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**CONTRACTUAL
R I S K
TRANSFER MANUAL**

Housing Authorities Risk Retention Pool

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Foreword

A contract is an agreement in which each party obligates itself to do something. Usually one party agrees to provide goods or services while the other party agrees to provide compensation for those goods or services.

The contractual relationship often creates circumstances that lead to the possibility of claims for damages.

QUESTION: Who should be responsible for paying these claims for damages?

ANSWER: The party having control of the conditions that led to the damages.

In a nutshell, this is what contractual risk transfer is all about.

The parties agree before a loss occurs who will be responsible for resolving that loss (indemnification). They also make arrangements for the money that will pay for the losses (insurance).

The purpose of this manual is to serve as a guide in developing and verifying proper indemnification and insurance requirements in contracts.

It is proper and appropriate for housing authorities entering into contracts for goods and services to transfer the liability exposures created by those contracts to the parties controlling the circumstances and conditions which might lead to claims of damage. This manual is intended to assist you in achieving that objective.

In addition to the practice of good risk management there are also specific regulations from HUD impacting the use of their funds that require contractual risk transfers.

“The contractor shall be responsible for all damages to persons or property that occur as a result of the contractor’s negligence, and shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. The contractor shall hold and save the PHA/IHA, its officers and agents, free and harmless from liability of any nature occasioned by the contractor’s performance.”

HUD Form 5370 section 2(d)

“Under no circumstances shall the PHA assume the liability of the contractor under a Hold Harmless or Contractual Liability clause.”

The Comprehensive Improvement Assistance
Program Handbook Chapter 6 page 18 Sec. (2) c.

The failure to properly transfer the risk will place the PHA in the position of responding to claims that are the responsibility of the contractor. This could be a violation of the spirit, if not the letter, of the HUD regulations.

The thought of reading about **insurance** is not very pleasant. Knowing that, HARRP staff has attempted to make this manual readable and interesting by minimizing jargon wherever possible and emphasizing practical suggestions to help make your job easier.

If you work with contracts you have to know some risk management and insurance. Approach the subject with an open mind and you will find that it is not the bitter pill you have imagined.

Feel free to call HARRP staff if you have any questions.

Introduction

In the practice of good risk management, your Authority often will attempt to transfer the risk of accidental loss through contractual provisions. Usually your Authority requires the other party to a contract (*Contractor*) to assume some or all of the potential liability arising out of the activity described in the contract. This transfer is appropriate, as the contractor is most often the party in the best position to control a possible loss because he/she has control of the property or the activity from which the loss might occur.

This transfer of risk is achieved by requiring suppliers, contractors, tenants, and users of public facilities (*i.e., the other party to most contracts*) to protect themselves and your Authority against claims or lawsuits 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 Authority*) is to require insurance. The other party's insurance should protect the Authority, its officers, officials, employees, and volunteers.

Your Authority'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. A hold harmless and indemnification clause is an agreement by which one party assumes the liability of another and agrees to defend them in the event of a claim. **It is the legal instrument of the risk transfer, while the insurance is the financial guarantee.** The hold harmless and indemnification clause should be written to take effect immediately upon execution of the contract. It should contain provisions that the Authority be held harmless, defended, and indemnified, and should describe the extent of such indemnification. The extent to which one party can transfer risk to another is controlled by each state's laws. We have attempted in this manual to provide state specific wording where appropriate.

The insurance policy, which financially supports the hold harmless and indemnification clause, 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 Authority's requirements.

As the insurance coverage does not become effective automatically, your Authority should require proof that the insurance is in effect before the contract is executed.

An award of the contract, conditioned upon the receipt of satisfactory proof of the proper insurance before performance begins, should be clearly spelled out in the Request for Proposal (RFP).

As proof of coverage, most insurance agents and brokers will provide a document called a **certificate of insurance**. Issuance of a certificate serves as some 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 Authority what exclusions or limitations may be found in the contractor's insurance policy. Therefore, your Authority **must** receive and review a copy of the policy or an **endorsement** amending the coverage to make sure that the actual required coverage is in effect. You should make every effort to obtain and review the endorsement or (*if necessary*) the actual policy before work begins pursuant to the contract.

The remaining chapters in this manual explain:

- How to establish insurance requirements for contracts with various contractors, tenants, vendors, and users of public property;
- How to monitor their compliance with those requirements during the term of the contract; and
- What to look for when you review insurance policies and endorsements.

Administering Insurance Requirements in Contracts

... *An overview*

Summary:

This chapter describes the basic steps in administering insurance clauses in contracts where the other party is required to provide insurance to protect your Authority, 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.*
- 5. Inform the other party's insurer immediately in writing of incidents or claims that may be covered by the insurance.*

Step One

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 Authority and the other party. Section 3 explains the fundamentals of drafting insurance specifications that have been developed for the most commonly encountered situations. Examples of these specifications appear in Sections 5 and 6 as exhibits.

The specification exhibits contain only insurance requirements. You will also need to include a **hold harmless** or **indemnification** clause, developed by legal counsel, in your contracts. Appendix C provides sample clauses appropriate for many situations. **However, the actual clause used should be developed by your Authority's legal counsel and reviewed by your risk manager or HARRP to verify that it is appropriate for your specific contracts.**

Step Two

Inform bidders of the insurance requirements early in the bid process and distribute forms promptly:

The sample specifications in Section 5A provide recommendations for the types and amounts of insurance that should be required for various kinds of contracts. They are based on a *best case* scenario. Sometimes, you will not be able to persuade your contractors to provide what you are requesting. You will need to either seek additional bidders or negotiate the best available protection for the Authority that you can.

In bid situations, insurance specifications should be included 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 coverage. Second, the bidder has the opportunity to forward the specifications to its insurer for approval before the bid is submitted, thus eliminating delay in awarding the bid.

A sample insurance certificate form is shown in Appendix B as Exhibit B-1, followed by an annotated form Exhibit B-2. *(Most insurers insist upon using their own form. If, after examining these forms, you have reason to believe they don't meet your requirements, you should contact HARRP as soon as possible so that we can assist you before you execute the contract.)*

Step Three

Review the completed insurance documentation promptly:

Immediately upon receipt of the insurance forms you should review them to determine if they comply with your requirements. If not, you should inform the bidder of the deficiencies.

Some PHAs require that the insurance documentation be submitted a few weeks before the remaining bid materials so they have sufficient time to review the materials and correct any discrepancies.

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 tickler file for 45 days before the expiration of the insurance. At that time, if you have not received proof of renewal or replacement of coverage, you should send a letter to the other party stating that your Authority requires receipt of a new set of forms before expiration of the existing coverage (*sample letter in "Using This Manual" section*).

If renewal of expiring coverage is not received by the expiration date, work must STOP. (*HUD Handbook 7485.3 appendix. I IV Sec.4c*).

Step Four

Save the signed forms:

Save the forms **indefinitely**, as claims may be presented many years after work is completed. The forms may be your Authority's only proof of coverage for the claims created by that contractor. If the scope of work will not be retained with these forms, the forms should be cataloged so one can identify what the job entailed and the specific location where it occurred (*i.e. wall insulation at XYZ Development*).

Step Five

Inform the other party's insurer immediately, in writing, of any incidents or claims that may be covered by the insurance:

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.

Failure to comply with the claims reporting requirements could make the insurance coverage unavailable. Send such written notifications to the agent listed on the applicable endorsement. As you may not have immediate access to the policy's notice-of-claim requirement clause, you should assume the worst case version: **report incidents or claims to the other party's insurer immediately**. If you have a copy of the policy, follow the reporting procedures explicitly. Retain copies of all correspondence (*A model letter for this purpose is included in the "Using this Manual" section*).

Usually the insurance agent completes the certificate form and includes the name, address, and telephone number of the agency, but not the insurer. Insurance industry standard endorsement forms often do not include this information. (*See the Declarations page of the insurance policy for the information if this is the case, or call the agent to obtain it.*)

Most insurance policies require reporting of incidents as well as 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 necessarily 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 and make it clear that you are reporting a claim. Keep a copy of all correspondence.

Drafting Insurance Specifications for Contracts

Summary

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

Evaluate the risk:

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

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 kind of injuries could occur to them?
- What property could be damaged and how severely?
- What is the maximum likely loss for each activity?
- Is there a possible pollution exposure (*lead paint, asbestos, or other*)?
- Are crowds likely to be involved (*i.e., could there be multiple claimants*)?
- 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 the Authority would be a defendant in the event of a loss?

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

Be as specific as possible in describing types of insurance required:

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 Authority may intend that a relatively broad coverage be purchased, yet a limited coverage form would still comply with an ambiguous requirement. This ambiguity could be removed by stating the titles or exact types of coverage forms to be maintained (*see "Minimum Scope of Insurance": Section 5A*).

In particular, your Authority should require that liability insurance be written on an occurrence basis. Claims-made coverage should not be accepted when other bids offer occurrence basis coverage. If occurrence coverage is not available, HARRP recommends an extended five-year reporting period on claims-made coverage. HUD "*General Conditions to Construction Contracts*" contains a similar provision.

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 Authority must seek reimbursement directly from the other party, not its insurer, in accordance with the indemnity or hold harmless clause of the contract for that portion of a loss. If the other party is financially unable to reimburse your Authority or if the indemnification clause in the contract is set

aside by a court, your Authority would bear the amount of the deductible (*or retention*). Also, some policies with SIRs do not require the insurer to provide defense. In such cases, your Authority might have to pay the contractor's defense costs or try to seek reimbursement from the contractor. Therefore, you should require disclosure and approval of deductibles or SIRs. If deductibles or SIRs are substantial, you might request that the other party 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 Authority'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 Authority, its officials, employees, and volunteers as insureds to all required liability coverages:

Standard contract conditions should specify that your Authority, its officials, employees, and volunteers are to be added by endorsement as insureds to all liability policies, except workers' compensation or professional (*errors and omissions*) liability policies.

In projects involving the use of sub-contractors, you should require that the contractor include all sub-contractors as insureds under the contractor's policies. In the alternative, the contractor must furnish your Authority with the required certificates from each sub-contractor which also name the Authority, its officials, employees, and volunteers as insureds. **This must be done in time for you to verify the compliance with your requirements before the sub-contractor begins work.** If not, your Authority could end up paying for a claim caused by the sub-contractor. This is a HUD requirement found in Form HUD-5379, Section 36(a) and Comp Grant Handbook 748513, Appendix 1: IV, Section 4(a).

NOTE: If you have an airtight hold harmless agreement with the Contractor, it should require him/her to indemnify you against claims caused by the sub-contractors. If the Contractor doesn't obtain indemnification and insurance from the sub-contractors, that is his/her problem. Your indemnification agreement requires the Contractor to make you whole even from losses caused by a sub-contractor.

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 for a loss from your Authority, your Authority's standard requirements should state that the other party's insurance is to be primary, and that your Authority's self-insurance program will not be called upon to pay for or share in a loss that should otherwise be paid by the other party's insurer. **Make sure that this condition is endorsed onto 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 onto the policy, the agreement is not binding on the insurer.**

Require that policies be endorsed to give your Authority at least 30-days, prior written notice of cancellation of insurance coverage:

Your Authority's standard insurance requirements should state that the policies be endorsed to require the insurer to provide at least 30- days written notice of cancellation or material change of policy terms.

Some businesses have begun financing their insurance premiums. In such cases the finance companies will generally only give a 10-day prior written cancellation notice. This may be the best you can get. The finance company must agree to a prior written notice.

Statements made on a certificate of insurance regarding cancellation notice do not have the same effect as a statement made in an insurance policy or endorsement.

Insurance industry-supplied certificates of insurance usually state only that the insurer or its agent *will endeavor* to provide the required number of days notice of cancellation or material change of policy terms. 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 rights not contained in the policy.

Specify that the insurance is to be placed with insurers that meet a minimum rating of B+:VI:

The ratings given by A. M. Best & Co. 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 financial management. The second, given as a Roman numeral ranging up to XV, indicates financial size by policy-holders surplus. HUD requires that insurers have an AM Best rating of not less than B+:VI. (*HUD Handbook 7401.5, Chp.1, Sec.1.4b*). You can find the AM Best rating of a company by asking the contractor's insurer to provide the AM Best rating in writing or by accessing their website at www.ambest.com.

The management rankings currently used by AM Best are:

A++	to	A+	Superior
A	to	A-	Excellent
B++	to	B+	Very Good
B	to	B-	Good
C++	to	C+	Fair
C	to	C-	Marginal
D			Below Minimum Standards
E			Under State Supervision
F			In Liquidation

Class I is the lowest Financial Size category, indicating a policy holders' surplus of under \$1million. Class XV, indicates a policy holders' surplus of over \$2 billion. In the middle, Class VII surplus ranges from \$50 million to \$100 million.

Your Authority should require that insurance be placed with companies that have a minimum AM Best's rating of at least B+:VI. This is HUD's requirement and there are currently over 1,500 companies with at least this rating. This requirement does not guarantee that the insurer will be solvent when called upon to pay a loss, but it does reduce the probability of coverage being placed with a clearly unqualified insurer.

In some cases, Best's does not assign a rating. Best's 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 Un-rated Reinsurer
NA-8	Incomplete Financial Information
NA-9	Company Request
NA-11	Rating Suspended

Companies with ratings between NA-4 and NA-11 should be considered unqualified. The fact that Best's has suspended the insurer's rating is a trouble sign. However, some of the NA classifications deserve further investigation. Although Best's 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's does provide a financial performance index (FPI) rating with these categories:

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

HUD allows contractors to carry NA-3 insurance with an FPI of at least a 6 or higher (*HUD Handbook 7401.5, Section 1.4b*). In some cases, the contractor may be unable to obtain coverage from a company that meets the rating requirements of your Authority. In such cases, your Authority 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 your state.

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 Authority should only accept insurers authorized to do business in your state, this will be either an admitted insurer or an authorized surplus lines insurer. Lower-rated insurers should be considered only if no other insurer will provide the coverage.

Be aware, however, that there may be a significant risk that such an insurer will not be able to pay a claim for which your Authority may then become responsible. Contact your risk management advisor prior to accepting the forms for approval from a sub-standard insurer.

Risk Retention groups and Governmental pools:

Many of the governmental entities you will have contact with are members of self-insurance pools. Many non-profits and private sector businesses participate in risk retention groups. Very few self-insurance pools have any kind of rating.

Risk retention groups are rated in a manner similar to insurance companies. When contracting with governmental entities you may not be able to obtain anything better than a letter from the self-insurance pool agreeing to act in good faith and to work cooperatively to resolve claims that arise during the contractual relationship.

