

COUNTY OF LOS ANGELES

INSURANCE MANUAL

FOR

SERVICE AGREEMENTS

Revised: January 12, 2010

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Section 1: Introduction

County of Los Angeles: Indemnification and Insurance Requirements for Service Agreements

The County Board of Supervisors has established policy requiring that departments address responsibility for liability costs between the County department and the Contractor¹ in service agreements (Section 14, Appendix). To implement the Board's mandate, the Chief Executive Office (CEO), with assistance from County Counsel, develops and maintains uniform indemnification and insurance terms for incorporation in County service agreements (Section 13, Exhibits). These requirements are periodically reviewed and revised to accommodate changes in the commercial insurance industry, and to meet County risk management needs.

The County's indemnification provision requires that the Contractor assume any and all financial liability related to or arising from its actions (the County retains financial liability for any injury or damage due to the County's sole negligence). Requiring appropriate types of insurance with adequate policy limits helps to ensure the Contractor will have the financial resources required to pay claims which are its responsibility. The County's insurance coverage limits are not based upon the value of the services provided under the contract. A small contract for shuttle bus services may involve only a few thousand dollars, but pose significant risk of bodily injury and property damage due to the transport of multiple persons in heavy traffic. Conversely, some consulting services may be more expensive but pose less exposure to financial loss.

As a general rule, the indemnification and insurance requirements included in this manual (Section 13, Exhibit A) may be incorporated as is within agreements without separate review by the CEO. In the case of unusual or unique risk exposures, departments may request that CEO and County Counsel review and suggest appropriate alternatives to the standard requirements (see Section 5).

¹ **For convenience, when the word Contractor is used in this manual, it will refer to all County service providers, contractors, vendors, and consultants.** Persons formally enrolled as department Volunteers are not considered Contractors. Volunteers are defended and indemnified by the County for third party liability which may arise from their volunteer activities, unless those actions are fraudulent, malicious, criminal or outside the scope of their volunteer work assignment. Volunteers are not indemnified for punitive damages.

Objectives of Controlling County Contractual Risk Exposures

The objectives of contractual risk management are to:

- Place as much responsibility as possible with the other party for liability that arises out of the situations covered by the contract. The Contractor is in control of the work process and is the party most knowledgeable concerning the work to be performed. Therefore, the Contractor is in the best position to manage the risks of its operations and should accept that responsibility and cost.
- Assure the Contractor has the appropriate types and amounts of insurance, or is otherwise financially capable of paying for the injuries and damages for which it is responsible. Since even competent firms with a past record of good performance may become involved in a third party claim or lawsuit, maintenance of insurance (or use of other appropriate risk financing) is critical to ensure that the Contractor has the funds necessary to indemnify the County for losses resulting from its activities.
- Protect the County from indemnity and legal costs associated with claims which may arise from the activities of Contractors. If a Contractor fails to maintain the required coverage, and the County is named in a claim or lawsuit arising from the Contractor's activities, the County may be forced to take legal action against the Contractor to recover its legal expenses and any damages (indemnity) paid to claimants. For this reason, executing contracts with uninsured Contractors may put the County at greater financial risk, since legal defense costs, judgments or settlements which cannot be paid by the Contractor or its insurer must then be paid from the respective department budget (see Section 14, Appendix).

This risk transfer method is an accepted business (and County) practice. If a Contractor is reluctant to indemnify the County, or to obtain insurance coverage to satisfy the County's insurance requirements, it is recommended that departments follow the procedures outlined in this manual and contact CEO Risk Management Operations and County Counsel as needed.

Functions of Contractual Risk Management

There are two distinct functions of contractual risk management: (1) contract review and (2) compliance monitoring.

Contract review assures that appropriate indemnification and insurance requirements are incorporated within solicitations (e.g., Request for Proposals, Invitation for Bids, Invitation for Quotes) and agreements. These requirements, when based upon the risk exposures generated by the contract, should not place an unacceptable financial burden on the Contractor.

Compliance monitoring is the process of obtaining adequate evidence that the Contractor satisfies the County's insurance requirements throughout the life of the contract. Without an enforcement procedure, the County cannot be confident that the requirements have been met.

Purpose of the Insurance Manual for Service Agreements

The purpose of this manual is to:

Provide guidelines concerning indemnification and insurance requirements appropriate for incorporation in County service agreements.

Describe the most commonly required types of insurance coverage.

Recommend methods which may be used to review agreements and monitor Contractor compliance with the County's insurance requirements.

The types and amounts of insurance, as well as the evidence of coverage required, may vary depending upon the nature of the contracted work activity and the risk exposures associated with the contract. Contracts which present unusual or severe loss exposures may require more detailed review, since they may require specialized indemnification language or additional insurance requirements. Departments are asked to consult with CEO Risk Management Operations and County Counsel if a Contractor requests modification of indemnification and/or insurance requirements.

Other Agreements – Construction Contracts

Construction contracts require specialized treatment. Section 10 provides guidelines for the establishment of appropriate insurance requirements. Insurance coverages and risk management practices are constantly evolving in order to address advances in technology and respond to changing business and regulatory climates. Countless books, seminars and classes are offered each year concerning the topics briefly covered in this manual, and the amount of information available via the Internet is increasing as well. If you wish to obtain more detailed information concerning insurance and risk management practices, please call CEO Risk Management Operations and we will refer you to additional resources.

Section 2: Indemnification Requirements

Indemnification is the promise of one party to compensate another party for certain kinds of losses.

Section 13, Exhibit A, includes the following indemnification clause which should be included in all service agreements:

Indemnification: Contractor shall indemnify, defend and hold harmless County, and its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Agreement.

In the case of the County, the intent of the indemnification clause is to transfer most common contractual risk exposures to the Contractor. The indemnification clause:

- Delineates the financial responsibility of each party.
- Requires that the Contractor accept responsibility for liability arising from its operations or services.
- Includes no coverage exclusions or dollar limitation.
- Includes a duty to defend the County against claims, even if no liability is eventually found. Just the fact that the County hired the Contractor to provide services on its behalf may result in the County being named a defendant in a lawsuit, even though the County and its employees had absolutely no involvement in the actions that led to the lawsuit. The indemnity clause enables the County to shift this risk to the responsible party, the Contractor.

There are certain limitations to the effectiveness of indemnification provisions as a risk transfer technique.

- Improperly written indemnification provisions may not be legally enforceable.
- The Contractor may not be willing to fulfill its indemnification commitment.
- The Contractor or its insurance carrier may not be able to pay indemnity costs.

In certain cases, a Contractor may request modification of the County's standard indemnification requirements. It is highly recommended that such requests be reviewed by CEO Risk Management Operations and County Counsel to evaluate any potential increase in County liability which may result from such revisions.

Section 3: Purpose of Insurance

Purchase of commercial insurance coverage is the method used by many Contractors to enable them to fulfill their promise of indemnification.

Insurance coverage:

- Provides legal defense for the Contractor, including defense against “frivolous” liability actions filed by third parties.
- Provides funds necessary to pay liability costs (indemnification) for which the Contractor is found responsible.
- May also provide additional benefits (such as medical payments coverage or loss prevention inspection services).

Insurance policies also have certain limitations, since they:

- Contain specific coverage exclusions.
- Contain specific dollar limitations.
- Must be monitored to ensure they remain in effect for the duration of the agreement.

Contractors should be required to provide, at minimum, general liability and auto liability coverages. Workers Compensation coverage should also be required to ensure Contractors provide those benefits for which they are responsible.

Alternative or additional insurance coverages also may be required to address special risk exposures. This includes situations in which:

- The service falls into one of the categories discussed in Section 5. G. - J. of the manual.
- The Contractor is the single source for a critical service, and provides evidence that coverage is unavailable or prohibitive in cost (see Section 7). These situations should be carefully evaluated before modifying insurance requirements, since the department faces greater financial exposure if the Contractor’s insurance coverages or coverage limits prove inadequate.
- Higher liability limits or specialized insurance should be required due to the unusually hazardous circumstance or the unique nature of the services to be provided (such as work involving aviation activities, marine exposures, or potential for pollution liability).

All Contractors should be required to indemnify the County and provide appropriate insurance coverage. This protects departments from inadvertently assuming indemnity and legal costs associated with claims and lawsuits arising from the Contractor's operations. Most Contractors recognize it is sound financial practice to protect their profitability (or survival) by maintaining adequate business insurance, and are agreeable to the County's requirements.

Section 4: General Insurance Requirements

Service agreements should always include provisions requiring Contractors to maintain appropriate insurance and provide evidence of coverage which is acceptable to the County. Subcontractors should also carry appropriate insurance. Standard contract language for this purpose is included in Section 13, Exhibit A (Indemnification and Insurance Requirements for Service Agreements). Key insurance requirements applicable to all service agreements include the following:

- A. **The Certificate of Insurance should document that the general liability coverage applies on a primary basis.** The Contractor's insurance is required to be primary to, and not contributing with, any other insurance or self-insurance programs maintained by the County. This means the Contractor's insurance will apply first to any loss, and only after the Contractor's insurance is exhausted will the County's commercial insurance or self-insurance programs apply to the loss. Requiring that the Contractor's policy be primary also prevents the Contractor's insurance company from seeking financial compensation from the County for the insurer's losses.
- B. **Certificate(s) of Insurance or other evidence of coverage must be delivered to the Department before the Contractor begins work.** Certificates should specifically reference the contract agreement and number, list all coverages required in the contract, and provide that the County will be given written notice by mail at least thirty (30) days in advance of any modification or termination of insurance coverage. Contractors should not be allowed to begin work until evidence of appropriate insurance coverage has been provided.
- C. **A copy of the additional insured endorsement to the general liability policy must be provided.** An endorsement is a written provision added to an insurance policy which modifies the policy provisions. An *additional insured* endorsement requires that the Contractor's insurer defend and indemnify the County in the event that liability claims arise out of the services performed by the Contractor. This entitles the County to be treated as if it had been issued its own, separate insurance policy. The insurance carrier must provide defense even in cases where the claim appears fraudulent or without merit.²

² An insurer is not obligated to provide defense for claims where there would be no coverage under the policy. For example, an insurer providing only general liability insurance coverage would not provide legal defense or indemnification for an auto liability claim.

