entities have risen more than 50% in recent years (see [www.iii.org](http://www.iii.org)). Also, recent changes to the CGL insured contract definition may bring defense costs within the limit of insurance, eroding the coverage available. The defense is within the limits if there is a conflict or your District selects separate defense counsel.

### **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 District'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 District as a material breach of contract.

### **2009 ACORD Form Changes**

#### **New Cancellation Wording.**

In September 2009, ACORD made significant changes to the ACORD 24 and ACORD 25. However, the main change involved essentially removing notice of cancellation from these certificate forms. This same change was made to all of the other ACORD certificate and evidence forms (ACORD 20, 21, 22, 23, 27, and 28) in December 2009.

Why was this change made? It began with ACORD being pressured by state regulators who had taken the position that notice of cancellation is a policy right, not a voluntary service, and should be governed by the policy. Only filed policy forms can grant policy rights, not certificates.

The truth is that even prior to the change an agent or broker could not guarantee that an Additional Insured or Certificate Holder would receive a 30-day notice. The change is to emphasize that such wording however well-intentioned, is essentially fraudulent since the agent/broker was guaranteeing the actions of an insurance company beyond their actual ability to do so.

We recommend that Districts continue to require the 30-day notice to our vendors/contractors on notice as to your expectations but that **YOU NOT HOLD UP CONTRACTS** if the vendor/contractor is unable to provide the notice provision.

## APPENDIX C

### ADMINISTERING INSURANCE REQUIREMENTS: A STEP-BY-STEP PROCESS

#### Summary:

This appendix describes the basic steps in administering insurance clauses in contracts where the other party is required to provide insurance to protect your District, 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.

#### 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 District and the other party. Appendix C explains the fundamentals of drafting insurance specifications.

Sample sets of insurance specifications that have been developed for the most commonly encountered situations appear in Appendix F.

The glossary 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.

Chapters 1 through 7 require the contractor's insurance agent or insurer to fill out and return District-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 Appendix D. Note, while District-supplied forms and

endorsements make verification of compliance easier, if an agent, broker or insurer chooses not to work with them they will at least know what you want.

### **Step 3: Review the completed forms promptly.**

Your District'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 forty-five (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 (including the current forms) to the other party stating that your District requires receipt of a new set of forms before expiration of the existing coverage. In general, your District should require its own forms whenever possible. ISO standard forms, not manuscript forms.

Your District should develop a one-page checklist that would be completed for each contract (see Appendix G, page 5). This checklist would be used to compare the District'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 District 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.

### **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 District'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 District. If the District'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.



## APPENDIX D

### OBTAINING VERIFICATION OF COMPLIANCE

#### Summary:

Your District 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 District should require that the insurer use forms provided by your District. If the insurer insists on use of insurer-provided forms, the forms must be modified to comply with District 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, that 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 District-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.

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 District before work begins.

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

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

**CHANGES IN ENDORSEMENT FORM:  
ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS  
(FORM B)**

**Additional Insured Issues**

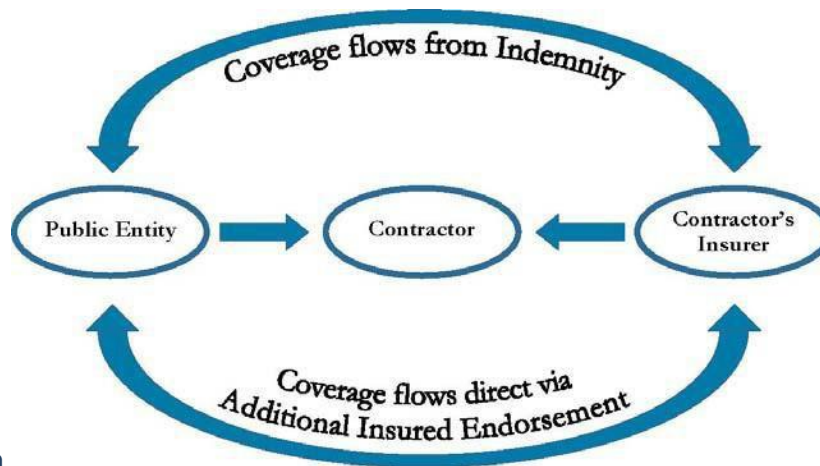
- A. The old preferred forms 20 10 11 85 or 20 10 10 01 **and** 20 37 10 01