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 million limits from one contractor if the Authority has previously required only \$1 million for similar projects. It is a common practice among businesses to under-insure. If most contractors carry limits less than you think are appropriate, it is possible that most contractors are under-insuring their risks. This could leave the Authority exposed to a claim in excess of the contractor's insurance limits.

The \$1 million limit stipulated in the sample insurance requirements is generally a minimum practical limit to require, although it is often too low in today's litigious society. 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 liability even though the contract may involve only a small expense. A checklist at the end of this chapter will help identify hazardous exposures. It is not all inclusive.

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

- A higher aggregate limit which is a multiple of the occurrence limit; for example, a \$1 million per-occurrence limit with a \$2 million aggregate, or

- A separate aggregate limit for your project or lease, or
- A policy dedicated to your project

None 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 the existence of excess coverage should be indicated on the insurance certificate forms and endorsements. On large projects, this approach may be the most feasible.

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

NOTE: The final four numbers on these forms may be different as they designate the month and year the form was last updated. If your forms are newer than those suggested above, they may offer less protection to you. Try to receive the forms dated as above.

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.

Contact your risk management advisor if you have any questions about these or other forms.

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

You should state in the contract and in the specifications 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 Authority as a material breach of contract. HUD also requires suspension of construction work when a contractor's insurance expires and is not renewed (*HUD Handbook 7485.3 appendix 1 IV Section 4c*).

Hazardous Materials and/or Activities

Contracts dealing with the following might require liability limits in excess of \$1 million:

- Operations in area with possible mercury, PCB, lead-based paint, asbestos, methane, gas, or other toxic/explosive or hazardous material
- Excavation or construction within 200 feet of any rail facility, lake, stream, pond, other waterway, or utility lines
- Excavation in public streets, new building basement, or near underground utilities
- Blasting, use or storage of any explosives, or pyrotechnic displays
- Construction or resurfacing of a roadway, sidewalk, or parking lot
- Access to any non-Authority owned property or property not under Authority's control
- Use of any watercraft, or marine equipment or of any aircraft
- Provision of vehicle, watercraft or aircraft (*by Authority to contractor*)
- Tunneling/Trenching (*especially if not refilled at end of day*)
- Pile driving
- Use of any Authority tools or equipment by contractor
- Crowd exposure (*i.e., work within 300 yards of a school, park, or hospital*)
- Purchase/Installation of playground equipment
- Operations involving open flame or fire hazard (*including sweating pipes*)
- Environmental Study Plan
- Architect/Engineer Study (*no plans*)
- Demolition of abandoned building or part of building still in use
- Renovation/Construction on an existing building while in use
- Architect/Engineer — Creation and signing of Construction Plans
- New construction of a building greater than one story tall
- Contract involves the use of fumigants or pesticides, solvents, paints, etc.
- Gang Intervention Programs
- Welding
- Armed Security Guards

List of Hazardous Industries

This list was prepared by Occupational Safety and Health Administration and is not all-inclusive.

Amusement and Recreation Services
Amusement Rides
Asbestos Abatement Contractors
Asphalt Paving
Automotive Repair Shops
Blast Furnace and Basic Steel Products
Building Maintenance
Cable Television Installation/Pole Climbing
Carnivals (*traveling*)
Carpentry and Floor Work
Concrete, Gypsum, and Plaster Products
Construction
Converted Paper and Paperboard (*except containers and boxes*)
Day Camps
Electric Lighting and Wiring Equipment
Electrical Work
Elevated Window Washers
Excavating/Trenching
Fabricated Structural Metal Products
Farm and Garden Machinery and Equipment
General Building Contractors
and Operative Builders
General Merchandise Stores
Glass and Glassware (*pressed or blown*)
Glass Products or Purchased Glass
Grading of Land
Hazardous Waste Disposal
Heating and Air Conditioning Contractors
Heavy Construction (*other than buildings*)
Hospital
Industrial Chemicals
Landscape and Horticultural Services
Lead Abatement Contractors
Logging, Sawmills, and Planing Mills
Manifold Business Forms
Masonry, Stonework, Tile Setting, and Plastering
Materials Handling Machinery and Equipment
Metal Cans and Shipping Containers
Metal Forging and Stamping
Metal Working Machinery and Equipment
Millwork, Veneer, Plywood, and Structural
Wood Members
Mining Equipment

Hazardous Industries *(continued)*

Miscellaneous Chemical Products
Miscellaneous Fabricated Metal Products
Miscellaneous Food Preparations and
Kindred Products
Miscellaneous Furniture and Fixtures
Miscellaneous Plastics Products
Newspaper Publishing
Nursing and Personal Care Facilities
Painting and Paper Hanging
Paints, Varnishes, Enamels, and Allied Products
Paperboard Containers and Boxes
Partitions, Shelving, Lockers, and Office and
Store Fixtures
Pest Control
Plastics Materials and Synthetics
Plumbing
Plumbing Fixtures and Heating Equipment
(except electrical)
Police *(Professional Liability and Vehicle)*
Public Safety *(Police, Fire, Security Guards, etc.)*
Public Building and Related Furniture
Refrigeration and Service Industry Machinery
Rolling, Drawing, and Extruding of
Nonferrous Metals
Roofing, Siding, and Sheet Metal Work
Sanitary Services
Scrap and Waste Materials — Wholesale
Secondary Smelting and Refining of
Nonferrous Metals
Semiconductors and Related Devices
Ship and Boat Building and Repairing
Soap, Cleaners, Cosmetics,
and Other Toilet Goods
Special Industry Machinery and Equipment
Towing Services *(auto)*
Transportation
Trucking, Courier Service, and Warehousing
Water Well Drilling
Welding
Wood Buildings and Mobile Homes
Wood Contractors

Obtaining Verification of Compliance

Summary:

Your Authority should require the responsible party to submit acceptable proof of insurance before work can begin or premises can be occupied. As proof of coverage, most insurance agents are accustomed to preparing, signing, and submitting an insurance industry-designed certificate of insurance. The insurance industry has numerous forms that attempt to perform the same function. The content of these forms must comply with all Authority insurance requirements. To the extent possible, you must 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.

Insurance Codes of most jurisdictions describe certificates of insurance and define their significance. For instance, the California Insurance Code clarifies the role of certificates of insurance in relation to the insurance policies which they describe. According to Section 3384, which became law on January 1, 1979:

“A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statement 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 the insurance to the certificate. Also, any statements made on the certificate, such as cancellation notice provisions, do not affect the policy if they are in conflict with the policy language.

Similar provisions of Nevada, Oregon, and Washington law, although not as straight-forward as the California Insurance Code, state that it is the policy, not the certificate, which contains the terms of the insurance contract.

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 state law.

To implement some of the insurance clauses in the sample specifications, the Contractor's insurance agent must request the insurance company to amend the Contractor's insurance. Forms should be completed by the insurance company and they must be signed by the underwriter or other authorized representative of the insurer. The original signed forms should be returned to your Authority before work begins. You should provide in the bid process, adequate time for this to occur and for you to review the documents.

Many of the items listed in these insurance specifications may already be found in the other party's insurance. For example, the types of coverage and the limits may already comply with the specifications. However, some of the other requirements recommended in this manual are not automatic and must be

added by the insurer. This would include the agreement to notify your Authority of cancellation and material changes to the policy. Also, few contractors have insurance policies that would automatically protect your Authority for claims arising from the contractor's work. Therefore, Authority specifications should require that the insurer add your Authority as an insured.

The Insurance Services Office and the ACORD Corporation, two insurance industry service companies, have developed forms that accomplish many of the amendments recommended in this manual. Some of these forms are shown in Appendix B. The risk in accepting these forms is that you must carefully review each form and compare it closely with the insurance requirements in your contract specifications.

There may be times you should require a complete copy of the Contractor's policy, including all of the required endorsements for review to determine if all required conditions are there.

NOTE: Not all general liability insurance policies are the same. Some insurers have modified basic ISO forms. Occasionally you will encounter a completely custom form known as a Manuscript Policy.

A manuscript policy will require you to read it completely and thoroughly. The specifications reserve your right to receive the entire policy.

CAUTION: Failure of your Authority to require correct insurance coverages or failure to monitor compliance could result in significant financial loss to your Authority for claims based upon the negligence of a lessee, contractor, or sub-contractor.

Your specifications should always state your right to receive a certified copy of all insurance policies and endorsements. You may then assert or waive this right on a case by case basis.

Specifications for Common Situations

Summary:

Although your Authority may enter into a large number and wide variety of contracts each year, most can be grouped into a few general categories based upon the risks associated with them and the protections your Authority will require. The Insurance Requirements Exhibits and Exemplar Insurance Forms will be found under the tabs 5A, 6A, and Appendix B.

Examples of the general categories of contracts that your Authority may enter into include, but are not limited to the following:

- **GENERAL PURPOSE:** These are the broadest specifications because they can be used for a variety of circumstances. Examples include: landscape maintenance, small property damage repairs, suppliers of products, use of Authority property for functions, etc.
- **BUILDING TRADES:** These can include general contractors for ground up construction, remodels, architects/engineers, lead/asbestos assessment or abatement, painting contractors, etc.
- **SOCIAL SERVICE PROVIDERS:** This can include home health care, meals on wheels, child care, educational instruction, recreation programs, etc.
- **USE OF AUTHORITY PROPERTY:** This includes (*generally*) non-residential leases such as leasing out office space, providing on-site space for social service providers (*including group homes*), fairs or other recreational activities, etc.
- **PROPERTY MANAGEMENT:** Use of professional property management firms, resident management corporations providing services to the Authority, non-profits managing Authority property, etc.
- **ARMED/UNARMED SECURITY GUARD AGREEMENTS:** Since HARRP does not provide any coverage for armed security guard claims, you must receive coverage from the security guard company.

NOTE: Professional errors and omissions exposures can exist under many contractual situations. You should require professional liability coverage in those contracts.

NOTE: Pollution exposures can exist under many contractual situations. You should require pollution coverage in those contracts.

NOTE: Automobile liability exposure may exist where contractors drive on your property or on your behalf. You should include automobile liability coverage in those contracts. If the work to be performed under the contract does not include more than incidental driving on your property, you can delete the requirement of a business auto policy and accept a personal policy. The Authority will not be added as an additional insured on a personal auto policy.

NOTE: You should require workers' compensation coverage consistent with the laws in your state. The Authority will not be added as an additional insured on a workers' compensation policy.

General Requirements for Most Contracts

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*), [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated above.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Contractors (with construction, lead paint, or asbestos risks)

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*), [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Builder's Risk insurance coverage for all risks of loss (*in compliance with HUD guidelines*).

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.

NOTE: If this contract deals with hazardous materials or pollutants (i.e. lead based paint, asbestos, etc.) the Contractor shall carry Contractor's Pollution Liability insurance to cover the pollution exposures. The Authority shall be named as Additional Insured on the policy.

2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Builder's Risk: Completed value of the project.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

Builder's Risk policies shall contain the following provisions:

1. The Authority shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the Authority, its officers, officials, employees and volunteers.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated above.

NOTE: If a subcontractor will be hired to perform hazardous material remediation, that sub-contractor will name the Authority, its officers, officials, employees and volunteers as additional insureds on its Pollution Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Insurance Requirements for Building Trades Contractors (with construction — Housing Authority as property manager at non-owned sites)

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto, [require if scope of work includes driving on managed site]*).
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Builder's Risk insurance coverage for all risks of loss (*in compliance with HUD guidelines*).

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.

NOTE: If this contract deals with hazardous materials, pollutants, or activities (i.e. lead based paint, asbestos, armed security guards, etc.). additional provisions covering those exposures must be included in order to protect the Authority's interests. The Authority shall be named as Additional Insured on the policy.

2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Builder's Risk: Completed value of the project (*if structural work is involved*).

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Owner, the Authority (*as site manager*) and its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Owner, and the Authority, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

Course of construction policies shall contain the following provisions:

1. The Owner and the Authority shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the Owner and the Authority, its officers, officials, employees, and volunteers.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated above.

NOTE: If a subcontractor will be hired to perform hazardous material remediation, that sub-contractor will name the Owner, the Authority, their officers, officials, employees, and volunteers as additional insureds on its Pollution Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Building Inspection Contractors (with lead paint and other risks)

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: \$1,000,000 per occurrence.

NOTE: since this contract deals with inspection of potential pollutants (*i.e., lead based pain, asbestos, etc.*), the Contractor shall carry Contractor's Pollution Liability insurance to cover the pollution inspection exposures. The Authority shall be named as Additional Insured on the policy.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for contractors or sub-contractors shall be subject to all of the requirements stated above. It is foreseeable that some specialty trades may perform work where different coverages than the above are needed. These decisions should be made by an insurance broker or the Authority.

NOTE: If a sub-contractor will be hired to perform hazardous material remediation, that sub-contractor will name the Authority, its officers, officials, employees, and volunteers as Additional Insureds on its Pollution Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Community and Social Service Providers Offering Counseling

Service Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of or failure to perform the work hereunder by the Service Provider, its agents, representatives, employees, or sub-contractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by State law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to Service Provider's profession.

MINIMUM LIMITS OF INSURANCE

Service Provider shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage (*including discrimination, fair housing, ADA violations, and sexual molestation*). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Service Provider including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Service Provider; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Service Provider.
2. For any claims related to this contract, the Service Provider's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Service Provider's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Service Provider.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Service Provider shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Service Provider shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for contractors or sub-contractors shall be subject to all of the requirements stated above. It is foreseeable that some specialty trades may perform work where different coverages than the above are needed. These decisions should be made by an insurance broker or the Authority.

NOTE: If a sub-contractor will be hired for work under this contract, that sub-contractor will be required to name the Authority, its officers, officials, employees, and volunteers as Additional Insureds on its insurance policies by endorsement.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Tax Credit Partnership Insurance Requirements for Building Trades Contractors (with construction risks)

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Builder's Risk insurance coverage for all risks of loss (*in compliance with HUD guidelines*).

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
NOTE: If this contract deals with hazardous materials or pollutants (i.e. lead based paint, asbestos, etc.), the Contractor shall carry Contractor's Pollution Liability insurance to cover the pollution exposures. The Partnership shall be named as Additional Insured on the policy.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Builder's Risk: Completed value of the project.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Partnership, its officers, officials, employees, volunteers, and partners are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an appropriate endorsement to the Contractor's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Partnership, its officers, officials, employees, volunteers, and partners. Any insurance or self-insurance maintained by any Partner, or the Partnership, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Partnership.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

Builder's Risk policies shall contain the following provisions:

1. The Partnership shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the Partnership, its officers, officials, employees, volunteers, and any partner.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Partnership with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Partnership in sufficient time before work commences to permit Contractor to remedy any deficiencies. The Partnership reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Partnership. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Partnership to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated herein.