It is customary for Contractors to name entities such as the County as an insured (commonly referred to as an “*additional insured*”) on their general liability policies. This often can be done at nominal or no cost to the Contractor. An actual copy of the *additional insured* endorsement should be obtained to verify that the insurance company has in fact amended the policy to include this important provision. See Section 13, Exhibit B for an example of a completed *additional insured* endorsement form.³

- D. **If the Contractor fails to maintain the required insurance, the County may immediately terminate or suspend the agreement.** The County also retains the option of purchasing the required insurance coverage and deducting premium costs from sums due to the Contractor.
- E. **The Contractor is responsible for reporting any third party claim or lawsuit filed against the Contractor, which has arisen from or relates to services performed by the Contractor under its agreement with the County.** The County requests notification of any accidents or incidents which could result in the later filing of a claim or lawsuit against the Contractor or County, and of any loss or destruction of County monies or property entrusted to the Contractor. Information concerning such accidents or incidents should be provided on County approved forms used by your department (see Section 13, Exhibit C for sample forms).
- F. **The Contractor is responsible for reporting to the County any injury to, or accident involving, a Contractor employee which occurs while the employee is on County premises.** This information also should be submitted on an approved County incident report form. These forms should be available through your department’s risk management coordinator (also see Section 13, Exhibit C - “Report of Non-Employee Injury” form), and a completed copy of the form should be distributed per County and department policy. Notification is required only for injuries resulting from accidents occurring on County property.

³A widely used *additional insured* endorsement is ISO form CG 20 10. The broadest and most favorable version of the form is the 11/85 Edition (Section 13, Exhibit B).

Section 5: Commercial Insurance Requirements – Coverage Types and Limits

As previously noted, Contractors should be required to provide general liability and auto liability insurance, and Workers Compensation coverage. A brief explanation of these and other coverages which may be required is provided in this section. Questions concerning insurance requirements for contracts with risk exposures not addressed in this manual may be referred to CEO Risk Management Operations.

A. General Liability

1. **Purpose:** General liability insurance provides protection against liability claims made by third parties alleging bodily injury and/or property damage, or personal or advertising injury resulting from the Contractor's activities.
2. **Coverage requirement:** General liability coverage should be required in all contracts. The Contractor should also be required to add the County as an insured (*additional insured*) on the general liability policy.⁴ The standard policy form used by most insurance companies to write this coverage is the "commercial general liability" form, also referred to as the "CGL" or ISO policy form CG 00 01 .⁵ The protection provided by the CGL form serves as the minimum coverage standard acceptable to the County.
3. **Coverage limits: Limits of not less than the following amounts should be required of all Contractors:**

General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

The following paragraphs provide a brief description and explanation of the kinds of coverage limits included within the CGL policy.

⁴Being named as an *additional insured* under the policy does not prevent the County from filing a claim against the Contractor's policy if the County suffers a loss. However, the County cannot file a claim to obtain compensation for damages incurred by the County due to the County's own negligence.

⁵The Insurance Services Office (ISO) is a nationally recognized service that produces policy forms and endorsements used by the insurance industry.

“Per Occurrence” limit: An occurrence is the event or incident which is the basis of a claim or lawsuit. The occurrence limit is the maximum amount the insurer will pay for all injuries and damages arising from a single accident or event (occurrence), regardless of the number of claimants.

“Personal and Advertising Injury” limit: The maximum amount the insurer will pay during the coverage year for all claims arising from personal and advertising injury (specifically, claims for injuries due to false arrest, detention or imprisonment, malicious prosecution, slander, libel, certain violations of a person’s right to privacy, or infringing upon another’s advertising idea or copyright). However, liability for these kinds of offenses committed by a Contractor whose business is advertising, publishing, broadcasting or telecasting (ex. Contractor is an ad agency, TV station or newspaper) is not covered under this policy and must be provided through other specialized coverages.

“Aggregate” limit: An aggregate limit is the maximum amount the insurer will pay for all injuries and damages occurring during the coverage year (regardless of the number of occurrences). The CGL includes two types of aggregate limits:

- **“General Aggregate Limit”:** The maximum amount the insurer will pay during the policy year for all bodily injury or property damage which results from the insured’s operations or premises, with the exception of amounts paid for bodily injury or property damage due to completed operations or products liability. Policies are usually written with a General Aggregate Limit equal to twice the Per Occurrence Limit.
- **“Products/Completed Operations Aggregate Limit”:** The maximum amount the insurer will pay during the policy year for bodily injury or property damage arising from all products liability or completed operations claims (i.e., claims arising from products sold by, or work completed by, the Contractor). This limit is also subject to the General Aggregate Limit. Most policies include a Products/Completed Operations Aggregate Limit equal to the general aggregate limit amount.

It is important that the amount of both aggregate limits appears reasonable to cover all losses related to the work done by the Contractor for the County, plus any losses generated by work done on other (non-County) projects which are active during the policy period.

- **Fire Damage:** also referred to as fire legal liability coverage. This is the maximum amount the insurer will pay for fire damage to premises rented by the Contractor.
- **Medical Expense:** covers medical expenses for an injured party, without regard as to whether the Contractor is legally liable to pay them. This coverage is intended to reduce the likelihood of the filing of a liability claim by a person who is injured due to the Contractor's operations or while on their premises.

The CGL policy limits will be stated in the Certificate of Insurance provided by the Contractor. The most widely recognized certificate forms are the ACORD forms (Section 6.A and Section 13, Exhibit D)⁶, although County will accept other forms.

In today's environment, it is possible for \$1 million per occurrence and \$2 million aggregate limits to be exceeded in settlements or judgments in serious liability cases. Higher limits of liability coverage should be considered for agreements involving potentially high risk activities (for example, garbage or refuse collection, dredging or drilling).

The following page provides an example of how various liability coverage limits might be applied in the event of loss.

Application of liability limits example: Assume a welding Contractor maintains a general liability insurance policy with the following limits:

General Aggregate:	\$1,000,000.
Products/Completed Operations Aggregate:	\$300,000.
Personal and Advertising Injury:	\$300,000.
Each Occurrence:	\$300,000.

A Contractor employee causes a fire (the occurrence) which results in serious burn injuries to 3 persons. Each injured person files a \$250,000 bodily injury claim against the Contractor. Assuming the Contractor is found responsible for these injuries, the combined \$750,000 in claims payments will exhaust the \$300,000 occurrence limit in the policy - the limit of coverage purchased would be inadequate to pay the total value of claims.

⁶ ACORD: refers to the Agency-Company Organization for Research & Development, a non-profit insurance association.

Assume the same Contractor employee repeatedly fails to properly maintain a work area, causing 6 people to be injured in 6 unrelated slip and fall incidents. Each injured person files a \$100,000 bodily injury claim against the Contractor. The policy requires that each of these events be considered a separate occurrence, which means the aggregate value of these claims would be \$600,000. The policy's aggregate coverage limit of \$1,000,000, minus any previous claims paid during the policy year, is the amount which would be available to pay the total \$600,000 in claims. Thus if the insurer previously paid the fire victims a total of \$300,000 for their claims (the occurrence limit) under the policy, and assuming no other claim payments have been made during the policy period, the remaining \$700,000 in aggregate policy limits is available to pay the \$600,000 in slip and fall claims.

4. Policy forms: The Commercial General Liability or “CGL” (CG 00 01) form serves as the minimum requirement.

The CGL is the standard policy form used by most insurance companies to write this coverage, and satisfies the County's minimum general liability coverage requirement.

One of the most important coverages in the commercial general liability form is Blanket Contractual Liability coverage. When a Contractor is sued by a third party, the County may also be named a defendant, even though the County had no involvement in the actions that led to the suit. Contractual liability provides the Contractor with coverage for the liability of others (e.g., the County) which the Contractor has agreed to assume under the indemnity clause in a contract. When the Contractor has executed a service agreement with the County which includes the County's indemnification provision, this coverage obligates the Contractor's insurer to defend and indemnify the County in the suit. “Blanket” means the coverage applies to all, and not just specified, contracts. Section 13, Exhibit E describes other key coverages automatically included in the CGL policy.

“Comprehensive” General Liability form:

On occasion, liability coverage may be written on another policy form used by insurance companies, known as the “comprehensive general liability form”. The comprehensive form is acceptable to the County provided the insurance company endorses it to include the following coverages which are automatically included in the CGL policy form:

Broad Form General Liability endorsement, Products and Completed Operations Hazard, Contractual Liability, Independent Contractors and Personal Injury Liability. The aggregate and occurrence limits of the policy should be not less than \$2 million and \$1 million, respectively.

5. How Coverage is “Triggered” under the CGL form: “Occurrence” versus “Claims-Made” triggers

There are two different versions of the CGL policy form in use: an “occurrence” form and a “claims-made” form. The version of the CGL form being used is indicated on the ACORD Certificate of Liability Insurance form (Section 13, Exhibit D). These versions specify the event (in one case, the occurrence causing the injury, in the other, the filing of a claim) that “triggers” or activates coverage under the policy, and should not be confused with “per occurrence” and “aggregate” policy limits, which apply to the amount of coverage available under the policy.

“Occurrence” basis: Coverage is “triggered” by an occurrence. In other words, coverage applies for bodily injury or property damage which occurs during the policy period, regardless of when a claim is filed against the Contractor.

“Claims-Made” basis: This version provides coverage for claims for bodily injury or property damage which occur after the retroactive date specified in the policy, as long as the claim is filed against the Contractor during the policy period. In other words, if there is a retroactive date in the policy, insurance coverage is “triggered” only if the bodily injury or property damage did not occur before that date.

6. Coverage exclusions: Significant exclusions to the coverage provided in the Commercial General Liability policy include liability arising from the following: pollution; use of watercraft, aircraft and automobiles; damage to property entrusted to the Contractor’s care, custody or control; or “professional” liability incidents resulting in a purely economic loss (see Section D. Professional Liability).

These contracts therefore may require more detailed review and use of specialized indemnification and insurance provisions. When these types of liability exposures exist, the Contractor’s insurance advisor usually designs an insurance program consisting of various policies and endorsements to ensure appropriate coverage will apply in event of loss. Departments are encouraged to consult with CEO Risk Management Operations if questions arise in these situations.

7. **Excess (Umbrella) Liability coverage:** Excess liability policies are used to increase the limits of liability coverage available to the Contractor. They typically “follow the form” of the underlying liability policy (usually referred to as the primary policy), and include an aggregate limit only when the underlying policy has an aggregate limit. When an underlying policy does not have an aggregate limit, the excess policy applies its limit strictly on a per occurrence basis. An umbrella policy may also cover liability risk exposures which would not be covered under the primary policy.
8. **Coverage for Small Businesses through the Contractors Liability Insurance Program (SPARTA):** Small or newly formed businesses unable to secure, afford or fully meet the County’s general liability insurance requirements may be eligible to purchase alternative coverage at a reasonable cost through the SPARTA Insurance Program (Section 13, Exhibit F). “Non-owned” auto liability coverage also is available through this program, and some Contractors may also qualify to purchase professional liability coverage through SPARTA.