This gives District coverage for

1. Products and completed operations;
2. Ongoing operations; and,
3. Direct access to insurance coverage even for District's sole negligence as if District purchased the policy.

- B. The new less-preferred forms (07 04 Additions)

- Attempt to limit District's coverage to vicarious liability for loss covered in whole or in part by contractor's negligence (i.e., no more sole negligence).
- Can get completed operations with 20 37 form.



- C. Diagram

- D. More detailed information is available from CSRM JPA or other industry reference

- E. Summary – in order of preference:

- Best: CG 20 10 11 85 covers all bases.
- OK: CG 20 10 10 01 and 20 37 10 01.
- Least advisable: CG 20 10 07 04 and 20 37 07 04.

**The old Form Numbers are CG 20 10 11 85** (the 85 in the number sequence is the “addition 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.

**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” for the insured by or for you (emphasis added).

The 1993, 1997 and 2001 versions read:

**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 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:

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

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.

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 District 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 cases.

It is recommended that for contractors, your District also request another form (CG 20 37 10 01), which contains coverage for products-completed operations. This version reads:

**WHO IS AN INSURED** is amended to include as an insured the person or organization that is 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: 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. 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.
  - 1. “Bodily injury” or property damage” occurring after:
    - 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
    - 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 contractors or subcontractor engaged in performing operations for a principal as a part of the same project.
- B. “Bodily injury” or “property damage” arising out of any act or omission of the additional insured(s) or any of their “employees.”
- C. “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.

**REPRODUCTION OF ACORD, INC. FORM**

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**

Date: (MM/DD/YYYY)

The above 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.

<b>PRODUCER</b> <i>This block identifies the Agent or Broker</i>	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 POLICIES BELOW.	
<b>COVERED PARTY</b> <i>The Insured is your district's contractor or lessee</i>	INSURER A	<i>The Insurer will be identified here. The Insurer letter appears again near the left margin under "Type of Coverage" to show which insurer provides which coverage</i>
	INSURER B	
	INSURER C	

THIS IS TO CERTIFY THAT THE COVERED PARTY NAMED ABOVE IS PROVIDED WITH THE COVERAGES LISTED BELOW FOR THE 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 COVERAGE DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH COVERAGE. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS (*This notice states that the policy supersedes the certificate form.*)

INS. LTR.	TYPE OF COVERAGE			POLICY NO	EFFECTIVE (MM/DD/YYYY)	EXPIRATION (MM/DD/YYYY)	LIMITS	
	<b>GENERAL LIABILITY</b>				These two columns show inception and expiration dates for policies identified. Pay special attention that coverage does not expire before and during your project or lease.		EA OCCURRENCE	\$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (EA OCCUR)	\$
		CLAIMS MADE	OCCUR				MED EXP (ANY ONE PERSON)	\$
	WRONGFUL ACTS						PERSONAL & ADV INJURY	\$
	ERRORS & OMISSIONS						GENERAL AGGREGATE	\$
	<b>GENERAL AGGREGATE LIMIT APPLIES PER</b>						PRODUCTS – COMP/OP AGG	\$
		POLICY	PROJECT				LOCATION	
	<b>AUTOMOBILE LIABILITY</b>			The columns under "Type of Coverage" show what is provided through the Agent or Broker identified above. If the insured uses more than one Broker, this certificate will not identify all existing.			COMB SINGLE LIMIT (EA ACCIDENT)	\$
	ANY AUTO						BODILY INJURY/PER INDIV	\$
	ALL OWED AUTOS						BODILY INJURY/PER ACCID	\$
	SCHEDULED AUTOS						PROPERTY DAMAGE	\$
	HIRED AUTOS							
	NON-OWNED AUTOS							
	<b>GARAGE LIABILITY</b>						AUTO ONLY – EA ACCIDENT	\$
	ANY AUTO						OTHER THAN EA ACC	\$
							AUTO ONLY AGGR	\$
	<b>EXCESS/UMBRELLA LIABILITY</b>						EA OCCURRENCE	\$
		OCCUR	CLAIMS MADE				AGGREGATE	\$
								\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
	<b>WORKERS' COMPENSATION AND EMPLOYERS LIABILITY</b> Any Proprietor/Partnership/Executive Officer/Member Excluded? If yes, explain under Special Provisions						WC STAT	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE – EA EMPL	\$
							E.L. DISEASE – POLICY LIMIT	\$