NOTE: If a sub-contractor will be hired to perform hazardous material remediation, that sub-contractor will name the Partnership, its officers, officials, employees, volunteers, and partners as Additional Insureds on its General Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Partnership for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Non-Residential Lessees

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto, [require if lease permits driving on Authority property]*).
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance (*for lessees with employees*).
5. Professional Errors and Omissions Liability insurance against all risks of loss for professional services and activities conducted on premises.
6. Property insurance against all risks of loss to any tenant improvements, betterments, and Lessee-owned business personal property.

MINIMUM LIMITS OF INSURANCE

Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: not less than \$1,000,000 per occurrence.
5. Property insurance: full replacement cost with no co-insurance provisions.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to Lessee's occupancy and use of the leased premises, including all liability resulting from personal property of lessee brought onto the leased premises; or arising out of automobiles owned leased, hired, or borrowed by or on behalf of Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Lessee.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Lessee shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the lease commences to permit Lessee to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Insurance Requirements for Lessees Operating Group Homes

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

Lessee shall also be responsible for obtaining an indemnification in favor of the Authority as well as the following insurance from its sub-contractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto, [require if Lessee's operations include driving on Authority property or if residents or participants will be transported]*).
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance (*for Lessees with employees*).
5. Professional Errors and Omissions Liability insurance.
6. Property insurance against all risks of loss to any tenant improvements, betterments, and Lessee-owned business personal property.

MINIMUM LIMITS OF INSURANCE

Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence \$2,000,000 aggregate (*including coverages for discrimination, fair housing and ADA violations, and sexual molestation*).
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
5. Property insurance: full replacement cost with no co-insurance penalty provision.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of maintenance or use of that part of the premises leased to the Lessee, or arising out of automobiles owned leased, hired, or borrowed by or on behalf of Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract.

Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Lessee.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Lessee's must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Lessee shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the lease commences to permit Lessee to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of the leased premises by subcontractors must be pre-approved by the Authority. Lessee shall require that all sub-contractors occupying space or performing services at the leased premises provide documentation confirming that such sub-contractors' insurance conforms to all the above specifications.

Notwithstanding this provision, Lessee shall indemnify the Authority for any claims resulting from the conduct of the Lessee's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Resident Management Corporations

Resident Management Corporation (RMC) shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the RMC's operation and use of the leased premises or other agreements with Authority. The cost of such insurance shall be borne by the RMC.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*if scope of work includes driving on Authority property, or transporting residents or participants*].
4. Workers' Compensation insurance as required by State law and Employer's Liability Insurance (*for RMC employees*).
5. Property insurance against all risks of loss to any tenant improvements, betterments, and RMC-owned business personal property.
6. Crime insurance (or a Fidelity Bond) which shall include Employee Dishonesty coverages.

MINIMUM LIMITS OF INSURANCE

RMC shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. (*including coverages for discrimination, ADA violations, and sexual molestation*). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Property insurance: full replacement cost with no co-insurance penalty provision.
5. Crime/Fidelity coverage: in an amount that exceeds the maximum probable loss that could occur.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of maintenance or use of that part of the premises leased to the RMC, or the performance of the RMC under any agreement with Authority; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of RMC.
2. The RMC's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the RMC's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the RMC.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. RMC must provide written verification of its insurer's rating.

VERIFICATION OF COVERAGE

RMC shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the agreement commences to permit RMC to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. RMC shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated herein.

NOTE: If a sub-contractor will be hired to perform hazardous material remediation, that sub-contractor will name the Authority, its officers, officials, employees, volunteers, and partners as Additional Insureds on its General Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

Notwithstanding this provision, RMC shall indemnify the Authority for any claims resulting from the performance or non-performance of the RMC's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Armed Security Guard Services

NOTE: HARRP coverage excludes all claims arising from the activities of armed security guards. Coverage, if required, must be individually obtained outside of HARRP Membership.

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

Only trained and licensed security guard employees will be used to fulfill the duties required under this contract.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property or transporting residents or participants*].
4. Workers' Compensation insurance as required by State law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance for armed security guards.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$3,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage **which shall include coverage under the policy for the armed operations of all security guard personnel. If the use of firearms is covered under a special insurance policy, the Authority will be named as an Additional Insured on the policy, and all sections within this exhibit will also apply to that coverage.** 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 contract, or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance for armed security guards: limit not less than \$3,000,000 general aggregate.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Guard Service, including all work and services to be performed in accordance with the terms of the security agreement between the Authority and the Guard Service; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Guard Service.
2. The Guard Service's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Guard Service's insurance.

3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Guard Service.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Guard Service must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Guard Service shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the agreement commences to permit Guard Service to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Since the Authority is contracting for professional services of an armed security guard firm, sub-contractors will not be permitted under this contract.

Insurance Requirements for Non-Armed Security Guard Services

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

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property, or transporting residents or participants*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance for security guards.

MINIMUM LIMITS OF INSURANCE

Guard Service shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance for security guards: limit not less than \$1,000,000 general aggregate.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Guard Service, including all work and services to be performed in accordance with the terms of the security agreement between the Authority and the Guard Service; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Guard Service.
2. The Guard Service's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Guard Service's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Guard Service.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Guard Service must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Guard Service shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the agreement commences to permit Guard Service to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Since the Authority is contracting for professional services of a security guard firm, sub-contractors will not be permitted under this contract.

Specifications for Special Situations

Summary:

This chapter provides general information about special insurance situations. These include:

Contracts for consultants such as architects, engineers, auditors, and others

Major construction projects

Environmental services contracts

Property management agreements

Professional Services Contracts

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

When contracting for professional services, your Authority 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 his/her negligent acts or omissions. Personal Injury liability lawsuits arising out of work done for your Authority will name the Consultant, your Authority, and any other connected party as defendants. Even though the Consultant may be the party liable under the law, your Authority, 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 often faced by public agencies.

As either General Liability, Professional Liability, or both types of insurance may ultimately pay for the loss, your Authority 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 Authority, 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 Authority's requirement will not pose a hardship.

Unless the Consultant is a sole practitioner, your Authority should require evidence of Workers' Compensation insurance. Even though the contract with the Consultant may make it 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 Authority resources in the event that a Consultant's employee is injured and the Consultant has failed to purchase the necessary insurance.

Special care is needed in drafting indemnification requirements for the contract with the Consultant. Many Professional Liability insurers exclude liability assumed under a 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 Authority for Bodily Injury or Property Damage arising out of the Consultant's alleged negligent acts or omissions in performance of the work. This assumption of liability is insurable under General Liability policies.

The exhibits found in *Section 6A* provide sample specifications for Consultant insurance requirements. The limits recommended by these sample specifications are \$1 million. As with all contracts, you should pay special attention to the appropriateness of limits included in the specifications. In some cases, smaller consulting firms may be unable to obtain (*or afford*) a limit of \$1 million for Professional Liability, although that amount should be required for General Liability coverage. On large projects, or those with significant potential for loss such as lead or asbestos abatement or disposal, higher limits are appropriate and firms unable to obtain these limits may be precluded from bidding.

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 Authority'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 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 A. M. 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 these cases, you should be prepared to relax the 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 Errors and Omissions Liability coverage in question and determine whether or not the insurer is admitted in your state. Many carriers writing this coverage are non-admitted. Contact your risk management advisor for assistance in this area.

Because Professional Errors and Omissions Liability insurance is almost always written on a **claims-made** basis, Authorities that hire architects or engineers should be concerned 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 or to purchase an extended reporting endorsement.

Currently HUD requires a five-year extended reporting period. 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 Authority, with a built-in claims reporting tail. The policy may cover all design professionals on a project. This arrangement affords greater protection for the Authority's interests but a disadvantage of a separate project policy is that an additional premium will be charged. This is only cost effective on large projects (*when architects and engineering fees exceed \$1 million*).

This area of Professional Errors and Omissions insurance does not lend itself to the application of hard-and-fast rules. Flexibility and the exercise of discretion on your part are needed to protect your Authority. Although there are no absolute guarantees to assure that your Authority 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

The transfer of responsibility for third party liability claims occurs in most contracts. Responsibility for damage to property owned by one of the parties is also addressed in some contracts, although this is less frequent. There are two primary situations where responsibility for property loss should be clearly spelled out:

1. Buildings in the course of construction
2. Leases involving extensive tenant improvements and betterments

Builder's Risk (*also known as Course of Construction coverage or Installation Floater*.) is the insurance purchased for property under construction. This type of insurance covers property in place but under construction as well as the equipment and materials to be installed. Premiums take into account the changing values as construction nears completion. In most cases, your Authority should arrange for Builder's Risk insurance on construction projects through the Contractor.

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 funding for the project or financing arrangements (*i.e., bonds*) require it.
- **DEDUCTIBLES:** Deductibles should be reasonable in relation to the non-insurance assets of the parties and the size of the project. If the other party to a contract has a large deductible, but does not have sufficient assets to pay that deductible when a claim occurs, the Authority may have to pay it. Don't let that happen to your Authority.
- **PROPERTY COVERED:** At minimum, the insurance should cover the full insurable value of the project or completed improvements. It may, at your Authority's option, also include consequential loss insurance if your Authority 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 the circumstances of the contract, your Authority most often should require that any loss payments be made to your Authority (*i.e., loss payee*). Sometimes the funding source may want to be the loss payee.
- **VALUATION BASIS:** Coverage can be written based on the completed value of the project or by reporting changes in value on a scheduled basis. Usually, the former method is preferred as it is less complex and there is less of a chance of errors resulting in inadequate insurance.

Since Builder's Risk is written specifically for a project, you should receive and retain a copy of the loss payee endorsement for each project covered by Builder's Risk insurance.

Tenant's Improvements and Betterments

Property insurance should be required where your Authority has a continuing interest in improvements or betterments installed by a non-residential 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 Authority as loss payee on the policy. You should also require a copy of the policy for your review.

Contracts with Private Parties for Use of Public Property

Occasionally, your Authority 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 non-profit organizations*) do not normally purchase commercial liability insurance, other forms of financial guarantee may be needed. If a fair or carnival will be held at your property by or in association with resident organizations, you should consider the use of a Special Events insurance policy.

Most homeowner insurers will provide additional insured coverage to another party if requested. An individual who purchases a homeowners policy or tenant's package policy should be able to ask his/her insurance agent to provide the additional insured endorsement when they are using your property..

Another problem you face 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 tenants policies 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.

There may be instances in which you cannot obtain any insurance coverage for the use of your facilities. In those cases you could implement necessary safety controls that limit the probability of a claim occurring and permit the event to go on without having the insurance. A decision must be made regarding whether or not the function creates a benefit sufficient to outweigh the expense to the

Authority of a claim for which it will be responsible. You should discuss those situations with your risk management advisor.

Environmental Services Contractors and Consultants

Environmental issues are becoming an increasing concern and are often the responsibility of local governmental agencies; both as the owners of contaminated property and as the entities responsible for the permit process. Municipalities are increasingly recognizing their exposure as generators and transporters of hazardous materials and pollutants. Municipalities are involved in issuing encroachment permits for access to their property involving both groundwater and soil contamination testing and potential cleanup of waste generators within their communities.

Many housing authorities are facing issues concerning lead based paint and asbestos.

There are very few insurance companies underwriting these unusual risks, and they are reluctant to modify their standard policy terms. Disposal of pollutants by your Contractors, such as lead and asbestos poses a significant and long-term problem. According to the current superfund legislation and regulations, the generator of a hazardous material (*you*) is jointly and severally liable for improper clean-up or disposal of those materials. For this reason you must carefully select contractors, haulers and disposal sites and have the Authority named as additional insured at every opportunity. The Authority can be held financially responsible for mishandling by a hauler that you hire or for a pollutant's escape from a landfill.

Exhibit 16 (*Section 6A*) contains insurance requirements appropriate for environmental contractors and/or consultants. If you cannot verify the A. M. Best's rating of the Contractor's insurer, or if the coverage is written by a risk retention group or captive insurance company, you should check with your risk management advisor for further information about the market.

NOTE: Automobile, Pollution, Asbestos Pollution, and/or Professional Errors and Omissions Liability insurance carriers may not name the Authority as additional insured. If the Authority cannot be named as additional insured, you should request a letter from the insurance company confirming its position regarding coverage extensions to the Authority.

Property Management Agreements

Housing authorities sometimes find it advantageous to hire property management professionals to manage some of their properties. The industry standard is to require the owner (*housing authority*) to indemnify the property management firm for any negligent acts or omissions of the property manager's employees. This industry standard should and can be amended by requiring the property managers to assume responsibility for losses caused by their employees. HARRP cannot extend its coverage to property managers.

**HARRP has a model Property Management Agreement
that can be found at www.harrp.com under Forms.**

Insurance Requirements for Architectural and Engineering Consultants

Architectural and Engineering Consultants shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of or failure to perform the work hereunder by the Consultants, their agents, representatives, employees, or sub-contractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects and engineers coverage is to be endorsed to include Contractual Liability.

MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Consultant; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. General Liability coverage can be provided in the form of an appropriate endorsement to the Consultant's insurance or as a separate Owner's policy.
2. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.

4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Consultant.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Consultant shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

If the Architectural or Engineering Consultant hires a sub-contractor or other trade under the scope of work of this contract, the Consultant shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for contractors or sub-contractors shall be subject to all of the requirements stated above. It is foreseeable that some specialty trades may perform work where different coverages than the above are needed. These decisions should be made by an insurance broker or the Authority.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Consultant shall indemnify the Authority for any claims resulting from the performance or non-performance of the Consultant's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Lead Paint Abatement Contractors and/or Consultants

Contractor shall procure and maintain for the duration of the contract all necessary Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of or failure to perform the work hereunder by the Contractor, its agents, representatives, employees or sub-contractors. Such insurance includes General Liability, Errors & Omissions, Pollution, Environmental Impairment, and/or Lead Based Paint Abatement Liability coverages.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*). The Commercial Liability Policy shall include: Lead Paint Abatement coverage, Independent Contractors coverage and shall name the Authority and its officers, officials, employees, and volunteers as Additional Insured. **A Claims-Made form of insurance coverage will not be accepted.**
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) Code 8, 9 (*if no owned autos*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance as appropriate.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury and Property Damage. **If this insurance does not include Lead Paint Abatement coverages, a separate insurance policy for Lead Paint Abatement may be used if it contains all insurance requirements in these specifications.** If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

The General Liability, Lead Paint Abatement Liability, Pollution, Environmental Impairment, and/or Asbestos Pollution, and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and with respect to liability arising out of work or operations performed by the Contractor, including work and materials covered by: Pollution, Environmental Impairment, Lead and/or Asbestos Pollution policies; or arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor.
2. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance. A claim shall include any allegation that lead was ingested or property was impaired

or damaged, arising from the abatement work performed by the Contractor or its sub-contractor(s).