Unlike the CGL policy, the SPARTA policy does not protect the Contractor and County against liability claims which arise from the activities of subcontractors used by the Contractor. To ensure all parties are adequately protected, subcontractors should be required to provide their own liability insurance or purchase SPARTA coverage.

9. **Homeowners Insurance - Liability provisions:** Contractors who operate their business from their residence may ask the County to accept their homeowners insurance in lieu of purchasing commercial general liability coverage. *In the majority of cases, Homeowner’s coverage does not satisfy the County’s requirements, since such policies typically exclude liability arising from business pursuits (including that arising from activities occurring away from the Contractor’s residence).* Please contact CEO Risk Management Operations if your Contractor asks you to accept his or her Homeowner’s liability insurance in lieu of a commercial general liability policy.
10. **“Special Events” Liability (SELIP Program):** When County facilities are rented or used by outside groups to hold special events (including, but not limited to classes, meetings, weddings, parades and sporting events), Event Sponsors must agree to indemnify the County and provide evidence of liability insurance coverage. Sponsors who need liability insurance may be eligible to purchase coverage through the County’s Special Events Liability Insurance Program, SELIP (Section 13, Exhibit G). SELIP coverage provides protection for the

Event Sponsor and the County against negligent acts or omissions resulting from the activities of the Event Sponsor.

B. Automobile Liability

1. **Purpose:** Automobile liability insurance covers claims for bodily injury and property damage arising out of the Contractor's use of automobiles. Automobile liability insurance must be maintained for those vehicles used in the performance of the contract.
2. **Coverage requirements:** It is recommended that auto insurance be required in all agreements, since nearly all services procured under contract require some use of automobiles. This insurance provides coverage for any liability the Contractor may incur for property damage or bodily injury (including damage to County property or injuries to County employees). The commonly used Business Automobile Policy, or BAP (ISO form CA 00 01), further described below, includes provisions that protect the County for liability the County may incur as a result of the Contractor's use of automobiles.

However, departments may waive:

- (a) The automobile insurance requirement for service agreements which do not require the use of automobiles.
 - (b) The requirement for "**owned**" automobile liability insurance for service Contractors that do not own any automobiles. However, Contractors should still be required to provide "hired" auto liability coverage for autos the Contractor leases or rents, and "non-owned" automobile liability coverage if their employees use their own automobiles to complete the contracted work.
3. **Coverage limits:** A limit of not less than \$1 million for each accident should be required of all Contractors. The BAP and similar ISO commercial auto policy forms do not contain an aggregate limit.

Coverage should apply to the Contractor's owned autos, any non-owned autos (usually autos belonging to employees) and hired autos (short-term rentals) used by the Contractor and its employees in the delivery of services under the contract.⁷ If the insurance certificate reflects coverage for "any auto", the policy will respond to loss caused by any automobile for which the Contractor could be liable.

⁷ Insurance brokers and consultants have advised that the cost to increase auto liability insurance limits from \$300,000 to \$1 million is often nominal. Contractors also may purchase "non-owned" auto coverage through SPARTA at a very reasonable cost (Section 13, Exhibit F).

If the automobile policy itself must be reviewed, the symbols for “Any Auto”, “Owned Autos”, “Hired Autos” and “Non-Owned Autos” (Symbols 1, 2, 8 and 9) will be found in the policy declarations page on the same line as the liability limit (see Section 13, Exhibit H, which describes the auto designation symbols found in the policy).

4. **Policy forms:** Most often the BAP (ISO form CA 00 01) will provide appropriate coverage.

The specialized Garage form (ISO form CA 00 05), which includes Garagekeeper’s Legal Liability coverage, should be required of all Contractors who provide auto sales, repair and maintenance, auto painting, parking or valet services.

Garagekeepers Insurance: The following insurance requirements should be included for these types of contractors:

Garage Insurance (written on ISO form CA 00 05 or its equivalent) including coverages with limits of not less than the following:

A. Garage Operations – Liability Other Than Covered Autos:

General Aggregate:	\$2 million
Products/Completed Operations:	\$2 million
Personal and Advertising Injury:	\$1 million
Per Accident:	\$1 million

B. Garage Operations – Liability for Covered Autos:

Automobile Liability for all Contractors’
“owned”, “non-owned” and “hired”
vehicles, or coverage for “any auto”: \$1 million each accident

C. Garagekeepers Liability:

Coverage shall apply on a Direct Primary basis, and include Comprehensive and Collision coverages, with limits not less than \$_____ per vehicle (we suggest the *department* insert the highest vehicle value for the fleet).

The first section addresses with the general liability risks which other types of businesses insure through a general liability policy. For an auto related business, this covers liability arising from a visitor slip and

fall on premises, or vendor's faulty brake job on a customer's car which results in an accident due to brake failure.

The second section covers auto-related liability involving the Contractor's ownership, maintenance and use of its own vehicles (ex. tow truck operations).

The third section covers damage to the County's (customer's) vehicles while they are in the vendor's custody (including servicing, parking and storing); Garagekeepers coverage must be specified, otherwise physical losses to County vehicles would not be covered under the Garage Liability sections noted above. Under the Garagekeepers coverage, loss also includes loss of use (ex. cost of a rental vehicle).

5. **Other Provisions:** *Additional insured* - the BAP and several other standard ISO policy forms (CA 00 05, CA 0012, CA 00 20) automatically provide coverage for liability that the Contractor has assumed via the indemnification requirement in its agreement with the County. This protects the County as an insured under the policy and therefore an *additional insured* endorsement is not required (insurance companies usually will not add an *additional insured* endorsement to a personal auto policy).

In lieu of BAP coverage or its equivalent, the Contractor may utilize SPARTA "non-owned" auto liability coverage (Section 13, Exhibit F). "However, SPARTA cannot provide auto liability coverage to vendors whose primary business involves vehicle servicing, or passenger or cargo transportation."

A specialized pollution liability endorsement form is needed to ensure that Contractors hired to transport hazardous materials have coverage for this exposure.

C. **Workers Compensation and Employers' Liability**

1. **Purpose:** This coverage protects the Contractor against claims for lost wages and medical expenses arising from on-the-job injuries to its employees. It is important to make sure the Contractor has this coverage, since an injured Contractor employee who receives workers compensation benefits is less likely to file a liability claim against the County, or to attempt to obtain benefits through the County's workers compensation program, than one who has been inadequately compensated.

2. **Coverage requirements:** Coverage should be required of all Contractors. The requirement for workers compensation may be waived when the Contractor is unwilling to purchase the coverage because state law does not require it (e.g. the Contractor is a sole proprietor or partner). Insurers generally will not add the County as an *additional insured* on the Contractor's workers compensation policy.
3. **Coverage limits:** With the exception of Employers' Liability coverage as described below, workers compensation does not have a coverage limit. Workers compensation coverage pays specific, scheduled benefits in accordance with state law ("statutory limit"). Certain classes of employees who work in navigable waters or adjoining areas (ex. docks) receive benefits based, not upon state law, but upon provisions of federal law, such as the Longshore and Harbor Workers' Compensation Act or the Jones Act.
4. **Employers' Liability coverage requirements and limits:** This coverage protects the Contractor when a suit is filed against it for an employment-related incident which is not compensable under the workers compensation law. Employers' Liability does not provide coverage for claims arising from employment-related practices (e.g. wrongful termination). Coverage should be required in limits of not less than:
 - \$1 million each accident. The insurer will pay no more than \$1 million for claims arising from a single accident, regardless of the number of employees injured.
 - \$1 million each employee for disease. No single employee can recover more than this limit for an employment-related disease claim.
 - \$1 million aggregate policy limit for disease. The insurer will pay no more than this amount for all employees injured by disease.

D. Professional Liability

1. **Purpose:** Protection against liability arising out of the delivery of professional services requires a special kind of insurance, generically called professional liability insurance. This insurance may also be referred to as errors and omissions (E&O) or malpractice coverage.

2. **Coverage requirements:** Professional liability coverage is not provided under the CGL policy. By definition, the CGL (1) covers only bodily injury and/or property damage, or personal injury, as noted earlier, and (2) provides that coverage applies only to losses which meet the policy definition of occurrence, and professional mistakes or failures may not meet this definition. For these reasons, contracts involving the work of professionals such as architects, engineers, surveyors, attorneys, accountants, software developers and systems integrators, and medical and mental health practitioners should include this coverage requirement.

Examples of other “non-traditional” professionals who should carry professional liability insurance to cover their liability for “economic” injury include, but are not necessarily limited to, answering services, appraisers, auctioneers, management consultants, collection agents, computer programmers and software designers, process servers, delivery services, staffing services, expert witnesses, benefit (plan) administrators, translators and inspection services. Please contact CEO Risk Management Operations if you need help in determining whether professional liability coverage is needed.

3. **Coverage limits:** Limits of not less than \$1 million per occurrence and \$3 million aggregate should be required. Hospitals or large medical practices may maintain higher aggregate limits. In some cases, limits of less than \$1 million per occurrence and \$3 million aggregate may be acceptable. Please contact CEO Risk Management Operations to discuss appropriate coverage limits if you believe your Contractor is exposed to professional liability risk.

Professional liability policies may be written with a per claim or per occurrence limit equal to the annual aggregate limit. The County requires the aggregate limits above as reasonable assurance that adequate monies will be available to pay for claims filed against the Contractor relating to work performed for both the County and for other (non-County) clients. The Contractor should also be required to provide an extended two year reporting period commencing upon termination or cancellation of the Agreement.

4. **Special Situations:**

Additional insured status: Insurers generally will not add the County as an *additional insured* on a professional liability policy, since the County does not serve in a professional capacity in relation to the Contractor's services. In fact, the County maintains its right to file claims against the Contractor if the County itself is injured or damaged by the Contractor's professional acts, errors or omissions.

Evidence of Coverage and Variations in Policy Forms: Insurance underwriters do not use a uniform professional liability policy form. If a department determines that a review of the policy is necessary to ensure coverage satisfies the contract requirements, a Certificate of Insurance is still required to ensure the County receives written notice of any cancellation of coverage (see also Section 6: Evidence of Insurance Coverage).

Federal Tort Claims Act: The Federal Tort Claims Act (FTCA) established a system for filing claims against the United States to recover monetary damages for negligent or wrongful acts or omissions by the Federal Government, Federal employees, or agents of the Federal Government. Certain Contractors may advise that they are entitled to indemnification by the Federal Government if liability arises from their performance of a function which supports a Federal requirement. Contractors who indicate they wish to use this FTCA liability protection to satisfy all or a portion of the County's professional liability insurance requirement should be asked to provide a copy of the Federal documentation of their coverage for the County's evaluation.