*The above columns to the right identify 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 coverage*

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT /SPECIAL PROVISIONS <i>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.</i>	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 <b>AUTHORIZED REPRESENTATIVE</b> <i>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.</i>
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<b>CERTIFICATE HOLDER</b> <i>Certificate Holder is your District</i>	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 <b>AUTHORIZED REPRESENTATIVE</b> <i>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.</i>
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## APPENDIX E

### SPECIAL SITUATIONS

#### **News Flash: School/Community College Districts Face New Restrictions in Contracting With Design Professionals**

With the enactment of [AB 573](#) (Wolk), many California public agencies including school/community college districts face new restrictions on the indemnity protections they can require when engaging design professionals.

The law applies to contracts (or amendments to existing contracts) entered into after January 1, 2007 with (1) licensed architects; (2) licensed landscape architects; (3) registered professional engineers; and (4) licensed professional land surveyors.

This law, which adds [Section 2782.8](#) to the California Civil Code, provides that agreements between most public agencies and the listed types of design professionals may only require the design professionals to indemnify and defend the public agency for liability arising out of the negligence, recklessness, or willful misconduct of the design professional. A broader indemnity provision is unenforceable, and the parties may not, by contract, waive this statutory limitation. Interestingly, the new law does not apply to the State of California, but does include cities, counties, special districts and joint powers authorities.

#### **What indemnity language is now acceptable?**

An example of an indemnity provision that complies with AB 573 would be the following: "... Design Professional shall indemnify, keep and save harmless the Public Agency... against any and all suits, claims, actions, damages, liabilities, costs and expenses [etc.] ... **that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional**, its employees, subcontractors, or agents in the performance (or non-performance) of services under this Agreement."

A provision that would not comply:

"... Design Professional shall indemnify, keep and save harmless the Public Agency... against any and all suits, claims, actions, damages, liabilities, costs and expenses [etc.] ... **that arise out of, pertain to, or relate to the services of the Design Professional**, its employees, subcontractors, or agents in the performance (or non-performance) of services under this Agreement."

The key issue is that the indemnity must relate to the negligence, recklessness or intentional misconduct of the professional. It cannot cover causes that are not related to the fault of the design professional.

## Professional Services Contracts

Professional liability insurance protects against losses that occur when a professional fail 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. The District will not be made an additional insured under a professional liability policy.

When contracting for professional services, you 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 District will name the consultant, your District and any other connected party as defendants. Even though the consultant may be the party liable under the law, your District, 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 District 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 District, 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 non-owned and hired automobiles. The consultant should have this coverage anyway, so your District's requirement does not pose a hardship.

Unless the consultant is a sole practitioner, your District 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 District 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 District 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 District for the consultant's professional acts, errors or omissions (such as design errors) is often not insurable. In such case, your District would be relying entirely on the consultant's own assets to pay the promised indemnity. Note, however, that your District would seldom be liable for the loss, as the concept of professional liability applies to a practitioner of that profession. The only way your District could be directly liable for a professional error is if it negligently chose the consultant, negligently signed off on, or negligently approved a design or work product.