3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

NOTE: The Automobile liability policy shall be endorsed to delete the Pollution and/or the Lead or Asbestos exclusion and to add the Motor Carrier Act endorsement (MCS-90), TL 1004, TL 1007 and/or other endorsements required by federal or state authorities.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+:VI. If Pollution, Environmental Impairment Liability, Lead and/or Asbestos Pollution Liability, and/or Professional Errors and Omissions Liability coverages are not available from an admitted insurer, the coverage may be written by a non-admitted insurance company. A non-admitted company should have an **A. M. Best's rating of B+:VI or higher**. Bidders must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before work commences to permit contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for contractors or sub-contractors shall be subject to all of the requirements stated above. It is foreseeable that some specialty trades may perform work where different coverages than the above are needed. These decisions should be made by an insurance broker or the Authority.

NOTE: If a sub-contractor will be hired to perform lead paint testing, disposal, or abatement, or other hazardous operations, that sub-contractor will name the Authority, its officers, officials, employees, and volunteers as Additional Insureds on its General Liability and all special liability insurance policies by a proper endorsement. Such endorsements will specifically name the Authority as Additional Insured for the hazardous material testing, abatement, disposal or remediation and other hazardous operations performed by that sub-contractor.

NOTE: The General Contractor's Commercial General Liability insurance should not include CG 2294 or CG 2295 as these endorsements will eliminate the General Contractor's insurance coverage for its work where the damaged work or the work out of which the damage arises was performed by a sub-contractor.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Property Management Firms Operating at Authority Owned Locations

Property Manager shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the contracted work by the Property Manager, its employees, agents, or sub-contractors. It is agreed that the Property Manager's Liability insurance shall be primary with respect to property management employee claims (*as defined below*), and not contributing with any other insurance maintained by the Authority unless the Authority is solely negligent.

Property management employee claims shall be defined as: *any and all claims, demands, suits, actions or judgments which actually or allegedly arise from the acts or omissions of the Property Manager or its officers, agents, employees, or sub-contractors, except such as may have been caused solely by the negligence of Authority*. To the extent a claim is brought against the Authority as the result of a property management employee claim, such claim against the Authority shall be deemed to be a property management *employee claim* and will be resolved by the Property Manager.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property or transporting residents or participants*].
4. Workers' Compensation insurance as required by State law and Employer's Liability Insurance (*for property management employees*).
5. Professional Errors and Omissions Liability insurance (*including defense for allegations of discrimination, fair housing, ADA violations, and sexual molestation*).
6. Crime insurance (*or a Fidelity Bond*) which shall include Employee Dishonesty coverages.

MINIMUM LIMITS OF INSURANCE

Property Manager shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance: \$1,000,000 per claim (*including coverages for discrimination, fair housing and ADA violations, and sexual molestation*).
5. Crime/Fidelity coverage: sufficient to cover all employees employed by Property Manager who shall be responsible for handling any monies; Employee Dishonesty \$100,000, Forgery or alteration \$100,000, Theft, Disappearance, Destruction, Inside/Outside \$10,000.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability on behalf of the Property Manager including all work and services to be performed in

accordance with the terms of the agreement between the Authority and the Property Manager. This includes, but is not limited to, property management employee claims (as defined above). The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to all liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Property Manager.

2. For any claims related to this contract, the Property Manager's insurance coverage shall be primary as respects the Authority, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Property Manager's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Property Manager.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+: VI. Property Managers must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Property Manager shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the lease or agreement commences to permit the Property Manager to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Property Manager shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated herein.

NOTE: If a sub-contractor will be hired to perform hazardous material remediation, that sub-contractor will name the Authority, its officers, officials, employees, volunteers and partners as Additional Insureds on its General Liability insurance policy by endorsement. Such policy will provide coverage for the hazardous material work and other hazardous material operations.

Notwithstanding this provision, Property Manager shall indemnify the Authority for any claims resulting from the performance or non-performance of the Property Manager's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Consultants

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Consultant, its agents, representatives, employees, or sub-contractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (*occurrence form CG 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to the Consultant's profession.

MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. (*including coverages for discrimination, ADA violations, and sexual molestation*). 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 contract or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance: \$1,000,000 per occurrence.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

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

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
2. The Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Consultant.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than B+: VI. Consultants must provide written verification of their insurer's rating.

VERIFICATION OF COVERAGE

Consultant shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before the agreement commences to permit Consultant to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Consultant shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated above.

Notwithstanding this provision, Consultant shall indemnify the Authority for any claims resulting from the performance or non-performance of the Consultant's sub-contractors and/or their failure to be properly insured.

Insurance Requirements for Environmental Contractors and/or Consultants

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Contractor, its agents, representatives, employees, or sub-contractors. With respect to General Liability; Professional Errors and Omissions Liability; Pollution, Environmental Impairment and/or Asbestos Pollution Liability, coverage shall 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 0 01 10 01*).
2. Insurance Services Office Additional Insured form (*CG 20 37 or CG 20 26*).
3. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, Code 1 (*any auto*) [*require if scope of work includes driving on Authority property*].
4. Workers' Compensation insurance as required by state law and Employer's Liability Insurance.
5. Professional Errors and Omissions Liability insurance appropriate to the Contractor's profession; and Pollution, Environmental Impairment, and/or Asbestos Pollution Liability (*there are no standard policies available for these coverages*).

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for Bodily Injury, Personal Injury, and Property Damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for Bodily Injury and Property Damage.
3. Workers' Compensation (*statutory*) and Employer's Liability: \$1,000,000 per accident for Bodily Injury or Disease.
4. Professional Errors and Omissions Liability insurance to include Pollution, Environmental Impairment, and/or Asbestos Pollution Liability: \$1,000,000 per occurrence, \$2,000,000 policy aggregate.

NOTE: These limits can be attained by individual policies or by combining primary and umbrella policies.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

OTHER INSURANCE PROVISIONS

The General Liability; Automobile Liability; Pollution, Environmental Impairment, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

1. The Authority, its officers, officials, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.
2. The Contractor's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance.
3. Each insurance policy required by these specifications shall be endorsed to state that coverage shall not be cancelled or materially changed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Authority.
4. Maintenance of the proper insurance for the duration of the contract is a material element of the contract. Material changes in the required coverage or cancellation of the coverage shall constitute a material breach of the contract by the Contractor.

The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.

If General Liability, Pollution, Environmental Impairment, and/or Asbestos Pollution Liability, and/or Professional Errors and Omissions Liability coverages are written on a **Claims-Made** form:

1. The **Retro-active date** must be shown, and must precede the date of the contract or the beginning of contract work (*whichever is earlier*).
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract or work (*See Form HUD 5370, Section 36 [2]*).
3. If coverage is cancelled or non-renewed, or otherwise not continually replaced with **Claims-Made** policy forms with a **Retro-active date** prior to the contract effective date, the Contractor **must** purchase extended reporting coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Authority for review before work begins under the contract.

The aforementioned provisions are considered material provisions of this agreement.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than B+: VI. Bidders must provide written verification of their insurer's rating. If Pollution, Environmental Impairment, and/or Asbestos Pollution and/or errors and omissions coverages are not available from an **admitted** insurer, the coverage may be written by a **non-admitted** insurance company. A non-admitted company should have an A. M. Best's rating of B+: VI or higher.

VERIFICATION OF COVERAGE

Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by these specifications. The endorsements should conform fully to the requirements. All certificates and endorsements are to be received and approved by the Authority in sufficient time before agreement commences to permit Contractor to remedy any deficiencies. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Use of sub-contractors must be pre-approved by the Authority. Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate insurance certificates and endorsements for each sub-contractor in a manner and in such time as to permit the Authority to approve them before sub-contractors' work begins. All coverages for sub-contractors shall be subject to all of the requirements stated herein.

Notwithstanding this provision, Contractor shall indemnify the Authority for any claims resulting from the performance or non-performance of the Contractor's sub-contractors and/or their failure to be properly insured.

Commonly Encountered Insurance Coverages

Automobile Liability Insurance

This coverage insures against liability claims arising out of the Contractor's use of automobiles. The scope of coverage is defined by the symbol used in the policy. Exhibit A-1 at the end of this Appendix provides descriptions of automobile designation symbols found in standard insurance policies. Generally, you should require Code 1, (*any auto*) which is the broadest code. Automobile coverage requirements should be waived only when the other party's work clearly does not involve the use of a motor vehicle. Should any doubt exist, this coverage should be required.

Builder's Risk Insurance (*Also known as Course of Construction coverage or Installation Floater*)

Builder's Risk insurance is a type of property insurance that addresses the special needs of construction projects by insuring property already in place or under construction. Some policies cover equipment and materials to be installed as part of the project. This type of insurance is required for ground-up construction or whenever structural changes are made to a building (*Form HUD 5370, Section 36 (3)(b)*).

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, consultant, or lessee. This type of policy provides coverage for premises and operations, use of independent contractors, and products and completed operations. Major exclusions include liability arising out of the ownership, maintenance or use of watercraft, aircraft, and automobiles. These exposures are normally covered by other insurance policies.

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

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

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

1. Contractual Liability coverage
2. Personal Injury and Advertising Injury Liability coverage
3. Premises Medical Payments coverage
4. Host Liquor Law Liability coverage
5. Fire Legal Liability coverage — Real Property
6. Broad Form Property Damage Liability coverage (*including Completed Operations*)
7. Incidental Medical Malpractice Liability coverage
8. Non-owned Watercraft Liability coverage (*under 26 feet in length*)
9. Limited Worldwide Liability coverage

10. Additional Persons Insured

11. Extended Bodily Injury coverage

12. Automatic Coverage — Newly Acquired Organizations (*90 Days*)

Most of these extensions are automatically included in the newer Commercial General Liability form. The BFCGL endorsement should be required if the Contractor's insurer uses the old Comprehensive General Liability form.

The specifications included in this manual designate the Commercial General Liability form.

Owners and Contractors Protective (OCP) Insurance

OCP policies, an often-proposed solution to the aggregate limits problem with General Liability policies, provide limited coverage for the Authority's interests only. They insure only the Authority's liability arising out of operations performed by the Contractor for your Authority at the project location, or liability arising out of acts or omissions in connection with the general supervision of the project. OCP policies are limited in that they provide coverage for:

- Contractual liability;
- Injury resulting from the Authority's activities beyond the general supervision of the contractor's operations;
- Claims alleging joint liability or sole liability of the owner.

If the insurer is not willing to provide an additional insured endorsement with the required modifications shown in the exhibits to this manual, then an OCP policy would be an acceptable alternative. Be aware of the significant restrictions noted above.

Professional Errors and Omissions Liability Insurance

Professional Errors and Omissions Liability is insurance that provides limited protection against claims for damages arising from negligent acts, errors, or omissions of the insured party. Examples of covered claims include design errors of architects or engineers resulting in property damage, and malpractice of doctors or lawyers. Other types of professionals such as social workers may also purchase this special liability insurance.

Coverage provided by Professional Errors and Omissions 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 Errors and Omissions Liability policies often cover a broader range of alleged economic loss. Because of the highly personal nature of Professional Errors and Omissions 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 named insured. However, they will issue a 30 day prior written cancellation notice by registered mail or an endorsement if it is required in your bid package and contract documents.

Property Insurance

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

Property insurance should be required when your Authority has a financial interest in property leased to others. Generally, your Authority should obtain the property insurance (*or self-insurance*) for property it owns, rather than requiring the other party to do so.

The advantages of your Authority providing its own property insurance are:

- Assurance that adequate coverage is purchased; and
- Assurance that premiums are paid, thus avoiding cancellation for non-payment of premium.

If the tenant owns the building (*on land owned by your Authority*), the Authority may want to have the tenant purchase the insurance and name your Authority as a loss payee. In the event of a claim, the Authority could use the proceeds to re-build the building. 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.

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 by the primary policies.

Umbrella policies are sometimes a way for a contractor to provide sufficient limits to meet your Authority's requirements. The premiums for a primary and an umbrella policy are often less than the premium for a primary policy with the same limits.

Workers' Compensation and Employer's Liability

Workers' Compensation insurance provides protection for bodily injury, sickness, or disease sustained by employees of the other party that occur in the course and scope of their employment. It should be required of any contractor performing work for your Authority.

Employer's Liability coverage is included in standard workers' compensation policies. It covers common law claims of injured employees that may be asserted in lieu of or in addition to a workers' compensation claim. This coverage is not provided by the exclusive state workers' compensation fund in Washington State. Stop-gap coverage is required in Washington.

Codes Used in Business Auto Policies

Code 1: Any auto

This is the broadest coverage and includes all other categories shown below.

Code 2: Owned autos only

Only those autos owned by the Named Insured (*and for liability coverage, any non-owned trailers while attached to power units owned by the Named Insured*). This includes autos acquired after the policy begins.

Code 3: Owned private passenger autos only

Only the private passenger autos owned by the Named Insured. This includes those private passenger autos acquired after the policy begins.

Code 4: Owned autos other than private passenger autos

Only those autos owned by the Named Insured which are not of the private passenger type (*and, for liability coverage, any non-owned trailers while attached to owned power units*). This includes autos, not of the private passenger type, acquired after the policy begins.

Code 5: Owned autos subject to No-Fault

Only those autos owned by the Named Insured which are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes autos whose ownership entitles the Named Insured to have No-Fault benefits in the state where they are licensed or principally garaged.

Code 6: Owned Autos subject to a compulsory Un-insured Motorists law

Only those autos owned by the Named Insured which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject Un-insured Motorists insurance. This includes autos acquired after the policy begins, provided they are subject to the same state Un-insured Motorists requirement.

Code 7: Specifically described autos

Only those autos described in the policy for which a premium charge is shown (*and, for liability coverage, any non-owned trailers while attached to those described power units*).

Code 8: Hired autos only

Only those autos leased, hired, rented, or borrowed by the Named Insured. This does not include any auto leased, hired, rented, or borrowed from employees or members of their households.

Code 9: Non-owned autos only

Only those autos owned, leased, hired, or borrowed by the Named Insured which are used in connection with business. This includes autos owned by the Named Insured's employees or members of their households, but only while used in the Named Insured's business.