Technology or Electronic Products and Services: Products built by (or services provided by) computer, telecommunications or similar firms and manufacturers may be more likely to cause an economic, rather than a physical loss, to the end user. Such economic losses might result from failure of software to perform as represented or liability arising from copyright/trademark infringement.

It is recommended that technology and electronics products and services agreements be reviewed by County Counsel and CEO Risk Management Operations, since special indemnification and insurance requirements may be necessary in these cases. For example, E&O insurance for the electronics industry may cover damages which arise from the Contractor's negligent acts or omissions, and from the design, implementation or use of the Contractor's products or services.

The best method of ensuring professional liability insurance will be available is to contract with reputable professionals who presently carry professional liability insurance and are, therefore, more likely to carry it in the future. Extra caution is recommended when dealing with a Contractor who does not customarily maintain this coverage. If a professional Contractor indicates they will have to make a special purchase of professional liability coverage to comply with the County's requirements, the Contractor may cancel the coverage following completion of their County contract. However, professional liability claims are often not made until months, or even years, after completion of the work. Because this type of insurance requires a policy to be in force at the time a claim is made (referred to as a "claims-made" policy), the absence of a policy at that time would mean there is no insurance coverage in effect.

E. Property Coverage

1. **Purpose:** When the County hires a Contractor who will occupy or use County-owned or leased property, the Contractor should be required to obtain insurance to protect against loss or damage of the property.
2. **Coverage requirements:** "All Risk" coverage should be required for any Contractor who takes possession of County real property (i.e., leases a building) or who utilizes the County's equipment or vehicles off the County's premises to provide ongoing service (ex. County provides Contractor with County-owned computers which Contractor keeps at Contractor's business premises).
3. **Coverage limits:** As a general rule, property should be insured for its full replacement value. The only exception to this rule would be autos and mobile equipment (including watercraft and aircraft) which customarily are insured for their actual cash value. Deductibles should be no greater than 5% of the full replacement or actual cash value, and the insurance policy must name the County as *loss payee*.

The Contractor's certificate of insurance should be requested to verify coverage requirements and deductible amounts. An ACORD "Evidence of Property" insurance form (see Exhibit D) is acceptable.

4. **Coverage exclusions:** Property insurance policies usually do not provide coverage for loss of money or securities, or for theft of covered property by the Contractor's own employees. Instead, Crime coverage is used for this purpose. Computers, fine arts and collectibles, historical documents, artifacts, gems, precious metals and other

unusual property also may require special forms of insurance coverage. Please contact CEO Risk Management Operations when a Contractor handles County property of this nature or the County is to be responsible for such property owned by others.

F. Crime

1. **Purpose:** Crime coverages protect against the loss of County money and/or securities which are under the care, custody and/or control of the Contractor.
2. **Coverage requirements:** Coverage should be required in agreements or contracts which require Contractors to pick up, carry, guard, and/or handle large amounts of cash or other highly valued items on behalf of the County. Such items may include bearer bonds, County warrants, food stamps, vouchers or other negotiables. Coverage should also be required when a Contractor has use of or access to County computer systems which transfer funds or record payables. The County should be named in all crime policies as *loss payee*.

The following table indicates the types of crime coverages required based upon the nature of the risk exposure:

Crime Coverage Type Requirements

Types of Crime Insurance	Situations Requiring Each Coverage Type
Employee Dishonesty	Contractor collects or handles a substantial amount of money, securities or other property on the County's behalf. Coverage should be required for firms transporting County receipts, administering claim payments and handling food stamps.
Forgery or Alteration	Contractor handles or issues checks or other financial instruments (ex. vouchers, certificates of deposit, food stamps, bearer bonds) which deposit or transfer funds.
Theft, Disappearance and Destruction	Contractor handles property owned by the County, or, property belonging to others for which the County is held financially responsible.
Computer Fraud	Contractor has access to County computer systems (from inside or outside the County's premises) or Contractor installs, makes modifications to, or prepares software used by the County. Coverage is needed when the computer system and/or software can be used to transfer funds or record payables.
Burglary and Robbery	Contractor transports or stores County property at the Contractor's premises.

3. **Coverage limits (by coverage type):** Crime losses are not frequent, and this makes them more difficult to predict. However, it is known that employee dishonesty losses tend to most commonly arise from the long-term actions of an employee. As such, losses tend to be severe when they are discovered.

The limits required should reflect the amount the department feels will comfortably protect its financial interests, and should bear a reasonable relationship to the amount of County funds entrusted to the Contractor. The following table provides general guidelines for determination of coverage limits, however, it also is suggested that departments obtain the assistance of their finance and accounting staff in developing an estimation of the potential loss exposure.⁸

Crime Coverage Limit Requirements

Types of Crime Insurance	Limits by Coverage Type
Employee Dishonesty	Example: A department is confident that control measures would result in quick discovery of the theft of \$100,000 or more in funds. That amount, multiplied by the number of years the Contractor is expected to serve the County (including all past contract years) represents the amount of theft that could potentially go unnoticed and should be insured: Coverage Limit = \$100,000 potential theft amount x 3-year contract = \$300,000
Forgery or Alteration	Limits equal to the employee dishonesty limit should be required. Brokers advice that most Contractors typically purchase these limits, since the cost of forgery coverage is modest.
Theft, Disappearance and Destruction	Limits should reflect the maximum value of the County's property in the Contractor's possession at any one time.
Computer Fraud	Limits should reflect the maximum value of the County's property in the Contractor's possession at any one time.
Burglary and Robbery	Limits should reflect the maximum value of County property which may be accessed by the Contractor at any one time.

⁸It is our understanding that the Surety Association of America once published guidelines for selecting adequate limits of crime coverages, but has discontinued this practice. However, one of the nation's largest insurance brokerage firms has advised the County that companies with a significant loss exposure generally purchase crime coverage with limits of \$5, \$10 or even \$20 million per occurrence to protect themselves against employee dishonesty losses.

G. Aircraft or Watercraft Liability

Special insurance is needed for contracts involving the charter of aircraft or watercraft, the use of such vehicles to transport County - owned property or County personnel, or similar purposes. Please contact CEO Risk Management Operations if questions arise concerning insurance requirements for these kinds of activities.

H. Environmental Liability (Pollution)

Projects that involve the testing, removal, handling, transportation or disposal of hazardous material (such as petroleum products, radioactive materials, asbestos or lead paint) or hazardous waste require special consideration. Please contact CEO Risk Management Operations if questions arise concerning potential environmental liability.

I. Other Coverages

Insurance policies and related products evolve over time in response to various factors, including changing risk exposures, market conditions and regulatory requirements. Traditional lines of insurance coverage may be modified to exclude certain risks from coverage, while new or specialized policy forms may be developed by underwriters to address unique risks.

As an example, new commercial insurance products such as “multi-media liability” coverage are being introduced to protect Contractors against liability resulting from copyright, trademark and intellectual property infringement (software developers may be sued for “borrowing” elements from another original software, and re-using them to write codes for other software). Companies in the electronics industry may find customized forms of Errors and Omissions (E&O) insurance now available which may cover damages arising from the Contractor’s negligent acts or omissions, and from the design, implementation or use of the Contractor’s products. Contractors whose primary business activity is advertising, broadcasting, publishing or telecasting, or who are exposed to claims for U.S. patent infringement, may also require and obtain such specialized coverage.⁹

⁹ A patent usually refers to a document granting some right, such as the right to an invention. By patenting the invention, the creator of the invention can prevent others from making commercial use of the invention without the creator’s permission. Copyright usually refers to the right to publication, production or sale of an expressive art form. Trademark usually applies to the names or logos (even color and sound) which is used to identify the maker of a particular product or service and distinguishes them from their competitors. A trade secret can be a device, process or formula known to the maker who uses it but not known to its competitors.

Please contact CEO Risk Management Operations if you have questions concerning special insurance needs or unfamiliar coverages.

J. Alternatives to Commercial Insurance

Most Contractors meet their risk protection needs through purchase of commercial insurance coverage. However, other Contractors may use a variety of alternative risk financing mechanisms. As an example, some organizations (including the County itself) may self-insure certain of their risk exposures, or participate in risk sharing pools, as described below.

1. **Self-insurance programs:** Section 13, Exhibit I provide suggested contract language for Contractors who propose use of self-insurance to satisfy a portion or all of the County's insurance requirements.

Contractor use of self-insurance, or commercial insurance coverage which is subject to a large deductible should only be permitted if the Contractor can provide adequate evidence that it is financially capable of maintaining an effective program. To assist in making this determination, departments should request the following:

- A formal statement from the Contractor that they are self-insured for the type and amount of coverage required in the agreement. Contractors who are self-insured for workers compensation benefits can provide a copy of their "Certificate of Consent to Self-Insure" issued by the State. The Contractor must notify the County immediately of discontinuation or substantial change in the program. **Alternatively, departments may access the California Department of Industrial Relations, Self-Insurance Plans (SIP) program website at <http://www.dir.ca.gov/SIP/sip.html>, to verify that the Contractor is permitted to self-insure its Workers Compensation obligations.**
- A formal statement that the County is a protected party under the Contractor's self-insurance program. This requirement will act to "insure" the County within the Contractor's self-insurance program.
- An agreement to notify the County immediately of any action or situation (such as a change in the Contractor's financial condition) which would have a significant negative effect on the protection that the self-insurance program provides to the County.

- An agreement to notify the County immediately of any claim or other action related to or involving the agreement with the County.
- Contact information for the Contractor's self-insurance claim administrator and legal counsel.
- A current audited financial statement to be forwarded to your department fiscal staff or to the Auditor-Controller for evaluation of the financial condition of the Contractor. The Auditor-Controller will not "approve" or "disapprove" the Contractor's proposed self-insurance program; rather, the department should review their evaluation in concert with other relevant information developed during the solicitation and negotiation process in order to assess the Contractor's ability to absorb financial losses not covered by commercial insurance. The Auditor-Controller advises that review of a Contractor's unaudited statements, income tax returns, or Dun and Bradstreet or credit reports is not adequate to evaluate the Contractor's financial condition.

The proposed self-insurance program must be reviewed and approved by the department prior to the effective date of the agreement.

2. **Risk Sharing Pools:** Some entities (often public agencies) may participate in a risk sharing group or "pool" to fund their losses. Such pools may consist of small to medium sized entities that may not individually be capable of self-insuring, but collectively have sufficient financial capacity to pay the losses and expenses of pool members.

Entities who wish to satisfy the County's insurance requirements through participation in such a pool should:

- Submit a certificate of insurance describing the pool coverages, and provide a copy of the pool's audited financial statements.
- Include supporting documentation from an agency such as the California Association of Joint Powers Authority, or, provide other available financial ratings (such as an A.M. Best rating, as discussed in Section 6) for County's review.