Chapter 4 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 high schools or community college building is, 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 District'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 non-admitted. 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 District, with a built-in tail. The policy may cover all design professionals on a project. This arrangement affords greater protection for the District'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).

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 District. Although there are no absolute guarantees to assure that your District 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.

#### **> Builder's Risk (Check with CSRM JPA Prior to Requiring Coverage)**

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 District 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 District's option, also include consequential loss insurance, if your District 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.

### > Loss Payments

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

### > 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 District 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 District 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 attorney's fees, resulting from the failure to obtain such waiver.

### 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 Chapter 2. 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. Assuring adequate insurance protection for all concerned poses certain technical and logistical problems because of the numerous parties involved. An approach often advocated to deal with these complexities is called the Construction Insurance Program (CIP).

CIP (often referred to as a "wrap up") 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. These coverages may include general liability, professional 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 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 CIP projects 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.

> 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. Contact CSRM JPA for additional information on CIP coverage.

### **Contracts with Private Parties**

Occasionally, your District 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 District could either modify the custom forms or accept an endorsement to the homeowners or tenant's package policy provided by the insurer.

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 District, and a master policy is issued to your District 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 District. The advantage of special event coverage is that your District can determine coverage and limits. Contact your risk management advisor for information concerning the availability of a special events insurance program for your District.

### **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.

Chapter 3 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 District is the owner. The encroachment or other permit process must be handled differently. Frequently contractors and consultants are not made aware of, the District'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 District's specific requirements until they have been hired by the private sector firm to conduct testing. Without preventing the needed testing or cleanup, the District must recognize how to transfer risk with the best protection for the District while still reaching the common goal.

Chapter 3 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, Contractors Pollution Liability, Asbestos Pollution and/or Errors & Omissions insurance carriers may not name the District as additional insured. If the District 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 MCS-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. However, it only applies to vehicles subject to financial assurance requirements of the Act; that is, which are subject to Federal jurisdiction. It may not provide coverage in situations where substances are transported that do not specifically fall within the definitions contained in the Act.

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 Cal OSHA;
- > 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.

**Chapter 3 contains insurance requirements appropriate for environmental contractors and/or consultants. These same insurance requirements are appropriate for transporters of hazardous wastes.**

## APPENDIX F

### 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**

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 – Check with CSRM JPA Prior to Requiring Coverage**

Also referred to as Course of Construction (COC) 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, repair or renovation, as well as equipment and materials to be installed. Installation Floater insurance is closely related, covering equipment during transit, installation, and/or testing.

#### **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. While we strongly recommend that this coverage be provided on an occurrence basis, this form can also be written on a claims-made basis.



### **Garage Keeper'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 garage keeper 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.

### **Owner Controlled Insurance Program (OCIP)**

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

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

OCIP policies are not as widely used in California, as they are 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 OCIP policy would be an acceptable alternative. Appendix B contains a sample OCIP 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 (reader should also see Appendix E "Special Situations").

### **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.

Property insurance should be required when your District has a financial interest in property leased to others. Generally, your District 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 District. The advantages of your District 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 District), your District may wish to have the tenant purchase the insurance and name your District 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 District 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 District 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.

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:

- > 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 District being bonded (principal), and the District 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 (contractor).

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 District) 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).

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 bases. 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 District's requirements.

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

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 District.

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. A risk advisor or CSRM JPA can provide additional assistance if more information is needed.