Common Insurance Industry Forms

ACORD Certificate of Insurance

Standard form (Exhibit B-1)

Annotated form (Exhibit B-2)

Two ISO standard endorsements used to add Authorities as Insureds on Contractor's Liability insurance:

Additional Insured: Owners, Lessees, or Contractors (*Form A*) [CG 20 09 10 93] (Exhibit B-3)

Additional Insured: Owners, Lessees, or Contractors (*Form B*) [CG 20 10 03 97] (Exhibit B-4)

Two non-standard endorsements used to add Authorities as Insureds on Contractor's Liability insurance:

Additional Insured: Owners, Lessees, or Contractors (*Form C*) [CGL 216 (04/98)] (Exhibit B-5)

Blanket Additional Insured Endorsement [EG 20 35 01 96] (Exhibit B-6)

Four ISO endorsements used to amend policy limits:

Amendment of Limits of Insurance (*Designated Project or Premises*) [CG 25 01 11 85] (Exhibit B-7)

Amendment of Limits of Insurance [CG 25 02 11 85] (Exhibit B-8)

Amendment – Aggregate Limits of Insurance (*per Project*) [CG 20 03 11 85] (Exhibit B-9)

Amendment – Aggregate Limits of Insurance (*per Location*) [CG 25 04 11 85] (Exhibit B-10)

Explanation of Insurance Industry Forms

ACORD Certificate of Insurance (*Exhibits B-1 and B-2*)

If properly completed, this form provides basic information regarding insurance in existence on the date the form is completed. It includes policy numbers, effective dates, limits, names of insureds, insurance companies, etc.

It is important to understand that, according to the box in the upper right corner, this document does not change the terms of the actual insurance policy. If the terms of the insurance policy differ from the contents of the ACORD Certificate, the insurance policy terms control.

A certificate, by itself, does not add your Authority as an additional insured. That must be done in the insurance policy or by an endorsement to it.

Standard Additional Insured Endorsements (*Exhibits B-3 and B-4*)

These two examples are forms this manual does not recommend you accept. The reason they are not recommended is that they state that your Authority is an additional insured for liability arising only out of the Contractor's "on-going operations" performed for the Authority at the designated location. There is an issue of whether the coverage and/or the right to tender a claim, continue to exist after those "on-going operations" have ceased and the Contractor leaves the designated location.

Non-Standard Additional Insured Endorsements (*Exhibits B-5 and B-6*)

These endorsements provide broader coverage to the Authority since they include not only the Contractor's "on-going operations" but also any liability for "your (Contractor's) work performed for the additional insured (Authority)." You should attempt to request and receive endorsements equivalent to these.

Endorsements Amending Policy Limits (*Exhibits B-7, B-8, B-9, and B-10*)

These endorsements respond to the "general aggregate limit" issue that is mentioned under "*Minimum Limits of Insurance*" on each of the "*Insurance Requirements*" exhibits in Sections 5A and 6A. They are used to apply your Contractor's general aggregate limits to your contract or project or to re-instate your Contractor's aggregate limits.

Sample: ACORD Certificate of Insurance

(Standard Form)

ACORD CERTIFICATE OF INSURANCE					ISSUE DATE (MM/DD/YY) <input style="width: 50px;" type="text"/>											
PRODUCER			<p>THIS CERTIFICATE 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.</p> <p style="text-align: center;">COMPANIES AFFORDING COVERAGE</p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%;">COMPANY LETTER</td><td style="width: 50%;">A</td></tr> <tr><td>COMPANY LETTER</td><td>B</td></tr> <tr><td>COMPANY LETTER</td><td>C</td></tr> <tr><td>COMPANY LETTER</td><td>D</td></tr> <tr><td>COMPANY LETTER</td><td>E</td></tr> </table>				COMPANY LETTER	A	COMPANY LETTER	B	COMPANY LETTER	C	COMPANY LETTER	D	COMPANY LETTER	E
COMPANY LETTER	A															
COMPANY LETTER	B															
COMPANY LETTER	C															
COMPANY LETTER	D															
COMPANY LETTER	E															
INSURED																
<p>COVERAGES</p> <p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN</p>																
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS											
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS' & CONTRACTORS PROT. <input type="checkbox"/> _____				GENERAL AGGREGATE \$ _____ PRODUCTS-COM/OP AGG. \$ _____ PERSONAL & ADV. INJURY \$ _____ EACH OCCURRENCE \$ _____ FIRE DAMAGE (any one fire) \$ _____ MED. EXPENSE (Any one person) \$ _____											
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE \$ _____											
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ _____ AGGREGATE \$ _____											
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$ _____ DISEASE-POLICY LIMIT \$ _____ DISEASE-EACH EMPLOYEE \$ _____											
	OTHER															
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS																
CERTIFICATE HOLDER			<p>CANCELLATION</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL ____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE</p>													

ACORD 25-2 (7/90)

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Sample: ACORD Certificate of Insurance

(Annotated Form)

ACORD CERTIFICATE OF INSURANCE				ISSUE DATE (MM/DD/YY)	
PRODUCER 1 This block identifies the insured's broker or agent.		2 THIS CERTIFICATE 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.			
INSURED 4 The insured is your entity's contractor or lessee.		COMPANIES AFFORDING COVERAGE NY A 3 NY B NY C COMPANY LETTER D COMPANY LETTER E 3. The insurer will be identified here. The company letter appears again in the left-hand margin near the center of the page to show which insurer provides which type of coverage.			
COVERAGES 5. This notice again states that the policy supersedes the certificate form.					
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
3	GENERAL LIABILITY		7	7	8
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROT.				GENERAL AGGREGATE \$ PRODUCTS-COM/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (any one fire) \$ MED. EXPENSE (Any one person) \$
	6				
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED <input type="checkbox"/> SCHEDULED <input type="checkbox"/> HIRED AUTO <input type="checkbox"/> NON-OWNED <input type="checkbox"/> GARAGE LIA				
	EXCESS LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$ STATUTORY LIMITS
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				EACH ACCIDENT \$ DISEASE-POLICY LIMIT \$ DISEASE-EACH EMPLOYEE \$
	9. This section will usually be used to restrict coverage to a specific job or lease. Watch for restrictions that would limit the coverage required by your specifications.				
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS 9					
CERTIFICATE HOLDER 10 Certificate holder is your entity. 12. 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.			CANCELLATION 11 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL ____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 12		

Sample: ISO Form – Additional Insureds

(Form A)

2ND REPRINT
APRIL 1994

COMMERCIAL LIABILITY
CGL—ENDORSEMENTS

POLICY NUMBER

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS (Form A)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name of Person or Organization (Additional Insured):

Location of
Covered Operations

Premium Basis		Rates	Advance Premium
Bodily Injury and Property Damage Liability	Cost	(per \$1000 of cost)	\$
		Total Advance Premium	\$

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

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:
 - A. Your ongoing operations performed for the additional insured(s) at the location designated above; or
 - B. Acts or omissions of the additional insured(s) in connection with their general supervision of such operations.
2. With respect to the insurance afforded these additional insureds, the following additional provisions apply.
 - A. Exclusions **b.**, **c.**, **g.**, **h.(1)**, **j.**, **k.**, **l.** and **n.** under COVERAGE A—BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section 1—Coverages) do not apply.
 - B. Additional Exclusions. This insurance does not apply to:
 - (1) "Bodily injury" or "property damage" for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.
 - (2) "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 contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- (3) "Bodily injury" or "property damage" arising out of any act or omission of the additional insured(s) or any of their "employees", other than the general supervision by the additional insured(s) of your ongoing operations performed for the additional insured(s)
- (4) "Property damage" to:
 - (a) Property owned, used or occupied by or rented to the additional insured(s).
 - (b) Property in the care, custody, or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control, or
 - (c) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

CG 20 09 10 93

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CG 20 09 10 93

Sample: ISO Form – Additional Insureds
(Form B)

CGL Additional Insured Endorsements

POLICY NUMBER

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**ADDITIONAL INSURED—
OWNERS, LESSEES OR CONTRACTORS—
SCHEDULED PERSON OR ORGANIZATION (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

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

Who Is An Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of your ongoing operations performed for that insured.:

CG 20 10 03 97

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CG 20 10 03 97

**Sample: Non-Standard Form to Add Authorities as
Insureds on Contractor's Liability (Form C)**

CGL Additional Insured Endorsements

POLICY NUMBER

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

All persons or organizations where required by written contract.

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

Who Is An Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of "your work" for that insured by or for you.

To the extent required under contract, this policy will apply as primary insurance to additional insureds scheduled above and other insurance which may be available to such additional insureds will be non-contributory.

Section IV., Condition 4., of this policy is amended accordingly.

All other Terms and Conditions of this Policy remain unchanged.

CGL 216 (04/98)

CGL 216 (04/98)

Sample: Non-Standard Blanket Additional Insureds

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Flat Premium Charge: \$

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

1. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (called "additional insured") whom you are required to add as an additional insured on this policy under a written contract or written agreement.

The written contract or written agreement must be:

- a. Currently in effect or becoming effective during the term of this policy; and
 - b. Executed prior to the "bodily injury," "property damage," "personal injury," or "advertising injury."
2. The insurance provided to the additional insured is limited as follows:
 - a. That person or organization is only an additional insured with respect to liability arising out of:
 - (1) "Premises you own, rent, lease, or occupy; or
 - (2) "Your work" performed for the additional insured.
 - b. The limits of insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations for this policy,

whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

3. The following exclusion is added to Paragraph 2., Exclusions in COVERAGES (Section I):

The insurance afforded the additional insured does not apply to "bodily injury," "property damage," "personal injury," or "advertising injury" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:

- a. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, design or specifications; and
 - b. Supervisory, inspection, or engineering services.
4. Any coverage provided hereunder shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or any other basis unless a written contract or written agreement specifically requires that this insurance is primary.

EG 20 35 01 96

EG 20 35 01 96

Sample: Amendment of Limits of Insurance *(Designated Project or Premises)*

**1ST REPRINT
JANUARY 1992**

**COMMERCIAL LIABILITY
CGL—ENDORSEMENTS**

POLICY NUMBER

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT OF LIMITS OF INSURANCE (DESIGNATED PROJECT OR PREMISES)

This endorsement modifies insurance provided under the following:

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

SCHEDULE

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

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

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

CG 25 01 11 85

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Sample: Amendment of Limits of Insurance**1ST REPRINT
JANUARY 1992****COMMERCIAL LIABILITY
CGL—ENDORSEMENTS**

POLICY NUMBER

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**AMENDMENT OF LIMITS OF INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

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

The limits of insurance shown in the Declarations are replaced by the limits designated in the Schedule or in the Declarations as subject to this endorsement with respect to which an entry is made.

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Sample: Amendment of Aggregate Limits of Insurance *(per Project)*

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JANUARY 1992

COMMERCIAL LIABILITY
CGL—ENDORSEMENTS

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT—AGGREGATE LIMITS OF INSURANCE (PER PROJECT)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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Sample: Amendment of Aggregate Limits of Insurance *(per Location)*

1ST REPRINT
JANUARY 1992

COMMERCIAL LIABILITY
CGL—ENDORSEMENTS

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT—AGGREGATE LIMITS OF INSURANCE (PER LOCATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The General Aggregate Limit under LIMITS OF INSURANCE (Section III) applies separately to each of your "locations" owned by or rented to you.

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

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Sample Hold Harmless Agreements

HARRP recommends that the following language be included in your bid specifications and contract language immediately following the hold harmless (indemnification) language that you use. It should make it easier to resolve any disputes over whether or not the contractor and its insurer owe the Authority a defense:

Any issues of whether contractor has a duty under this contract to defend ***(housing authority name)*** against a particular claim or lawsuit shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof.

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 statutory and case law of the state in which your Authority is situated. Specific provisions of those statutes and cases should be examined to determine the allowable indemnification terminology.

The language of indemnification and hold harmless agreements should be explicit. It is often not possible to do that with a short, simple statement. Time devoted to the drafting of appropriate language may be time your Authority will not spend defending a claim or litigating with a contractor over the intent of that agreement. Refer to your state and type of contract for the appropriate example.

NOTE: “**Contractor**” will be the name used consistently in your contract for the general contractor, vendor, consultant, etc. “**Authority**” will be the name identifying your housing authority throughout the contract. Replace these words with formal titles when preparing documents.

CALIFORNIA

Strict or Type 1 Indemnity Language

Contractor (*Indemnitor*) shall indemnify, defend, and hold harmless **Authority**, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and attorney fees (*including, without limitation, costs, attorney fees, expert witness fees, and other expenses 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 **Authority**.

In this example, the contractor promises your Authority to assume all risk of loss resulting from the project, including losses caused by the joint negligence of your Authority and the contractor or its sub-contractors.

CAUTION: While this type of agreement provides the broadest protection for the Authority if a construction contract is involved, it would be subject to challenge under California Civil Code Section

2782(b) because it purports to indemnify the Authority for losses for its own active or joint negligence. Therefore, this type of agreement should not be used if a construction contract is involved. If that is the case, the following example (*intermediate form*) should then be used.

Intermediate Form

Contractor shall defend, indemnify, and hold harmless **Authority**, 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 **Contractor**, any sub-contractor, 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 **Authority**.

In this second example, **the Authority receives indemnity if it was not negligent or if its negligence was only passive.** (*There is a great deal of case law on the active/passive distinction. 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 Authority 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, considerably limiting the extent of the indemnification. So, if the contract promises indemnity for losses (*however they may be caused regardless of responsibility for negligence arising from use of the premises, facilities, or services, or caused by any person or persons whomever*), the wording will be interpreted as a general indemnity clause.

Release Agreement — California

If you have a defined group of persons who might be exposed to the harm (*for example, participants in an athletic event on Authority property*), a release agreement should be prepared. Generally, a release agreement should be set in type larger and bolder than the other parts of the form that contains the release, such that the larger and bolder type makes it more conspicuous and compels notice of the release to the reader. The release must be easily readable by persons of ordinary vision, so the release should not be smaller than 10 point type. The language must be clear and explicit and not so lengthy and convoluted as to be incomprehensible to the average reader.

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 **Authority** as a result of my participation in the event. This release is intended to discharge **Authority**, its officers, officials, employees, and volunteers, and 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 authorities 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 California Supreme Court case which cited this 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.

Where it is anticipated that children under age 18 will be participants in events, a parent of the child should sign a release form which expressly gives parental permission for the child to participate in the

event and waives all liability against the Authority.

A standard parental permission and release form might read as follows:

My child has my permission to participate in the *(insert event/activity)*. On behalf of my child and myself, I waive all liability against the **Authority**, its officers, officials, employees, and volunteers, and any other involved municipalities or public agencies, from and against any and all liability arising out of my child's participation in the *(insert event/activity)*, even though the liability may arise out of negligence or carelessness.