Section 6: Evidence of Insurance Coverage - Requirements

Evidence must be obtained to verify that the Contractor has satisfied the County's contractual insurance requirements. It is also recommended that departments implement a diary or similar tracking system in contract files so that evidence of coverage is re-evaluated, as needed, to ensure the required insurance remains in effect. In all cases, evidence of coverage must be provided to the County *before* the Contractor commences services under the contract.

A. Certificate of Insurance (ACORD Certificate) and the *Additional Insured* Endorsement (CGL policy).

The most practical method of verifying Contractor compliance is to require submission of a Certificate of Insurance - certificates are issued for this very purpose. A copy of the *Additional Insured* endorsement to the general liability policy should also be required (an endorsement is a written provision added to an insurance policy which modifies the policy terms).

A certificate of insurance itself cannot be used to modify a policy, and thus gives no contractual rights to the certificate holder, the County. This is why a copy of the *Additional Insured* endorsement to the general liability policy also must be attached to the certificate - to verify that this insurance requirement has been met. Many government agencies and private companies commonly require certificates of insurance and copies of this key endorsement.

A certificate generally can be reviewed more quickly and easily than a policy of insurance, but still requires careful review. Only completed certificates which document adequate coverage should be accepted, and certificates must be updated as coverages expire, or are renewed or replaced.

B. Insurance Policies.

Use of Certificates of Insurance is the most practical and expedient method of verifying the Contractor's insurance coverage. However, on rare occasions the County may find it necessary to obtain and review a certified copy of the Contractor's insurance policy. A review of policy language may be necessary when:

- A proper certificate of insurance cannot be obtained, or there are questions about policy coverages and/or exclusions which are not addressed by the certificate.
- The policy(ies) offered are unusual or highly specialized.
- An accident involving the County occurs.

A complete review of the policy provides good verification that a Contractor's insurance meets the terms required by the County. However, use of this method requires more knowledge of insurance policy forms and terminology, and involves greater administrative time and expense than the use of certificates.

Even if policies are obtained, a Certificate of Insurance also should be required. This is important because being named as a Certificate Holder means that the County (the certificate holder) will receive notification from the Contractor's insurer if the existing policy is cancelled before the renewal date. Upon this notification, the County also can obtain and review a copy of the new replacement policy.

Some private companies may put their Contractors on the "honor system" and not require them to submit evidence of coverage. While this "option" may appear to offer the lowest administrative cost, it leaves the organization exposed to potential liability costs which are not paid by the Contractor or the Contractor's insurer. In contrast, some government entities require Contractors to use customized endorsement forms designed by the entity which include all of the entity's insurance requirements, and require that the form actually be endorsed onto the Contractor's insurance policy. In the case of routine contracts, use of such an endorsement would provide the exact coverage the entity requires. However, insurers are often resistant to accepting such an endorsement, or may consider it only if they are permitted to include their own proposed alterations. The standardized form may also require revisions to address differences in contractual risk exposures.

C. Additional Insured Endorsement: General Liability Policy

A copy of the endorsement which adds the County as an insured on the Contractor's general liability policy should be obtained along with the certificate of insurance (see Section 4 and Section 13, Exhibit B). Being named as an *additional insured* on the Contractor's policy means that if the County is named in a claim or lawsuit due to the Contractor's operations under their contract with the County, the County can seek coverage from the Contractor's insurance. This helps keep liability costs (claims) out of the County's self-insurance and commercial insurance programs, and provides for the County to receive legal defense from the Contractor's insurer. It also may provide protection to the County in the event that the indemnification provision in the agreement cannot be enforced (such as when the circumstances of a particular loss do not fall within the scope of the County's indemnification clause). Endorsements changing the policy after the policy issue date should be signed by the insurance company to ensure the endorsement will take effect.

D. Record Retention

Certificates of insurance and copies of endorsements (or policies) should be retained at least as long as the agreement is kept on file (the Auditor-Controller generally recommends that agreements be retained 5 years after the end of the contract term or the date of any final County audit). Some consultants recommend these documents be kept indefinitely, since some claims may not be filed until months or years after the incident occurred.

E. Acceptability of Insurers

The County's insurance requirements specify that Contractors should obtain coverage from insurance companies acceptable to the County who has a current A.M. Best rating of not less than A:VII.¹⁰ A Best rating of A:VII indicates that the company evidences strong financial strength and ability to meet their ongoing financial obligations to policyholders.

In certain situations (perhaps due to the nature of the Contractor's operations and/or the type of insurance required) insurance may not be available from carriers with an A:VII or better rating. If questions arise concerning carrier acceptability, please contact CEO Risk Management Operations.

F. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions which apply to the Contractor's insurance must be declared to the County. If there are concerns regarding the Contractor's ability to fund losses within its deductible or retention levels, the County retains the right to require the Contractor to (1) reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or, (2) require the Contractor to provide a bond (or other acceptable financial instrument) guaranteeing payment of all such losses and related costs.

Deductibles are commonly used in the insurance industry to reduce premium costs and increase market availability for both the insurers and insurance buyers (Contractors, in the case of this manual). An insurance company is usually more willing to write coverage (and offer better prices) if a Contractor is willing to assume some financial risk via a deductible.

¹⁰ The A.M. Best company reports on the financial strength of insurance companies. Information concerning A.M. Best ratings and publications may be obtained from www.ambest.com.

Nominal deductible amounts of several thousand dollars may be reasonable for many Contractors. However, substantial deductibles require more review. Does the amount appear reasonable in light of the Contractor's size and experience? Has the Contractor evidenced a history of successful financial performance, or had problems in satisfying other financial obligations? While some Contractors may obtain significant financial benefits from maintaining a large deductible, a small or new company usually cannot set aside the monies necessary to fund a large deductible, and generally is more vulnerable to sudden economic events. Unless such a Contractor can provide financial evidence satisfactory to the department which would support their ability to maintain a large deductible, the Contractor should be required to reduce or eliminate the deductible as previously noted.

Despite the County's best efforts, there may be instances in which an accident occurs and the Contractor will not accept responsibility for the County's tender of a claim which falls within the Contractor's self-insurance retention. At minimum, if the department finds it necessary to retain the Contractor's services, it is recommended that current and future agreements be amended to require coverage without the deductible or which includes a financial guarantee. Depending upon the severity of the situation, it may be necessary to take further action, including contract termination and Contractor debarment.

Related information concerning the evaluation of deductibles and self-insured retentions is included in Section 5 (J. Alternatives to Commercial Insurance). It is recommended that departments contact CEO Risk Management Operations if there are questions concerning the appropriateness of a self-insured retention or deductible.

Section 7: Contractor Failure to Maintain Insurance

This office recommends that appropriate insurance coverages be required to protect the County's financial interests. Absence of Contractor insurance coverage should be considered a warning flag and require additional department investigation.

A. Financial Impact of Working with Uninsured Contractors

1. If a Contractor fails to maintain the required coverage, and the County is named in a claim or lawsuit arising from the Contractor's activities, the County may be forced to take legal action against the Contractor to recover its legal expenses and any damages (indemnity) paid to the third party claimants. County budget policy provides that legal and indemnity costs which can't be recovered from the Contractor are paid from the respective department's operating budget (Section 14, Appendix).
2. An uninsured Contractor may be at greater risk of insolvency due to its financial exposure to uninsured loss. This may result in additional County costs if the Contractor must be replaced.

B. Reducing Contractual Risk

1. Alternative insurance - SPARTA Program. Contractors who indicate that the required insurance coverage is unavailable or not affordable may be eligible to purchase liability coverage at a reasonable cost through the County's SPARTA Insurance Program (Section 13, Exhibit F), which is administered by Municipality Insurance Services (Municipality), an insurance brokerage firm. Contractors interested in this program must call Municipality directly at 1-800-420-0555.
2. Contractor Evaluation and Selection Criteria. It is recommended that departments utilize the services of Contractors who are willing and able to comply with the County's indemnification and insurance requirements. However, in the event that the pool of qualified Contractors is limited and the need for services is so critical that the department believes it must consider proposals from Contractors who cannot fully meet the County's requirements, at a minimum the following measures are recommended:

- (a) *Written evidence:* Contractors should be required to provide evidence demonstrating a “good faith effort” was made to obtain the necessary coverage. This should be provided in the form of a letter from the Contractor’s insurance agent or broker, and include copies of actual insurance company quotes or declinations. This information, along with other relevant criteria, can then be considered by the department in the Contractor selection and contract negotiation processes.
- (b) *Contracting Process - Contractor Selection and Evaluation Criteria:* Development of appropriate proposal (bid) specifications, including reference checks and specific, detailed statements concerning the obligations and responsibilities of each party, assist in loss prevention by discouraging those Contractors who are not qualified for the job or who cannot meet other contractual obligations from bidding on the work. Input also should be obtained from the department’s risk management coordinator and safety officer as appropriate. These measures may help reduce the risk of contracting with questionable or undesirable firms.
- (c) *Contractors should be required to comply with department loss prevention guidelines and related policies.*
- (d) *Uninsured Contractors should be replaced with insured providers at the earliest possible opportunity.*

C. Contract Termination

Every contract should include a provision that gives the County the right to terminate the contract if a Contractor fails to maintain the required insurance (Exhibit A). Termination may be necessary if a Contractor fails to submit updated Certificates or if notice of cancellation is received from the Contractor’s insurance company.

In an ideal world, common law should result in liability arising out of the Contractor’s operations being assigned to the Contractor. In reality, government agencies may become the target of litigation (the “deep pockets”) if liability arises due to the Contractor’s acts or omissions.

The greater the risks associated with the services to be provided, the more important it is to establish appropriate indemnification and insurance requirements, select experienced and responsible Contractors, obtain acceptable evidence of insurance coverage and implement appropriate department loss prevention procedures.

Section 8: Performance Security

A. County Policy

In accordance with policy established by the Board of Supervisors (Section 14: Appendix), performance security is not required for service contracts with an award amount of less than \$50,000. Contracts for services with award amounts equal to or greater than \$50,000 should include a performance security requirement only if the department determines it could suffer significant financial loss if the Contractor failed to perform as required under the contract. The County's interests are best protected by awarding of contracts to those Contractors deemed to be competent and financially capable as a result of the department's evaluation process.

B. Forms of Performance Security

If performance security is found to be necessary, several options are acceptable: a Performance Bond, Letter of Credit (LOC) or a Certificate of Deposit (CD).