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## APPENDIX G

### SAMPLE CHECKLISTS

1. Potential High-Risk Situations
2. Risk Analysis Worksheet
3. Project Checklist
4. Hold Harmless/Indemnification Review
5. Severity-related Questions

## Potential High-Risk Situations or Special Insurance Required

- \* Crowd exposures
- \* Plumbing
- \* Work involving vehicles
- \* Work involving watercraft
- \* Medical services
- \* Legal services
- \* Other professional services
- \* Zoning or planning services
- \* Use or serving of alcohol
- \* Work with natural gas
- \* Work near waterways
- \* Any pollution or environmental exposure
- \* Maintenance or inspection services
- \* Use of caustics, flammables, explosives
- \* Work involving utilities/provisions of
- \* Heavy equipment
- \* Computer hardware or software
- \* Work near water, docks, wharves
- \* Work involving aircraft
- \* Marine work of any kind
- \* Construction management
- \* Handling of funds or assets
- \* Inspection services
- \* Electrical work
- \* Work near roads
- \* Work near airports
- \* Design engineering or architectural services
- \* Surveys, soil engineering, topographical surveys
- \* Armed guards, use of armored cars
- \* Work involving boilers, pressure vessels, or Services turbines

## Risk Analysis Worksheet

Activity Contemplated in Contract	General Liability	Auto Liability	Workers' Comp	Errors & Omissions	Builder's Risk	Aircraft Liability	Special Coverage
Advertising publication	P (1)		±(Statutory)				
Aircraft: use, ownership or maintenance of						P (10)	
Animals: care use of, maintenance of	P (1)		±(Statutory)				± (10)
Caustics: use or handling of	P (3)	±(1+)	±(Statutory)				± (3+)
Child care	P (5)	±(1)	±(Statutory)				± (5+)
Construction, remodeling	P (5)	±(5)	P (Statutory)	± (1+)	±Value		
Crowd (more than 10 persons)	P (5+)	±(1)	±(Statutory)				
Electricity: use of electrical work, repair	P (3)	±(1)	±(Statutory)		±Value		
Emission or discharge of potential	P (5)	±(1)	±(Statutory)				P (5)
Explosives: use of, storage/transportation/handling	P (10)	± (1)	±(Statutory)		±Value		± (5)
Flammables, usage of	P (5)	± (1)	±(Statutory)				
Food: service, sales	P (3)	±(1)	P (Statutory)				
Medical services, skilled	±(1)	±(1)	±(Statutory)	P (3+)			± (3)
Nuclear/radioactive material: use of	P (1)						± (5)
Plumbing/sewer: maintenance, construction, repair	P (3+)				±Value		
Professional services other than medical or design	±(1)	±(1)	±(Statutory)	P (1+)	±Value		
Professional services: engineering or architectural	±(1)	±(1)	±(Statutory)	P (1+)			
Toxics: use or handling of	P (1+)	±(1)					± (5+)
Trucking: transportation, solid waste hauling	±(1+)	P (5+)	±(Statutory)				
Tunneling: excavation	P (10)	±(1)	±(Statutory)		±Value		±
Welding, cutting with torch	P (5)	±(1)	±(Statutory)		±Value		

Key: P = Required      ±= Probably Required

Identify the types of risks involved in the contract you are analyzing.

For each required category of insurance, use the activity with the highest risk number to determine limits to require.

(1) = \$1 million      (3) = \$3 million      (5) = \$5 million      (10) = \$10 million







## CONTRACT REVIEW CHECKLIST

### HOLD HARMLESS/INDEMNIFICATION REVIEW

1. Contract Date/Parties: \_\_\_\_\_
2. Party(ies) Accepting Risk: \_\_\_\_\_
3. Type of Risk Accepted: \_\_\_\_\_
4. Breadth of Risk Accepted: Negligence Own Joint Other  
**Direct** **Consequential** | Sole
5. Nature of Damage/Injury Accepted:
 

Property Damage:	<input type="checkbox"/> Our property	<input type="checkbox"/> Other party's property	<input type="checkbox"/> Property of third Persons
Bodily Injury/Personal Injury:	<input type="checkbox"/> Our employees	<input type="checkbox"/> Other party's employees	<input type="checkbox"/> Third party employees