NEVADA

The following language has been provided by a Nevada defense attorney as acceptable language for contracts subject to Nevada Law:

Contractor (*Indemnitor*) shall defend, indemnify, reimburse, and forever hold harmless **Authority**, and Authority's directors, subsidiaries, affiliates, officers, agents, servants, employees, successors, assigns, and representatives from and against any and all adversarial proceedings that shall include, but are not limited to, formal or informal complaints, claims or allegations, whether legal or administrative, any action (*whether in law or in equity*), demand, loss, fine, penalty lien, interest, attorney fee, cost, or any liability for injuries whether to property or person (*up to and including death*) and any other associated or like expense of any kind or nature, whether arising before or after the completion of the work set forth herein which is in any manner directly or indirectly caused, associated with, occasioned by, or contributed to, in whole or in part, or claimed to be caused, associated with, occasioned by, or contributed to, in whole or in part, by reason of any act, failure to act, neglect, breach of representation, warranty, covenant, omission, fault, or negligence of **Contractor**, of **Contractor's** sub-contractors, sub-contractors, directors, subsidiaries, affiliates, officers, agents, servants, employees, successors, assigns, and representatives or of anyone acting under **Contractor's** direction or control or on **Contractor's** behalf which is or may be in connection with or incidental to the performance of this contract.

Upon **Authority's** notice of any claim(s) associated with **Contractor** for which **Authority** demands indemnification, **Contractor** shall assume the good faith defense, compromise, or settlement of any such claim at **Contractor's** sole expense through the services of attorneys reasonably acceptable to **Authority**. However, in assuming said good faith defense, compromise or settlement, **Contractor** may not, without the prior written consent of **Authority**, agree to (1) any injunction or relief or restriction that may affect the **Authority**, or (2) any settlement which would adversely affect the business or operations of **Authority**.

If **Contractor** does not elect to defend such claim or suit within ten (10) days after having received **Authority's** notice thereof or fails to defend the interest of **Authority** diligently, at **Authority's** reasonable discretion, **Authority** may defend against such claim or suit at **Contractor's** expense. In doing so, **Authority** may elect to compromise or settle such claim or suit with claimant at **Contractor's** expense.

OREGON

Indemnity clauses in construction contracts are governed by ORS 30.140, which will not permit a party to indemnify another party for that other party's *sole negligence*. Nor can a party be indemnified if it negligently designed the construction project, or for its sole negligence in the inspection of the project. With these restrictions in mind, the following language is recommended for building trade contracts:

Contractor hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries, affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, liabilities, interest, attorney fees, costs, and expenses of any kind

Appendix C

or nature, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Contractor**, its sub-contractors, or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract.

Contractor's aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the fault, negligence, or strict liability of the parties released, indemnified, or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the sole negligence of the parties released, indemnified, or held harmless. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

Contractor hereby agrees to require all its subcontractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming **Authority** as indemnitee.

Contractor's failure to require a sub-contractor or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an identical indemnity clause to the preceding clause renders **Contractor** liable to indemnify **Authority** to the extent it would have been indemnified had the requirement been fulfilled.

For contracts other than those involving the building trades, the following language is recommended:

Contractor hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, whether arising before or after completion of the work hereunder, and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Authority**, **Contractor**, **Contractor's** sub-contractor, or of anyone acting under **Contractor's** direction or control or on **Contractor's** behalf in connection with or incidental to the performance of this contract. **Contractor's aforesaid release, indemnity and hold harmless obligations, or portions of applications thereof, shall apply even in the event of Authority's sole negligence or strict liability.** **Authority** shall be indemnified and held harmless to the fullest extent permitted by law. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

Contractor hereby agrees to require all its sub-contractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming **Authority** as indemnitee.

Contractor's failure to require a sub-contractor or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an identical indemnity clause to the preceding clause renders **Contractor** liable to indemnify **Authority** to the extent it would have been indemnified had the requirement been fulfilled.

NOTE: If the non-construction contractor will not accept the broad indemnification language recommended above, substitute the building trades contract indemnification language.

Release Agreement — Oregon

The following language can be used for participation in Authority sponsored programs or those taking place on Authority property.

For and in consideration of my participation in *(insert event/activity)* I hereby waive, release and discharge any and all claims for damages against any person or entity in any way involved in the *(insert event/activity)*, including but not limited to Authority, which in any way may arise from my participation in the *(insert event/activity)*. I fully understand and appreciate the risks involved in my participation in the *(insert event/activity)* and hereby assume those risks and release all persons or entities described above, who might be liable to me for damages. It is further understood and agreed that this waiver, release, and assumption of risk is to be binding on my heirs, successors, and assigns. This is intended to afford **Authority** the maximum protection allowed by law. If any portion of this exculpatory clause is void and unenforceable, that portion shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

WASHINGTON

Due to various Washington tort reform statutes and RCW 3.24.115 dealing with construction contracts, your Authority will not be able to require contractors to indemnify the Authority for its own negligence. With regard to injuries occurring during the construction process, the Authority (*owner*) may have a duty to warn of or make safe all conditions on the premises which it knows or should know of that may be unreasonably dangerous. It is advisable that the Authority take measures of its own to ensure the safety of its premises. Failure to inspect your property or to supervise the Contractor's use could result in the Authority becoming liable for injuries occurring on the property, even if the Contractor creates the hazard. In view of the restrictions on indemnification and the affirmative duties of property owners, the following language is recommended for building trade contracts:

Contractor hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries, affiliates, officers, agents, employees, successors, assigns and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, **including those arising out of injury to or death of Contractor's employees**, whether arising before or after completion of the work hereunder, and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Contractor**, its sub-contractors, or of anyone acting under its direction or control, or on its behalf in connection with or incidental to the performance of this contract. **Contractor's** aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the fault, negligence, or strict liability of the parties released, indemnified, or held harmless to the fullest extent permitted by law. However, in no event shall they apply to liability caused by the sole negligence of the parties released, indemnified, or held harmless. **Contractor** expressly waives its immunity under industrial insurance, Title 51 RCW. This waiver was mutually negotiated by the parties, **as evidenced by the initials of the undersigned, in the right margin**. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

The parties agree that **Contractor** is an independent contractor and the **Authority** has no right of control over employees engaged by the **Contractor**.

Contractor hereby agrees to require all its sub-contractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming **Authority** as indemnitee.

There is no Washington statutory law governing indemnification in areas beyond the building trades contracts. However, Washington case law does not favor broad indemnification clauses and strictly construes them. The following language is recommended for non-construction contracts:

Contractor hereby releases and shall indemnify, defend, and hold harmless **Authority**, its subsidiaries, affiliates, officers, agents, employees, successors, assigns, and authorized representatives of all of the foregoing from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney fees, costs, and expenses of any kind or nature, **including those arising out of injury to or death of Contractor's employees**, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence of **Authority, Contractor, Contractor's** sub-contractors, or of anyone acting under **Contractor's** direction of control, or on **Contractor's** behalf in connection with or incidental to the performance of this contract. **Contractor's aforesaid release, indemnity, and hold harmless obligations, or portions of applications thereof, shall apply even in the event of the Authority's sole negligence or strict liability. Authority** shall be indemnified and held harmless to the fullest extent permitted by law. **Contractor** expressly waives its immunity under industrial insurance, Title 51 RCW. This waiver was mutually negotiated by the parties, **as evidenced by the initials in the right margin**. If any portion of this indemnity clause is invalid or unenforceable, it shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

The parties agree that **Contractor** is an independent contractor and the **Authority** has no right of control over employees engaged by the **Contractor**.

Contractor hereby agrees to require all its sub-contractors or anyone acting under its direction, control, or on its behalf in connection with, or incidental to the performance of this contract to execute an indemnity clause identical to the preceding clause, specifically naming Authority as indemnitee.

Release Agreement: — Washington

Release, or exculpatory, agreements are enforceable in Washington unless (1) they violate public policy, (2) the negligent acts fall greatly below the standard established by law for the protection of others (*i.e. gross negligence*), or (3) the provision is inconspicuous. Also, a parent cannot release a child's potential right of recovery.

With these restrictions in mind, the following language is recommended for participants in Authority-sponsored programs or those taking place on Authority property. We recommend utilizing the following exculpatory clause in appropriate situations, such as recreational activities on your Authority's property:

For and in consideration of my participation in *(insert event/activity)*, I hereby waive, release, and discharge any and all claims for damages against any person or entity in any way involved in the *(insert event/activity)*, including but not limited to **Authority**, which in any way may arise from my participation in the *(insert event/activity)*. I fully understand and appreciate the risks involved in my participation in the *(insert event/activity)* and hereby assume those risks and release all persons or entities described above, who might be liable to me for damages. It is further understood and agreed that this waiver, release, and assumption of risk is to be binding on my heirs, successors, and assigns. This is intended to afford **Authority** the maximum protection allowed by law. If any portion of this exculpatory clause is void and unenforceable, that portion shall be deemed excised and the remaining portions of the clause shall be given full force and effect.

Glossary

ACORD Insurance Certificate: A certificate of insurance commonly issued by insurance agents on behalf of their clients to indicate to other interested parties the nature and amounts of insurance purchased by the client. The ACORD certificate form was developed by the insurance industry in an attempt to standardize and simplify this type of insurance documentation. A sample form appears in *Appendix B*. This form does not provide insurance coverage. An endorsement or insurance policy is needed for that purpose.

Admitted Insurer: An insurance company that is licensed to do business in a state.

Agent: One who has authority to act for another. An insurance agent acts for an insurer by soliciting buyers of insurance and providing them service on behalf of the insurer. (*See also 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.

All Risk: This is a property coverage, also called “*special*” or “*open perils*” coverage, that applies to all losses except those that are specifically excluded in the policy under the exclusions.

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. (*See also Agent.*)

Builder’s Risk Insurance: Property Coverage designed for a building under construction, where the value changes each day as improvements are added. Coverage is written for the completed value of the building with a premium set for just above 50 percent of the completed value. There is no industry standard for this coverage. You should require the General Contractor to obtain this coverage. Consider obtaining the broadest form of coverage which will include such “*soft costs*” as design costs, architect’s and engineers fees, loss of income, additional costs of financing due to delays in re-building, etc.

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 Authority’s contractor and vendor 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*). This assumes that there has been an unbroken chain of claims-made policies issued by the same insurer. 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. If the contractor changes insurers, the retroactive date would change to the date the new policy went into effect. Claims which occurred under the prior policy would not be covered by the new insurer unless “*prior acts*” coverage is included, and would not be covered by the old insurer in the absence of an “*extended reporting period*” purchased by the Contractor.

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.

Glossary

Therefore, if your Authority's protection is to be preserved under this policy form, claims made against your Authority, either orally or in writing, must be reported immediately to the insurer at the address on the endorsement form or insurance policy. If the coverage has expired, or is about to do so, send notice by the fastest possible means to reduce the possibility of missing a deadline.

A common claims-made version also makes an exception for claims arising out of incidents that have been reported to the insurer during the policy term or within sixty (60) days thereafter provided that the claim is made within five 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*), and 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 Authority arranges to be protected under a Contractor's Liability insurance policy 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 Errors and Omissions Liability risks are almost always written on a **claims-made** basis, especially for 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. (*See also Occurrence -based Coverage.*)

Commercial General Liability Insurance (CGL): Covers an organization from exposure that can result in lawsuits alleging negligence that causes injury or property damage as a result of the organization's premises, products, or completed operations. The exclusions must be examined carefully to assure compliance with insurance requirements.

Completed Operations Liability Coverage: This insurance covers claims where the insured's liability arises from work that has been completed, such as property repairs or renovation. You should make sure your additional insured status covers completed operations as well as on-going operations.

Course of Construction: *See Builder's Risk*

Cross Liability Clause/Separation of Insureds Clause/Severability of Interest Clause: These terms provide language in liability policies that makes 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.

Declaration Page: The first part of an insurance policy containing statements and information about the specifics of the coverage, covered persons, or property.

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: A written change to an insurance policy that expands, reduces, or otherwise modifies coverage provided by the policy.

Glossary

Errors and Omissions Coverage: This is a form of liability insurance that responds to claims of injury that result from mistaken or improper acts during the performance of official duties. It may include discrimination and can include employment practices liability. It also covers the performance of professionals such as architects, engineers, lawyers, accountants, etc.

Exclusion: Any loss or cause of loss not covered by an insurance policy.

Hold-Harmless Agreement (Indemnification): Agreement in which one party accepts the financial obligations of responding to claims arising from allegations of its own negligence and/or that of the other party.

Named Insured/Insured/Co-Insured: The terms “*named insured*” and “*insured*” are defined in liability policies. The term co-insured 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 on the front page, or if lengthy, added by endorsement. The named insured has the duty to pay the 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 Authority 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 Authority as an insured as respects the Contractor’s work.

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, by endorsement, and must include the name and address of the party to whom notice is to be sent.

Negligence: The failure of a person or organization to exercise a proper degree of care in a given situation. The standard usually is that of a reasonable, prudent person in like circumstances.

Occurrence Coverage: A form of 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 (*eg., the Contractor or your Authority*) would be protected against this claim by the policy in effect at the time of the accident (*See also Claims-Made.*)

Personal Injury: As used in insurance policies, this term usually applies to injuries of a non-physical 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.

Glossary

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 Authority should require Products and Completed Operations Liability coverage from all contractors and from suppliers of hazardous products, such as pesticides and herbicides. Typically, this coverage is included in Comprehensive General Liability coverage and in Commercial General Liability coverage.

Professional Liability: *See Errors and Omissions.*

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 and providing for its defense costs.

Specified Perils: Property insurance that only responds if the damage resulted from the listed (*or specified*) perils in the policy. The burden is on the insured to show that a specified peril was the cause of the damage. A more limited form than “*All Risk*.”

Waiver of Subrogation: An agreement between two parties to a contract whereby one or both agree(s) 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.

An example of such a waiver is sometimes found in lease agreements. The landlord and tenant may agree that the landlord’s insurer does not attempt to charge the tenant for losses the insurer has paid. The contract may require that the landlord obtain a waiver of subrogation from the insurer, and provide evidence of the waiver to the tenant.

Waivers should be used with caution. Some insurance policies void the coverage if the insured agrees to waive the insurer’s subrogation rights without prior approval. Other policies permit waivers. You should carefully review the policies and/or call your risk management advisor for assistance when dealing with waivers of subrogation.

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, U perils. Your Contractor should provide this coverage if the contract includes excavation or the use of explosives.