1. Performance Bond (Bond)

- a. Purpose:** Although a Bond may be used on other types of contracts, its primary use is to ensure that a construction or similar project is completed in accordance with contract terms, and that all payments are made to the Contractor's material suppliers and sub-contractors. To obtain payment under the Bond, the County must file a claim (declaration of default) with the surety, and also demonstrate that it has met its contractual obligations. Theoretically, losses are expected to be infrequent on bonds since bond underwriters carefully analyze the Contractor's performance capabilities and financial stability before executing a bond.

Various types of bonds, including bid, performance and payment bonds, may be required by law or by the project owner. Please contact CEO Risk Management Operations if you have questions about such bonds.

- b. Bond requirements and bond forms:** The bond issuer should be a corporate surety licensed to transact business in the State of California. Most large property and casualty insurers have surety departments. For some firms, surety bonds comprise most if not all of the business they write.

A variety of standardized bond forms may be acceptable for service agreements. Several sample bond forms, such as the American Institute of Architects (AIA) Performance Bond and Labor and Material Payment Bond forms (form A311), or performance bond, payment bond and bid bond forms developed by the federal government (Standard Forms 1418, 1416, 24 and 25B) are included in Section 13: Exhibit J, for illustration purposes. It is recommended that departments consult with CEO Risk Management Operations and County Counsel if there are concerns about the acceptability of a bond form or the authenticity of the bond document itself.¹¹

- c. **Bond amount:** The required Bond amount should equal 100% of the total contract amount/award, or be set in an amount equal to the estimated financial loss which may be incurred by the County due to the Contractor's failure to perform. The Contractor's cost to obtain such a Bond is usually at least 0.5% to 1% of the total contract price.

2. Letter of Credit (LOC)

- a. **Purpose:** This form of performance security allows the County to draw money from a financial institution (bank) if the Contractor does not meet the specific obligation(s) stipulated in the agreement.
- b. **LOC requirements:** The LOC must specify precisely what triggers the County's right to access the funds. If the contract or the LOC contain an inadequate description of services to be performed, the County may be prevented from drawing on the LOC. The LOC must also be irrevocable, so that the Contractor cannot withdraw the LOC without a written release from the County. The LOC must be maintained throughout the term of the contract, and comply with the minimum criteria and standards established by the County Treasurer and Tax Collector (Section 13, Exhibit K).

¹¹Further information concerning surety bonds and companies may be obtained from sources such as the Surety Association of America (www.surety.org), the Surety Information Office (www.sio.org), state insurance departments, the U.S. Small Business Administration (SBA) and U.S. Department of the Treasury.

- c. **LOC amount:** The LOC face amount should equal the estimated maximum cost to replace the Contractor's services. The Contractor's cost to obtain the LOC is generally 1% to 2% of the face amount of the LOC.

3. **Certificate of Deposit (CD)**

- a. **Purpose:** In lieu of a bond or LOC, the Contractor may opt to provide performance security in the form of a CD. The County would have the right to cash the CD if the Contractor fails to provide the agreed upon services. Since the County alone judges the Contractor's compliance with the terms of the contract, the County can access a CD more easily than it can a Bond or an LOC.
- b. **CD requirements:** The maturity date of the CD must not be prior to the expiration date for performance or other provisions of the Agreement (i.e., the CD must be maintained throughout the term of the Agreement). The CD also must comply with the minimum criteria and standards established by the County Treasurer and Tax Collector (Section 13, Exhibit K).
- c. **CD amount:** The amount of the CD should reflect the estimated cost for the department to replace the Contractor's services. The Contractor's cost to obtain the CD is represented by the opportunity cost of the funds retained in the CD.

Section 9: County Insurance Programs and Evidence of Coverage

The County uses a variety of methods to handle its risk exposures and control its cost of risk. Some risk exposures are retained; the costs of these risks are paid directly from County funds rather than transferred through the purchase of commercial insurance. As a general rule, the County retains (“self-insures”) a risk when its estimated costs are predicted to be less than the cost of insurance premiums. Other risk exposures which are less predictable, or pose threat of catastrophic loss beyond the County’s risk retention capacity, are transferred through purchase of insurance policies. In some cases, the County purchases insurance to satisfy legal requirements.

For these reasons, agreements in which a Contractor or another third party requires the County to provide insurance coverage should be amended to state that the County retains the option to self-insure to satisfy its contractual insurance requirements.

- A. **Property** The County purchases commercial property insurance on certain of its buildings and equipment to satisfy financial or lease agreements, or to comply with the request of County departments who may desire to purchase insurance for a particular property. County buildings which are not commercially insured are said to be “self-insured”, since any loss to such property is borne solely by the County.
- B. **Liability** The County self-insures most of its general, auto and professional liability risk exposures. However, commercial liability coverage is maintained for certain special or high risk exposures (such as aviation).
- C. **Workers Compensation** The County self-insures its workers compensation program. A copy of the County’s “Certificate of Consent to Self-Insure” is included in Section 13, Exhibit M.
- D. **Certificates of Insurance for County Commercial Insurance and Self-Insurance Programs**
 - 1. Evidence of Commercial Insurance Coverage: Certificates of Insurance for the County’s commercially insured programs may be obtained from CEO Risk Management Operations. As an example, lenders usually require Certificates of Insurance from the County’s insurance brokers evidencing that commercial coverage is in effect for a particular County building or for certain County personal property (such as computers and communications systems).

2. Evidence of Self-Insurance Coverage: The Board of Supervisors has delegated authority to the CEO to issue Certificates of Self-Insurance as evidence of the County's retention programs (Section 13: Exhibit L, Section 14: Appendix). These Certificates describe the County's agreement and obligation to indemnify a third party for liability arising from acts or omissions of the County and its Special Districts, its officers, employees, agents or volunteers.

Please call CEO Risk Management Operations if your department is requested to provide evidence of the County's commercial or self-insurance coverage to another party.

SECTION 10: INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR CONSTRUCTION PROJECTS AND GUIDELINES FOR INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR CONSTRUCTION PROJECTS

INDEMNIFICATION AND INSURANCE REQUIREMENTS (IIRs) FOR CONSTRUCTION PROJECTS

(The following insurance requirements and indemnity provisions are designed for inclusion in County construction project contracts. You should use the Guidelines to determine what coverages and limits are to be required for each project.)

I. INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officials, officers, employees, agents and Trustees (the Indemnified Parties) from and against any and all liability, loss, injury or damage including (but not limited to) demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts, errors, and omissions arising from and/or relating to the Project. This indemnification does not apply to liability caused by the active negligence of the County.

The Contractor shall assume all risks and bear all cost for loss of, damage to, or missing or stolen, equipment, tools, vehicles and materials owned, hired, leased or used by the Contractor for this Project.

II. GENERAL INSURANCE PROVISIONS

Without limiting the Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Section, "General Insurance Provisions", and the "Insurance Coverage Requirements – Types and Limits" Section of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

A. Evidence of Coverage and Notice to County: Certificate(s) of insurance coverage (Certificate) or other evidence of coverage satisfactory to the County shall be delivered to County prior to commencing services under this Agreement. Such Certificates or other evidence shall:

- (1) Specifically identify this Agreement by name or number.
- (2) Clearly identify all insurance coverage types and limits required in this Agreement and must be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions, and list any County required endorsement forms.
- (3) Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.
- (4) Include a copy of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) as additional insureds for all activities arising from this Agreement. County's additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full limits and scope of protection of the Contractor's policy shall apply to the County as an additional insured, even if they exceed the County's minimum insurance requirements herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies this and the other insurance requirement provisions herein.

- (5) Show the Contractor's insurance policies, with respect to any claims related to this Agreement, are primary with respect to all other sources of coverage available to Contractor. Any County insurance and self-insurance coverage shall be excess of and not contribute to any Contractor coverage. This may be evidenced by adding a statement to the additional insured endorsement required in item (4), stating "It is further agreed that the insurance afforded by this policy is primary to any insurance or self-insurance programs maintained by the County and the County's insurance and self-insurance coverage are in excess of and non-contributing to the Named Insureds coverage."
- (6) Certificates and copies of any required endorsements, notices of cancellation shall be delivered to:

County of Los Angeles
Contracting Department Division/Section
Contracting Department Address
Attention: Name Department Contract Administrator

Renewal Certificates shall be provided to County not less than ten (10) days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.

Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

- (7) Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

- B. Insurer Financial Ratings.** Insurance is to be provided by an insurance company authorized to do business in California and acceptable to the County, with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County.
- C. Waiver of Subrogation.** To the fullest extent permitted by law, the Contractor waives its and its insurer(s) rights of recovery against County under all required insurance policies for any loss arising from or related to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.
- D. Failure to Maintain Coverage.** Contractor's failure to maintain or to provide evidence that it maintains insurance coverage acceptable to the County, shall constitute a material breach of the contract, upon which County may immediately withhold payments due to Contractor, and/or terminate or suspend this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.
- E. Sub-Contractor Insurance Coverage Requirements.** Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.
- F. Deductibles and Self-Insured Retentions (SIRs).**

(Insert one of the following paragraphs provided below, see item 1 of Guidelines)

[The following paragraph is to be used for Non Lump Sum Low Bid Construction Contracts (i.e., A/E or other consulting services or dredging or excavation work, remediation or installation services, etc.)]:

Identify any deductibles or self-insured retentions (deductible/retentions) exceeding \$25,000. The County retains the right to require the Contractor to reduce or eliminate deductibles/retentions as they apply to the County, or, require Contractor to provide a bond or other financial instrument guaranteeing payment of all such retained losses and costs attributable to the Contractor's retention, or, withhold payment to Contractor in the amount of all or any deductibles/retentions as the County deems

appropriate. Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR.

(The following paragraph is to be used for Lump Sum Low Bid Construction Contracts):

Confirm deductibles or self-insured retentions shall not exceed \$25,000. The County retains the right to require the Contractor to provide a bond or other financial instrument guaranteeing payment of all such retained losses and costs attributable to the Contractor's retention, or, withhold payment to Contractor in the amount of all or any deductibles/retentions as the County deems appropriate. Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR.

- G. Claims Made Coverage.** If any part of the Required Insurance is written on claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than (See Item 3 of Guideline) following Contract expiration, termination or cancellation.
- H. Application of Excess Liability Coverage.** Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.
- I. Separation of Insureds.** All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.
- J. Alternative Risk Financing Programs.** The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.
- K. County Review and Approval of Insurance Requirements.** The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

III. INSURANCE COVERAGE REQUIREMENTS — TYPES AND LIMITS

(Throughout Section III, County personnel should refer to the Guidelines and the Coverage and Limit Matrix to identify the types of insurance and limits to be required.)