**INSURANCE REVIEW**  
No answer means either it is not mentioned in the contract or it is specifically

	Required of You		Required of Others	
	Yes	No	Yes	No
1. Liability Insurance				
a. Is it Required?	\$	\$	\$	\$
b. Limits of Liability	_____	_____	_____	_____
c. Special Coverage Required	_____	_____	_____	_____
d. Occurrence v. Claims Made Coverage	_____	_____	_____	_____
e. Named as Additional Insured	_____	_____	_____	_____
f. Cross Liability	_____	_____	_____	_____
g. Contractual Limits Required	_____	_____	_____	_____
h. Cancellation Notice	# of Days	_____	_____	_____
i. Certificate or Other Evidence	_____	_____	_____	_____
j. Other: _____	_____	_____	_____	_____
2. Workers' Compensation	Yes	No	Yes	No
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	# of Days	_____	_____	_____
g. Certificate or Other Evidence	_____	_____	_____	_____
h. Other: _____	_____	_____	_____	_____
3. Property Insurance	Yes	No	Yes	No
a. Is it Required?	_____	_____	_____	_____
b. Valuation method required	* ACV	* RV	* ACV	* RV
c. Additional Named Insured/Additional Insured	_____	_____	_____	_____
d. Waiver of Subrogation	_____	_____	_____	_____
e. Cancellation Notice	# of Days	_____	_____	_____
f. Certificate or Other Evidence	_____	_____	_____	_____
g. Other: _____	_____	_____	_____	_____
4. Automobile Liability Insurance	Yes	No	Yes	No
a. Is it Required?	_____	_____	_____	_____
b. Valuation method required	\$	\$	\$	\$
c. Additional Named Insured/Additional Insured	_____	_____	_____	_____
d. Waiver of Subrogation	_____	_____	_____	_____
e. Cancellation Notice	# of Days	_____	_____	_____
f. Certificate or Other Evidence	_____	_____	_____	_____
g. Other: _____	_____	_____	_____	_____

## Severity-related Questions for the Contract Risk Analyst

- > How many persons will be involved in the activity?
- > What will be the nature of their work?
- > How many are exposed to injury from one event?
- > Can persons not associated with the project/activity be harmed?
- > What is the exposure to natural disaster (earthquake, flood, windstorm, etc.)?
- > What effects would a disaster have on the property or people involved?
- > What would be the economic consequences of a delay (to the district)?
- > What is the value of district property associated with the activity?
- > What types of vehicles will be used, if any? Do they carry passengers?
- > How many people will occupy/use the finished product/structure?
- > How many could be harmed from an occurrence at the site?
- > Could injuries result later from latent defects or poor design?
- > Is there any exposure to disease, carcinogens, structural failure, crowd panic, fire, crashes, explosions or other occurrences with catastrophic potential?

The objective of these questions is to find the lurking catastrophe in the contracted activity of its aftermath. Some real-life examples of extremely severe loss incidents could include:

- > Communicable disease (such as Legionnaire's disease) distributed by a ventilating system
- > Collapse of a structure (such as the 1981 Hyatt-Kansas City skywalk)
- > Plane crashes
- > Ferry sinking
- > Failure of parking structures during earthquakes
- > Multiple casualties from riots such as at various popular music concerts or international soccer games

## **APPENDIX H**

### **SAMPLE FORMS**

1. Hold Harmless Agreements

## 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 promise 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.

### Example 1 – Strict or Type I Indemnity Language

Contractor shall hold harmless, defend and indemnify District 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 District.

In the first example, the contractor promises your District to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your District and the contractor or its subcontractors. **Caution: While this type of agreement provides the broadest protection for the District, it would be subject to challenge under Civil Code Section 2782(b) because it purports to indemnify the District 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 District 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 District.

In this second example, the District receives indemnity if it was not negligent or if its negligence was only passive. A great deal of case law exists 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 District 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.

### Example 3 – Limited Form

Contractor agrees to protect, indemnify and save harmless District 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 District, 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 District.**

### 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 District 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 District as a result of my participation in the event. This release is intended to discharge the District, 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.