Instructions to Bidders for Completing, Executing, and Submitting Evidence of Insurance to the Housing Authority

PROVIDE THIS DOCUMENT AND ATTACHMENTS TO YOUR INSURANCE AGENT.

INSURED: _____
(Contractor, Lessee, Permittee, etc.)

DATE: _____

AGREEMENT/REFERENCE NUMBER: _____

A. Insured (Contractor, Vendor, or Tenant)

1. In order to reduce problems and time delays in providing evidence of insurance to the Authority you are requested to give your insurance agent or broker a copy of the attached Insurance Requirements Sheet, along with these instructions for completing, executing, and submitting evidence of insurance.
2. If the agreement requires Workers' Compensation coverage and you have been authorized by the state to self-insure Workers' Compensation, then a copy of the certificate from the state authorizing self-insurance for Workers' Compensation shall meet the requirements for Workers' Compensation insurance covering activities within the state.
3. All questions relating to insurance should be directed to the Authority department or office responsible for your contact, lease, permit, or other agreement.

B. Insurance Agent or Broker

1. The appropriate endorsement form shall be used. Certificates of Insurance alone will not be accepted by the Authority.
2. More than one insurance policy may be required to comply with the insurance requirements. The Authority's insurance requirements to your insured's agreement, contract, lease, or permit are attached.
3. You shall have an authorized representative of the insurance company sign the completed endorsement forms and note his/her telephone number on them.
4. The name of the insurance company underwriting the coverage and its address shall be noted on the endorsement form.
5. The general description of agreement(s) and/or activity(s) insured shall include reference to the activity and/or to either the specific Authority contract number, lease number, permit number, or construction approval number.
6. The coverages and limits for each type of insurance are specified on the attached insurance requirements sheet. When coverage is on a scheduled basis, then a separate sheet is to be attached to the endorsement listing such scheduled locations, vehicles, etc.
7. Endorsements to excess or umbrella policies will be required when primary insurance is insufficient to comply with the Authority's requirements.
8. Completed endorsement(s) including cancellation notices and questions relating to the required insurance are to be directed to:

Address Cancellation Notice and Issue Endorsements to:

NAME OF HOUSING AUTHORITY

NAME OF INDIVIDUAL

STREET ADDRESS

CITY, STATE, ZIP

9. Improperly completed endorsements will be returned to your insured for correction by an authorized representative of the insurance company.
10. Delay in submitting properly completed endorsement forms may delay your insured's intended occupancy or operation under the agreement with the Authority, **or may result in your insured's bid being rejected for non-compliance.**

Special Conditions to the Housing Authority Contract of Construction

In order for the Authority to be adequately protected as is required by the HUD General Conditions to the contract, the following Special Conditions shall apply to the successful proposal:

Insurance Endorsements:

In order to comply with HUD's requirement that Authorities not assume the liability of contractors or their sub-contractors, and in the exercise of responsible risk management, insurance endorsements shall be required in order to protect the Authority. Prior to the beginning of any work under this contract, an authorized representative of each successful bidder's insurers shall submit insurance endorsements naming the Authority as Additional Insured.

- If the duties under this contract require Professional Errors and Omissions Liability insurance, the Additional Insured requirement of these Special Conditions shall be waived. However, all other provisions herein shall remain in effect.
- Insurance offered to indemnify the Authority shall be provided by insurers rated by A.M. Best Company with a rating of not less than B+:VI.
- If the coverages offered are on a claims-made form, the insurer shall provide an extended five- year reporting period to the Additional Insured (*Authority*).
- All such insurance shall be primary policies notwithstanding any inconsistent provisions in any policies of insurance or self-insurance maintained by the Authority and shall not require contribution by the Authority on any basis, pro rata, or otherwise.
- The policy to which the Additional Insured endorsement is attached shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

The policy to which the Additional Insured endorsement is attached shall not be subject to cancellation, change in coverage, reduction of limits or non-renewal except after written notice of not less than thirty (30) days given to the designated Authority official by certified mail, return receipt requested prior to the effective date thereof.

The Authority has provided its Instruction to Bidders and insurance requirements required under this contract. ISO Endorsements or others, will be acceptable provided they contain the protection contained in the insurance specifications.

Prologue

This manual has been designed to permit users to analyze risks created by contracts that housing authorities are entering into and to prepare documents which transfer the risks to the appropriate parties.

Not only is this good risk management practice, it is also required by HARRP policy. (See “*Quota Share Deductibles for Failure to Practice Contractual Risk Transfer*” in this Section.)

The manual also contains exemplars of standard insurance forms to increase the user’s familiarity with them. Reading this manual, and putting its suggestions into practice, will provide the experience you need to successfully transfer risks to the appropriate party in most contractual situations. Some unique situations may create more difficulty. Call HARRP for assistance when you encounter these unique circumstances.

The following steps should be undertaken in each contractual situation:

1. Read Section 1 — “*Introduction*” and other pertinent chapters.
2. Determine what risks this contract exposes your Authority to (See Section 3).
3. Choose the appropriate Exhibit from Sections 5A and 6A to include in the Bid Specifications (modify according to your risk analysis), “*Special Conditions*,” and “*Instructions*” from “*Bid Package Instructions*” section of this manual.
4. When bids are received, check to see if the indemnification agreement and insurance requirements are met exactly. (Notify bidder if they are not.)

We have included a number of exemplar letters and forms in this section for your use. We will continue to supplement these forms as we determine a need. Let us know if there is something you think we should include.

Contact HARRP if you have any questions!

Quota Share Deductibles for Failure to Practice Contractual Risk Transfer *(Page 1 of 2)*

Policy Statement:

All HARRP members have agreed, in the Intergovernmental Cooperation Agreement, to comply with HARRP's risk control recommendations. One recommendation, which is prudent for all members, is Contractual Risk Transfer. Analyzing risks involved in contractual situations and allocating them to the appropriate party is necessary for the protection of your agency's assets. Also, HUD, in various documents, requires that contractors (*in both construction and non-construction agreements*) be responsible for their own claims and that housing authorities not assume the liabilities of those with whom they do business.

Policy:

All HARRP members are expected to contractually transfer risk to those with whom they do business. Risk transfer is implemented by inserting an indemnification clause into agreements that makes contractors responsible for their own claims and for defending the housing authority from those claims. It also includes requiring insurance in appropriate amounts and with proper endorsements delivered to the housing authority before the contract becomes effective.

All HARRP members will be given an opportunity to be educated on contractual risk transfer by regional seminars, workshops, phone consultations, and the HARRP Contractual Risk Transfer Manual. Failure to transfer risk after implementation of this policy will result in a quota share deductible for a portion of the funds HARRP pays on a claim resulting from that failure.

Implementation:

When HARRP staff determines that a claim could have been avoided if the member had practiced effective risk transfer, the member will be so notified. On the submission of a second such claim, a deductible will be implemented after consultation between staff and the Claims/Loss Management Committee. Any staff recommendation for a quota share deductible will take place only after a thorough investigation of the risk transfer issues has been conducted. The quota share deductible will be applied following the final resolution of the claim.

This policy will be implemented only for contracts entered into, amended, or extended after the date of March 31, 2002.

Criteria:

Quota share deductibles will be implemented on subsequent claims after the first claim resulting from the failure to transfer the risk has been submitted to HARRP. In coverages where there is already a quota share or other deductible (*i.e. Errors and Omissions claims*), this risk transfer quota share deductible will be in addition to the existing deductible.

HARRP will take whatever action is appropriate to attempt to recoup from contractors at fault for the claim, any sums paid by HARRP and the member.

Procedure:

The Risk Manager or Claims Manager will investigate the member's risk transfer endeavors on claims where the failure of risk transfer is determined to have led to the claim and report to the Claims/Loss Management Committee with a recommendation regarding implementation of a member deductible. After consideration of the facts the Committee will determine the appropriate action to take.

HARRP will not apply a quota share deductible where:

- A mistake was made by the member in determining the type of specialty insurance to require in the contract; or
- Where all responsive bidders for a contract refused to accept risk transfer; or

Quota Share Deductibles for Failure to Practice Contractual Risk Transfer *(Page 2 of 2)*

- Where a member is receiving funding and the funding source requires indemnification by the HARRP member; or
- Where a member is protected as an insured under another entity's insurance policy (*such as where the member manages property for private building owner*); or
- Where there is only a single source for a needed housing authority procurement of products and/or services and that source will not accept risk transfer; or
- Where the contractor is a seller or distributor of a product (*i.e. stoves*) and does not indemnify purchasers.

Quota share deductible will be applied as follows:

- | | |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ➤ First risk transfer failure | Warning of future implementation of deductibles and offer of telephone or regional risk transfer training. |
| ➤ Second risk transfer failure | 10% quota share deductible of the total cost of the claim. |
| ➤ Third risk transfer failure | 15% quota share deductible of the total cost of the claim and referral to the Claims/Loss Management Committee for special additional loss control conditions. |

A Quick Guide to Reviewing an Insurance Policy

Sometimes you absolutely must read an insurance policy to be sure your Authority is being properly indemnified. Insurance companies sometimes slip damaging exclusions or endorsements into a policy which literally gut the coverage. (*This may be hard to believe, but it is the sad truth.*) If you are not aware of these shortcomings when you verify the insurance documentation, you will be when a big claim is filed and your Authority ends up paying for it.

All sections of a policy need to be reviewed. Areas where you will most likely find language which might restrict the coverage you have required in your contract are:

Declaration Page

Here you find the name of the insurance company, the name of the insured (*your contractor*), a policy number, policy dates, limits of insurance (*hopefully at least as much as you have required*), size of insured's deductible or self-insured retention (*remember the contractors have to have sufficient assets to pay this amount for each claim so don't permit them to have too big of a deductible*), the annual premium, and the signature of an insurance company official.

Conditions

Conditions are requirements which the insured (*your contractor*) must meet or the insurance company will deny coverage. You should review this area closely and seek assurances from your contractors that they have complied with all conditions.

Paying the premium is usually one of the conditions. Using only state certified hazardous materials handlers might be another.

Exclusions

It is very important for you to review this area. These are the things the insurance company does not intend to cover. For example, if the contract is to remove asbestos tiles and there is an exclusion for claims relating to asbestos, neither you or your contractor has any coverage under that insurance policy.

If there is an exclusion for "*liability assumed under a contract*" there won't be any coverage to back-up the great indemnification language you included in the contract.

Endorsements

Always review these carefully because they amend the policy. They should refer to the section of the policy being amended. Go to that section and compare the existing language to that contained in the endorsement. Make sure the endorsement is not deleting or restricting coverage you have required and which is included in the original insurance policy.

Carefully read the endorsement adding the Authority as Additional Insured. Make sure it provides coverage for the Contractor's negligence after the job is complete (*"Your" work performed for the Additional Insured*).

Contract and Risk Transfer Review/Checklist

(Page 1 of 2)

Contract Identification: _____ Term: _____
 Parties: _____
 Location of Work: _____
 Person Completing the Review: _____ Date: _____
 Date Contract Approved: _____

Check all that apply according to Bid Specifications

Indemnification Provisions

	Bid Complies	Bid Doesn't Comply	Comments/Notes
<input type="checkbox"/> Broad Form Basis (Includes sole negligence of Authority)			
<input type="checkbox"/> Intermediate Form Basis (Joint negligence of Contractor and Authority)			
<input type="checkbox"/> Professional Errors and Omissions Liability			
<input type="checkbox"/> Special Indemnification Provision(s)			

Insurance Requirements

	Bid Complies	Bid Doesn't Comply	Comments/Notes
Commercial General Liability \$ _____ Each Occurrence \$ _____ General Aggregate \$ _____ Products/Comp.Ops. Agg. \$ _____ Deductible <input type="checkbox"/> Per Project General Aggregate <input type="checkbox"/> Per Location General Aggregate			
<input type="checkbox"/> Automobile Liability \$ _____ Each Accident <input type="checkbox"/> Covers All Vehicles			
Workers' Compensation Employer's Liability Limits \$ _____ Bodily Injury by Accident \$ _____ Bodily Injury by Disease/Policy \$ _____ Bodily Injury by Disease/Employee			
<input type="checkbox"/> Pollution Coverage			
<input type="checkbox"/> Additional Insured Status <input type="checkbox"/> Coverage Primary <input type="checkbox"/> _____ Days Notice of Change/Cancellation			
<input type="checkbox"/> Errors and Omissions Coverage <input type="checkbox"/> Includes Discrimination <input type="checkbox"/> Claims-Made Form/Extended Reporting Tail			
<input type="checkbox"/> Miscellaneous Requirements			

Contract and Risk Transfer Review/Checklist

(Page 2 of 2)

Check all that apply according to Bid Specifications

Insurance Requirements <i>(continued)</i>	Bid Complies	Bid Doesn't Comply	Comments/Notes
<input type="checkbox"/> Umbrella/Excess Liability \$ _____ Each Occurrence			
<input type="checkbox"/> Owners and Contractors Protective Liability \$ _____ Each Occurrence			
<input type="checkbox"/> Owners and Contractors Protective Liability \$ _____ Each Occurrence <input type="checkbox"/> Soft Costs Included?			

Evidence of Insurance	Bid Complies	Bid Doesn't Comply	Comments/Notes
<input type="checkbox"/> Certificate – ACORD Form			
<input type="checkbox"/> Certificate – Manuscript Form			
<input type="checkbox"/> Endorsement(s)			
<input type="checkbox"/> Copies of Policies			
<input type="checkbox"/> Other			

Frequently Asked Questions About Contractual Risk Transfer *(Page 1 of 4)*

Endorsements

Can you tell us the endorsement number the Contractor's insurance agent should give us to make the Authority an Additional Insured?

The most common Additional Insured endorsements begin with CG 20 10 ... or CG 20 26 ... They are published by a company called ISO. The best endorsement available is CG 20 37 ... which offers the additional insured coverage for completed operations. Some insurance companies use their own forms and do not subscribe to ISO and therefore do not use the above endorsement numbers. Authorities should read the endorsement and not rely on a form number because the subscribing insurance company has the authority to modify the wording.

The insurance agent for the Contractor said we cannot be named as an Additional Insured under Professional Errors and Omissions Liability and Workers' Compensation. Is this correct?

Yes, Professional Errors and Omissions Liability requires that you be employed within that profession to be an insured under the policy. That type of policy is written to protect the clients from the errors and omissions of the professional they hired.

Workers' Compensation protects the employer from injuries to its employees. If you use an indemnification clause resembling those included in this manual and get endorsed as Additional Insured onto the Contractor's General Liability policy, their insurer will defend the Authority from suits arising from the Contractor's employees being injured on your property.