A. Builder's Risk Course of Construction Insurance. Such coverage shall:

- (1) Insure against damage from perils covered by the Causes-of-Loss Special Form (ISO policy form CP 10 30), and be endorsed to include earthquake, flood, ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils). Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating and other equipment during testing.
- (2) Be written on a completed-value basis and cover the entire value of the construction project, including \$(Insert the replacement value of County-furnished materials and equipment here) in County-furnished materials and equipment, against loss or damage until completion and acceptance by the County.

- OR -

Installation Floater. Such coverage shall:

- (1) Insure against damage from perils covered by the Causes-of-Loss Special Form (ISO policy form CP 10 30), and the perils of earthquake, flood, risk of transit loss, loss during storage (both onsite and offsite) and collapse during construction (without restricting collapse coverage to specified perils). Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating and other equipment during testing.
- (2) Cover all property to be installed (including labor) for the full contract value (without coinsurance) against loss or damage until completion and acceptance by the County.

- B. General Liability Insurance.** Such coverage shall be written on ISO policy form CG 00 01 or its equivalent, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate: \$(See item 2 of Guidelines)

Products/Completed Operations Aggregate: \$(See item 2 of Guidelines)

Personal and Advertising Injury: \$(See item 2 of Guidelines)

Each Occurrence: \$(See item 2 of Guidelines)

The Products/Completed Operations coverage shall continue to be maintained in the amount indicated above for at least (see Table 3 of Guidelines) years from the date the Project is completed and accepted by the County.

- C. Automobile Liability insurance.** Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than \$ (see item 4 of Guidelines) for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Such insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- D. Professional Liability/Errors and Omissions insurance.** Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the Contractor, its officers or employees arising from or related to this Agreement with limits of not less than \$ (see Table 5 of Guidelines) per occurrence and \$ (see Table 5 of Guidelines) aggregate. The coverage shall also provide an extended two-year reporting period commencing upon expiration, termination or cancellation of this Agreement.

- E. Workers Compensation and Employers' Liability Insurance or qualified self-insurance satisfying statutory requirements.** Such coverage shall provide Employers' Liability coverage with limits of not less than \$1 million per accident. Such policy shall be endorsed to waive subrogation against the County for injury to the Contractor's employees. If the Contractor's employees will be engaged in maritime employment, the coverage shall provide the benefits required by the *U.S. Longshore and Harbor Workers Compensation Act, Jones Act* or any other federal law to

which the Contractor is subject. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.

- F.** *(Insert Name of Special Liability Insurance listed below or if there is no need for special liability insurance insert "Left Blank Intentionally").*

Contractor's Pollution Liability Insurance. Such insurance shall cover liability arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of pollutants in compliance with governmental mandate or requests. Motor vehicle pollution liability will be required under the Automobile Liability Insurance indicated above under section "C" for removal of pollutant from the work site. Contractor shall maintain limits not less than \$ (see Table 5 of Guidelines) per occurrence and \$ (see Table 5 of Guidelines) aggregate.

Asbestos Liability Insurance. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or requests. Motor vehicle asbestos liability will be required under the Automobile Liability Insurance indicated above under section "C" if asbestos will be removed from the work site. Contractor shall maintain limits not less than \$ (see Table 5 of Guidelines) per occurrence and \$ (see Table 5 of Guidelines) aggregate.

Railroad Protective Liability. Such insurance shall be in the name of the *(put railroad's name here)* and cover liability arising out of the contractor's operations on railroad property or damage to railroad stock or cargo. Such insurance shall be written for the limits required by the railroad at any time the County is obligated to provide a railroad with such coverage, either by contract or when contractor must cross or work on railroad property in completion of work for the County.

- G. Performance Security Requirements.** Prior to execution of the Contract, the Contractor shall file surety bonds with the County in the amounts and for the purposes noted below. All bonds issued in compliance with the Contract shall be duly executed by a solvent surety company that is authorized by the State of California, is listed in the United States Department of the Treasury's Listing of Approved Sureties Treasury (Circular 570) (see www.fms.treas.gov/c570/) and is satisfactory to the County, and it shall pay all premiums and costs thereof and incidental thereto.

Each bond shall be signed by both the Contractor (as Principal) and the Surety. The Contractor shall give two surety bonds with good and sufficient sureties: the first in the sum of not less than 100% of the Contract price to assure the payment of claims of material men supplying materials to the Contractor, subcontractors and mechanics and laborers employed by the Contractor on the Work and the second in the sum of not less than 100% of the Contract price to assure the faithful performance of the Contract.

1. The "Materials and Labor Bond" (or "Payment Bond") shall be so conditioned as to insure to the benefit of persons furnishing materials for or performing labor upon the Work. This bond shall be maintained by the Contractor in full force and effect until the Work is completed and accepted by the County, and until all claims for materials, labor and subcontracts are paid.
2. The "Bond for Faithful Performance" shall be so conditioned as to assure the faithful performance by the Contractor of all Work under said Agreement, within the time limits prescribed, including any maintenance and warranty provisions, in a manner that is satisfactory and acceptable to the County, that all materials and workmanship supplied by Contractor will be free from original or developed defects, and that should original or developed defects or failures appear within a period of one year from the date of Acceptance of the Work by the County, the Contractor shall, at Contractor's own expense, make good such defects and failures and make all replacements and adjustments required, within a reasonable time after being notified by the County to do so, and to the approval of the department. This bond shall be maintained by the Contractor in full force and effect during the performance of the Work of the Agreement and for a period of one year after acceptance of the Work by the County.

Should any surety or sureties upon said bonds or any of them become insufficient or be deemed unsatisfactory by the County, said Contractor shall replace said bond or bonds with good and sufficient sureties within ten (10) days after receiving notice from the County that the surety or sureties are insufficient or unsatisfactory.

No further payment shall be deemed due or will be made under this Agreement until the new sureties shall qualify and be accepted by the County.

GUIDELINES FOR INDEMNIFICATION AND INSURANCE REQUIREMENTS (IIR) FOR CONSTRUCTION PROJECTS

These Guidelines and the Liability Coverage and Limit Matrix were developed to assist you in determining the types of insurance and limits to require for different County construction projects. The Guidelines also include a glossary of insurance terms you may not be familiar with to assist you.

These Guidelines are to be used in conjunction with the Indemnification and Insurance Requirements (IIR) for Construction Projects. If a limit appears below a coverage heading next to a project description in the Liability Coverage and Limit Matrix, that coverage is required for that type of project. The limit shown beneath that heading is the minimum limit required for a small project. Except for workers compensation, the limit shown must be increased by the multipliers in Table 2, 4 and/or 5 below to arrive at the required minimum limit for that size project or for a “high hazard” project. If the type of project you are developing specifications for is not shown in the Liability Coverage and Limits Matrix, contact CEO — Risk Management for the appropriate coverages and limits.

Indemnification and insurance requirements must be shown in bid documents and in County contracts.

Steps to Determine Coverages and Limits

Required liability and workers compensation coverages are identified by using the Liability Coverage and Limits Matrix, the project categories in Table 1, and the multipliers for specific project categories in Table 2, 4 or 5. The process is as follows.

First, find the type of project description that best describes the work to be done in the Liability Coverage and Limits Matrix. The left-hand column of the Liability Coverage and Limit Matrix (the column entitled “Type of Project”) lists various types of project work. The column headings to the right identify different types of insurance that may be required. A particular type of insurance is required when a limit appears below an insurance heading. If no limit is shown under a column heading, that type of insurance is not required for that type of project.

Next, determine the project category the project falls into from Table 1. A project category generally refers to the size of the project. Projects will be one of four sizes based on the total contract cost. A project’s total contract cost is determined based on the total cost of construction for the project, including all trades. However, if the work is considered “high hazard,” the “high hazard” category must be used in place of the size category.

There are separate multiplier tables for general liability limits (Table 2), automobile liability limits (Table 4), and special and professional liability limits (Table 5) (“special” liability refers to specialized types of liability insurance such as asbestos liability, marine liability, etc.). These multipliers are used to determine the final limit to be required for the project for each type of insurance. The workers compensation coverages and limits to be used are as shown in the Liability Coverage and Limits Matrix and are not increased by a multiplier.

Next, increase the limits shown in the Liability Coverage and Limits Matrix by the multiplier shown in Tables 2, 4 or 5 based on the project category and the type of liability insurance. The limits shown in the Liability Coverage and Limits Matrix are all for a “small” project. For larger and for “high hazard” projects, the limit shown should be increased by the multiplier in the appropriate table. For example, for a medium-sized asbestos remediation project with no high hazard exposure, a minimum \$2 million limit should be required. Arriving at this limit is based on the \$1 million limit shown for asbestos removal work in the Liability Coverage and Limits Matrix times the medium-sized project multiplier for special liability shown in Table 5.

Table 1
Construction Project Categories

Project Category	Qualifying Features
1. Small projects	Less than \$5 million in contract cost
2. Medium projects	\$5 million up to \$25 million in contract cost
3. Large projects	\$25 million up to \$100 million in contract cost
4. Major projects	\$100 million+ in contract cost
5. High hazard projects - general liability, special liability or professional liability	“High hazard” means any project in categories 1 through 4 that includes blasting, structural steel work, tunneling, work on bridges, stadiums/concert halls/arenas, structural renovation/retrofit, new or untried construction concept/technique, construction over public walkways, or is in or closely adjoins occupied structures ¹² , involves extensive excavation, tunneling or mining, etc.
6. High hazard projects — automobile liability	For automobile liability, “high hazard” means any project in categories 1 through 4 in which there are many vehicles onsite, specialized or oversized vehicles, vehicles with volatile or hazardous loads, vehicles operating in high population or high vehicle/pedestrian traffic areas, or in which affected streets lack adequate traffic control or are not designed to accommodate larger vehicles or increased construction traffic, etc.

¹² Any structure that is occupied by 100 or more people during construction (excluding contractor and subcontractor employees), that abuts a building housing 100 or more people during construction or will be occupied by over 1,000 people after project completion, is to be considered “high hazard.”

Instructions For Deductibles/Retentions and Specific Coverages

1. **Deductibles or Retentions (Pertains to Section II, F of IIR).** It is important that the County be assured that the Contractor can afford to pay any deductibles or retentions that apply to its policies and, thereby, continue the project to completion. By state statute, the maximum deductible or retention for each policy purchased by the General Contractor on a County project can be no more than 5% of the contract cost. However, some Contractors are financially better off and better able to sustain loss within their deductibles or retentions than others. The County can consider requests for higher deductibles based on the contractor's demonstrated ability to pay the deductible. The County has developed the following maximum deductibles/retentions based on the following types of contracts:

For Lump Sum Low Bid Construction Contracts, the County has set the maximum deductible/retention it will accept at \$25,000. The nature of Lump Sum Low Bid Contracts require that the County specification be identical for all bidders. The paragraph indicated for Lump Sum Low Bid Contract should be used to establish the stated deductible/retention amount for these contracts.