The agent sent us an insurance certificate naming the Authority as Additional Insured and the agent tells us that the Authority is automatically covered within the Contractor's General Liability policy. How do we get evidence of the automatic coverage?

Insurance certificates by themselves do nothing to protect the person who receives them, no matter what wording is typed on them. Therefore, you need an Additional Insured endorsement, or a copy of the insurance policy.

What the agent told you may in fact be true, but you must get and read that section of the General Liability policy that claims to add the Authority automatically as an Additional Insured.

Some insurance Companies (*but not all*) have started to insert language into their policy wording that makes entities that require additional insured status automatically an Additional Insured **if and only if** it is required in a written contract, agreement or permit. Some of these endorsements fail to make their coverage primary and excess over the Additional Insured's coverage, so be sure to read the document.

Contract Price

If our contract is for a very small amount (*say less than \$1,000*) for work to be performed, should we still require insurance?

Yes, there is no relationship between the contract price and the amount you can be sued for if your Contractor's work injures another party. You always have to ask and answer the following questions:

What can go wrong during the performance of this contract?

Who can get hurt by this Contractor's work?

How badly could they get hurt?

The answers to these questions will determine how much insurance is required.

In a small contract, can we require less than \$1,000,000 in limits of liability insurance?

It depends on the scope of work required in your contract. Some jobs are higher risk than others. You can find a partial listing of high risk activities at the end of Section 3 (*Drafting Insurance Specifications*) of

Frequently Asked Questions About Contractual Risk Transfer (Page 2 of 4)

this manual. If a Contractor is not performing a high risk job, you can lower the limit of liability insurance. Be aware that HUD guidelines recommend not less than a \$500,000 limit.

Hazardous Materials Contracts

We entered into a contract that requires, among other things, asbestos removal and lead paint abatement. The General Contractor we hired is not certified to do that type of work, he says he will use a certified abatement sub-contractor to perform that type of work. Do we need to get Additional Insured endorsements from the abatement sub-contractor?

Yes, since the General Contractor's insurance probably does not provide specialty coverage for abatement of pollutants. It will contain a pollution exclusion (*because they are not licensed and EPA certified in asbestos and lead abatement*). Therefore, the General Contractor's insurance will not pay for any pollution claims. However, the abatement contractor should have the specialized insurance to pay for lead and asbestos claims, and you will need to get endorsements from the abatement sub-contractor's insurer naming the Authority an Additional Insured, with the sub-contractor's coverage being primary for the abatement work.

Stop Gap and Employer's Liability

We asked for Employer's Liability insurance and we got Stop Gap, what is the difference?

Stop Gap is an added coverage to a General Liability policy in states that are the exclusive sellers of Workers' Compensation (*such as Washington*). These state funds offer Workers' Compensation (*i.e. employee injury protection*) only unlike commercial insurers that include the additional Employer's Liability coverage with the Workers' Compensation coverage.

Employer's Liability and Stop Gap cover claims arising from employee related claims that are not covered by Workers' Compensation, such as lead abatement workers children getting an elevated blood level from lead dust in the work clothes of their parent. If the children sue the employer, the Employer's Liability or Stop Gap coverage would handle that claim.

Emergencies

How do we require insurance from a Contractor if we have an emergency which needs immediate action to avoid a bigger property loss or bodily injury?

In unforeseen emergencies, contractual risk transfer takes a back seat to getting a problem fixed that may cause bodily injury or property damage.

Insureds and HARRP members have a duty to protect the public and to prevent their property from suffering further damage. In these situations, there is no time to put out a full blown "*Request for Proposals*" and do the necessary checking of insurance documentation. You should engage responsible contractors and work with them to implement safeguards that reduce the probability that a claim might occur from the work.

Auto Insurance

Our contractor told us he uses his personal vehicle and not a company vehicle to get to and from work. He pointed out that the contract does not involve use of a vehicle and that he will only be using it for his own transportation, therefore, he asked us to waive the auto insurance requirement, can we do that?

Yes, if the contract does not require use of a vehicle and it is a personal auto solely used for getting to and from work sites.

Frequently Asked Questions About Contractual Risk Transfer *(Page 3 of 4)*

Some insurance companies tell us that it is not necessary to name the Authority as an Additional Insured on a motor vehicle liability policy because insurance follows the vehicle and there is an omnibus clause in personal auto insurance that covers other entities when the vehicle is used in business.

The risk management community is divided on this issue. Some insurance companies see it as necessary to issue Additional Insured endorsements, others do not. Ask for the endorsement anyway and if they will not provide one get a Certificate of Insurance or auto insurance card proving the Contractor has auto coverage.

Non Contribution Endorsement

The insurance endorsement we received makes the Contractor's insurance primary and makes the Authority Additional Insured, but contains no clause that says the insurance company will not seek contribution from the Authority. However, the endorsement says the Authority's coverage is excess over the Contractor's limits. Can we accept this?

Yes, because the Contractor's coverage is primary, and the Authority's coverage is excess, the Contractor's insurance must pay up to its policy limits until those limits are exhausted. Most claims rarely settle over the limits required in HARRP's recommended insurance requirements. That is why your risk assessment should include an analysis of the amount of damage that could occur to someone due to the work being done under the contract.

General Questions and Answers

Some contractors have attempted to limit their liability to the contract price. Can we do this?

This is almost never acceptable. If you have analyzed the risks of loss under the contract (*i.e. what can go wrong, who can get hurt, how badly, and who has control of the conditions that can cause or avoid the loss*) and have determined that there is little probability that any loss will exceed the contract price, then it would be okay. (*In the real world this will almost never be the case.*)

Can we change the \$1,000,000 limits stated in the manual?

You can negotiate the \$1,000,000 limits (*both up and down*) based upon your analysis of the probable risks of loss under the contract. As the Authority official most knowledgeable about this contract, you understand how much loss the Authority could be exposed to under the contract.

How do you "negotiate" the hold harmless language in the contract?

First, you analyze the risks of loss you might expect as a result of the performance of the contract. Once you know what might go wrong, who might get hurt, how badly, and who controls the conditions that can cause or avoid the loss, you have a better idea of how to allocate the risk and how much protection the Authority needs.

If Contractors object to your language, ask them to explain their objection and give you their proposed language. Match that with your language to determine the differences. If you have difficulty determining the possible effects of the suggested changes, call HARRP and we will discuss it with you. If you give something up, make sure it does not substantially increase the Authority's exposure and try to get something in return, such as additional safeguards.

Frequently Asked Questions About Contractual Risk Transfer *(Page 4 of 4)*

The Contractor wants us to indemnify him with the same language we have in our indemnification clause. Can we do this?

You should never agree to assume the Contractor's liability. You have no control over the Contractor's activities so why should you accept legal responsibility for those activities? If the Authority is doing nothing more than paying the Contractor, it should never indemnify the Contractor. If the Authority and the Contractor are both working on the job site, or performing separate services under the contract, a mutual hold harmless might be appropriate. The language should spell out what each party is doing and that they will be responsible for claims caused by that activity. Mirror image indemnification language is not usually appropriate.

Contractors and insurers complain that the housing authorities want to be indemnified for "*all their liability*."

Ask them to quote the language upon which they base their allegations. All the indemnity clauses limit the indemnification to "*work hereunder*," "*work described herein*," or other language restricting the indemnity to exposures related to the contract in which they are included, not to all of the housing authority's exposures.

This is a totally baseless complaint — so make them read the language to you to prove their allegations.

Sometimes the Contractor may wish to insert language under which he/she would indemnify the Authority for claims made against the Contractor for its "*gross negligence*" or "*sole*" negligence. Is that okay?

Neither of these is acceptable. The vast majority of claims will allege simple negligence (*not the higher level of gross negligence*). As noted above, most claims will also allege some amount of joint negligence (*i.e. contractor, sub-contractor, authority, etc.*). If you accept the indemnity being offered, it will apply to very few claims. The Authority will be responsible for all the others. If the Authority is responsible for 90% to 95% of the claims, you haven't effectively transferred much risk.

The insurance coverage provided by the bidder who submitted the lowest bid does not meet the specifications we included in the "*Request for Proposal*." Can we award the bid to another contractor?

If you included specifications for insurance in the "*Request for Proposal*" the bidder has not complied with the specifications and it would not be the "*lowest responsive bid*." If that is the standard your Authority applies in its contracting policy you should be able to award the bid to the "*lowest responsive bidder*."

Let's Bring it All Together

(Page 1 of 2)

Now that you have reviewed this manual, you should be able to confidently develop appropriate indemnification language to include in your bid specifications and contracts. You should be able to develop the appropriate insurance specifications that will give your Authority a reasonable chance of having a source of funds to pay for any claim that might arise from the performance or non-performance of the other party to a contract.

So why don't we walk through the thought processes and actions you should take to effect proper contractual risk transfer. Let's assume you have to enter into a contract to have the roofs of seven buildings at a single site re-shingled. What do you do?

Ask and answer the questions:

- What can go wrong in the performance of this contract?
- Who can get hurt?
- How badly might they be hurt?

Your answers should run the gamut from the Authority being damaged by non-performance of the roofer, by shoddy workmanship or materials, to a resident stepping onto a nail that is left at the site, to a child being injured by playing around debris or roofing materials if they are not secured. How about possible injuries to the Contractor's employees? Could the truck delivering the shingles run over one of your residents? Yes to all the above and more.

- So you need to develop indemnification language under which the Contractor will defend and indemnify the Authority for all those types of injuries (*everything that he/she, not the Authority, has control over or that would not happen if this contract work was not occurring*).
- What kinds of insurance should the Contractor have?
 - How about General Liability?
 - Probably Automobile Liability?
 - Certainly Workers' Compensation
 - Maybe Pollution Liability if the old shingles contain asbestos?
- What limits should you require?

We suggest you start at \$1,000,000 for the General and Automobile Liability. You could increase it or decrease it based upon your understanding of how generous your local juries are; the kinds of safeguards you can have the Contractor put into place to minimize the chances of the claim occurring; etc.

Now it is time to go to the HARRP Contractual Risk Transfer Manual and pull together the documents that spell out the indemnification and insurance requirements you have settled on. (*Let's assume that you're in California for the purposes of this exercise*)

Since this is a construction contract, you ought to model your indemnification language on the "Intermediate Form" of indemnification so you don't run afoul of California Civil Code Section 2782(b). Next you should get Exhibit 2 "Insurance Requirements for Contractors (with construction or lead paint or asbestos risks)" and modify the insurance limits based upon your risk assessment.

If you then go to the section entitled "Bid Package Instructions," you should include both the "Special Conditions" and the "Instructions to Bidders ..." documents. These documents add suspenders to the belt you have already provided with the other documents, but the bidders and their insurers should have no questions about what you are asking for.

- All of this documentation should be included in your Authority's standard bid proposal solicitation materials.
- Since insurance companies are generally very slow when it comes to providing

Let's Bring it All Together

(Page 2 of 2)

documentation (*and they don't always provide the coverages you have asked for*) you should consider requiring the indemnification and insurance information to be submitted to you a few weeks before the other bid information is due. This will give you time to review it (*yes, you really **must** review it*) and ensure you receive what you asked for in your specifications. These extra few weeks might be needed to have the bidder get back to his/her insurer and get it right.

➤ You have two objectives during this process:

1. Get your contracts issued so that the Authority can receive the goods and services that it needs.
2. Protect the interests and assets of the Authority (*by not paying claims that should be the responsibility of the other party*).

So this contractual risk transfer process is one of **NEGOTIATION!!** Sometimes you get everything you ask for the first time out. Often you don't. That is when you sharpen your negotiating skills so that both of the above objectives can be met.

This manual contains "*guidelines*." You cannot take it off the shelf, photocopy a few pages to send to the bidders, then head off to deal with another project. No one understands better than you what will be accomplished under the terms of the contract you are working on. You are the one in the best position to determine what can go wrong, who can get hurt, and how badly they might get hurt. So you have to develop the appropriate indemnification and insurance specifications to handle your assessment of the risks.

If the contractors and/or insurers won't give you what you ask for, make them tell you why not and ask what they suggest. Then see how you can alter the risks of loss that you originally thought might occur so that you can get your contract issued and still protect the Authority's interests

This stuff is not rocket science, but it is also not something that is "*one size fits all*." It requires a moderate amount of special knowledge (*found in this manual*), a lot of common sense, and the experience you gain each time you go through the process.

We here at HARRP are available to help you deal with the tough and first-of-a-kind issues. But we can't help every member with every contract, so you need to develop the skills and confidence to do the majority of your Authority's contractual risk transfer. A number of your colleagues have already developed these skills. They now call us, explain what the issues are, what their solution is, and ask our opinion. We are pleased that more and more often our response is — "*That's perfect!*" We know you can do it. By using this manual and following its guidelines, you will soon know that you can do it!

Sample Letter Notifying Insurer of Claim or Incident

<DATE>

Brokers "R" Us
123 S. Main Street
Anywhere, USA

RE: Notice of Accident: () Insurance Company
Claimant: Mary Jo Fell
Your Insured: XYZ Construction
Job: Construction of ABC Development
Date of Incident: February 29, 2003

Dear Broker:

Your office has previously issued an endorsement for the above captioned work being conducted by your insured at our ABC Development. Enclosed you will find an incident report, which appears to have been caused by your insured's work.

The above referenced endorsement names our Housing Authority as an Additional Insured. We hereby request defense and indemnity pursuant to our insurance endorsement and rights under your insurance policy no.:

_____.

Please have your adjuster contact me so that we can assist him/her in the investigation. I can be reached at the telephone number shown above/below.

Sincerely,

Executive Director

cc: Contractor

Sample Letter Notifying Contractor of Expiring Insurance

<DATE>

XYZ Construction Company
Address
City, State, Zip

RE: Contract Number: _____
Expiring Insurance: _____

Dear Gentlemen:

Our files indicate that your _____ insurance coverage; Policy number:
_____ will be expiring on _____.

Pursuant to the general conditions of our contract form HUD-5370 Section 36(3)c:

If any insurance is due to expire during the construction period the contractor “including subcontractors if applicable” shall not permit the coverage to lapse and shall furnish evidence of coverage to the contracting officer.”

If we do not receive evidence of renewed coverage before the date the current policy expires, the housing authority will have no other option but to declare a default under this contract. We request that you immediately secure renewal coverage under the expiring policy and/or another policy consistent with the specifications listed in our bid package. Otherwise, federal regulations require the housing authority to stop all work and declare this contract breached.

We require that renewal coverage documents be delivered to this office before the expiration of the current insurance so that work will not be interrupted.

We thank you for your prompt attention to this matter.

Sincerely,

Executive Director