For Non-Lump Sum Low Bid Construction Contracts (i.e., A/E or other construction related consulting services, dredging or excavation work, installation or remediation services, etc.) the County has set the maximum deductible/retention it will accept at \$25,000. If a Contractor wants to use a higher deductible, the County retains the right to require the Contractor to provide a bond or other financial instrument guaranteeing payment of all losses and retained costs below the deductible or retention. The paragraph indicated for Non-Lump Sum Low Bid Construction Contract should be used in the bid documents to convey this to the General Contractors.

The deductibles/retentions must apply on a "per occurrence" or "per loss" basis, except on professional or special liability policies. Deductibles or retentions that apply "per claim" are acceptable on professional or special liability policies.

2. **General Liability Insurance Limits (Pertains to Section III, B, of IIR).** Insurance limits should be based on the risk of bodily injury and property damage claims, including construction defects discovered after project completion and County acceptance. Table 2 provides recommended multipliers to be applied to the general liability per occurrence limits in the Liability Coverage and Limits Matrix. Applying the multipliers to the limits in the Liability Coverage and Limit Matrix will result in the minimum recommended per occurrence limit for the project. For example, the \$1 million per occurrence limit for interior renovation work on a project of medium size would be \$1 million times two, for a per occurrence limit of no less than \$2 million.

The personal injury/advertising injury limit should equal the per occurrence limit.

The policy aggregate limit should be double the per occurrence limit unless the aggregate limit applies solely to the project (in which case the policy aggregate should be equal to the per occurrence limit).

The products/completed operations aggregate limit should be double the required per occurrence limit, unless the products/completed operations limit applies solely to the project (in which case the products/completed operations limit should be equal to the per occurrence limit).

Table 2
Minimum General Liability Limits

Project Category	Limit Multiplier
Small	The per occurrence limit shown in the Liability Coverage and Limits Matrix
Medium	2 to 5 times the per occurrence limit shown in the Liability Coverage and Limits Matrix
Large	7.5 to 25 times the per occurrence limit shown in the Liability Coverage and Limits Matrix
Major or high hazard	25 to 50 times the per occurrence limit shown in the Liability Coverage and Limits Matrix

3. **Continuation of Claims Made or Products/Completed Operations Coverage (Pertains to Sections II, G, and III, A, of IIR)**. The Contractor should be required to continue this insurance after the project is completed and accepted by the County, to cover any potential injuries and property damage later resulting from construction defects.

Continuation of this coverage is not required for small projects or projects that do not involve construction. Continuation of this coverage is recommended for the period shown in Table 3.

Table 3
Minimum Time for
Continuing Claims Made or Products/Completed Operations Coverage
After Completion

Project Category	Years Coverage Must be Continued
Small	None
Medium	Two years
Large	Three years
Major and "high hazard"	Five years

4. **Automobile Liability Insurance Limits (Pertains to Section III, C, of IIR).** The multipliers in Table 4 should be applied to the automobile limits shown in the Liability Coverage and Limits Matrix to determine the minimum automobile liability limit for the project. No annual aggregate applies to automobile limits.

Table 4
Minimum Required Automobile Liability Limits

Project Category	Limit Multiplier
Small	The per accident limit shown in the Liability Coverage and Limits Matrix
Medium	Two times the per accident limit shown in the Liability Coverage and Limits Matrix
Large	Three times the per accident limit shown in the Liability Coverage and Limits Matrix
Major and "high hazard"	Five times the per accident limit shown in the Liability Coverage and Limits Matrix

5. **Professional and Special Liability Insurance Limits (Pertains to Section III, D and F, of IIR).** The multipliers in Table 5 should be applied to any professional liability and "special liability" limits shown in the Liability Coverage and Limits Matrix to determine the minimum liability limit required per claim (or per occurrence). The annual aggregate limit should be two times the required per claim (or per occurrence) limit.

Table 5
Professional and Special Liability Limits

Project Category	Limit Multiplier
Small	The per claim limit shown in the Liability Coverage and Limits Matrix
Medium	Two times the per claim limit shown in the Liability Coverage and Limits Matrix
Large	Three times the per claim limit shown in the Liability Coverage and Limits Matrix
Major and "high hazard"	Five times the per claim limit shown in the Liability Coverage and Limits Matrix

6. **Builders Risk, Installation Floater, Property and Boiler & Machinery (Pertains to Section III, A, of IIR).** Items III, A, in the IIR identify two forms of property protection that can be used to insure property to be installed in a project (builders risk insurance and an installation floater).

Most capital improvement projects will require builders risk coverage. However, there are situations in which builders risk insurance is not required.

Projects in which the total project cost is under \$50,000 or that involve grading and/or paving only (with no infrastructure construction) do not require builders risk insurance.

Projects in which the Contractor is installing material and equipment in an existing structure should require an installation floater policy rather than builders risk insurance (although a Contractor can substitute a blanket builders risk policy in place of an installation floater).

For projects that involve structural renovations or additions to an existing structure, the County has two exposures: one for the new work being done and one for the existing building or structure. If the new work does not involve a major exposure to the existing building or structure, the County should require an installation floater policy equal to the contract cost on the new work. The County would then assume the risk of damage to the existing structure.

If the new work involves a major addition or major renovation that could affect the structural integrity of the existing structure, the County should require builders risk insurance that covers the new work and the existing structure for the total cost of the contract plus the value of the existing structure. Except when projects also involve existing property, the value insured in a builders risk policy or an installation floater should always be equal to the total contract cost.

If a Contractor's work involves testing air conditioning systems, boilers, pressure vessels, major machinery or major electrical panels, the County should require that the builders risk or installation floater policy include coverage for testing. Otherwise, any damage done to the equipment as a result of trial tests will not be covered.

Work on roads and drainage canals can involve sizable contract costs. However, the probability of damage on such projects is limited. Additionally, when damage occurs, it is usually limited to a small area and represents a small portion of the total contract value. As such, unless there are high-value segments of the project subject to a sizable loss (such as an expensive pumping station) builders risk insurance is not recommended.

7. **Workers Compensation (Pertains to Section III, E, of IIRs).** For workers compensation, the Liability Coverage and Limit Matrix only identify that coverage needed. The statutory workers compensation limit and the employer's liability limit should remain as shown in the Liability Coverage and Limit Matrix. Multipliers are not used to increase these limits.

Should you have any questions concerning these Guidelines, please call CEO-Risk Management at (213) 351-6436.

GLOSSARY

TERM OR PHRASE	MEANING
Admitted Insurer	An insurer that is licensed to do business in the state.
Authorized Insurer	An admitted insurer or an approved surplus lines insurer authorized to do business in the state.
Aggregate Limit	The maximum limit to be paid during the policy period for all covered claims. In the commercial general liability policy, there are two annual aggregate limits. One applies to all coverage other than products and completed operations and a second aggregate limit applies to products and completed operations.
Aircraft Liability	A liability insurance policy covering liability arising from the use of an aircraft.
Asbestos Liability	A liability insurance policy covering loss arising from the removal, encapsulation and/or transportation of asbestos.
Automobile Liability	A liability insurance policy covering loss arising from the operation of automobiles.
Boiler & Machinery	A type of insurance that covers damage to property caused by a boiler or equipment "accident." ("Accidents" include explosion or tearing asunder originating from pressure vessels, electrical arching or centrifugal force.) Builders risk policies can usually be extended to include this coverage during testing of boilers, electrical systems and machinery.
Blanket Builders Risk	A builders risk policy purchased by a Contractor that applies to all projects the Contractor reports to the insurer during the policy term.
Builders Risk	A type of insurance that covers damage to property under construction.
Commercial General Liability	A common type of general liability policy designed by the Insurance Services Office (ISO) and widely used by insurers. The principle coverages included in a commercial general liability policy include premises and operations, products and completed operations, contractual liability and personal and advertising injury liability.
Contractors Professional Liability	A type of liability insurance covering a Contractor's liability for engineering or architectural work, review of plans and shop drawings, project management, project consulting, project scheduling, etc.

TERM OR PHRASE	MEANING
Coverage	A term referring to the protection that makes up part or all of the insurance in an insurance policy. (See Commercial General Liability for an example.)
Deductible	An amount that the insured entity is responsible to reimburse to the insurer after payment of a third-party liability claim or the insured's share of loss paid as part of a property claim.
Design E&O	A type of professional liability insurance for engineers and architects (also known as architects and engineers E&O).
Continuation of Products/ Completed Operations Coverage	A requirement that an insured continue to purchase products/completed operations insurance for a stated period after the contracted work is completed and accepted by the County.
Employers Liability	A coverage that is part of a workers' compensation policy. Employers liability insures the employers liability (up to a stated limit) for injury to employees that are not subject to workers compensation laws.
Environmental Liability	A liability insurance policy covering liability and cleanup costs arising from pollution spills or leaks. (Coverage can include the cost to cleanup owned property as well as non-owned property.)
Errors & Omissions	Another term for professional liability.
Excess Insurance	An insurance policy that stands above (or excess to) primary insurance.
General Liability	A liability insurance policy covering loss arising from general operations and the operation of premises.
Installation Floater	A type of insurance that covers damage the materials being installed by the insured.
Jones Act	A federal law that requires employers to insure the captain and crew members of a boat for injury. (The law applies to all employees working on a boat operating in navigable waters.)
Marine Liability	A liability insurance policy covering loss arising from the operation of boats or ships (also known as a protection and indemnity policy.)

TERM OR PHRASE	MEANING
Navigable Waters	Ocean and inland waters that can be consistently used by larger boats or ships. (Operations on navigable waters can subject employers to paying <i>United States Longshore and Harbor Workers Act</i> benefits to injured employees.)
Non-Contributing	An insurance policy in which the policy limits will not combine with (contribute with) other policies to share a loss. A non-contributing policy would stand as excess to other policies.
Personal and Advertising Injury	A general liability coverage that covers libel, slander, false arrest, malicious prosecution, wrongful eviction, violation of privacy and use of another entity's idea (or infringing on another entity's copyright, trade mark or slogan) in advertising the insured's products or services.
Policy Aggregate	An annual aggregate limit in the commercial general liability policy that applies to all commercial general liability coverages except Products/Completed Operations.
Pollution Liability	Another term for environmental liability.
Primary Insurance	Insurance that stands first in line to pay a loss.
Professional Liability	A liability insurance policy covering loss arising from errors or omissions done in performing professional services (also known as an errors & omissions [E&O] policy.)
Products/Completed Operations Liability	A type of general liability coverage that covers liability for damage or injury caused by the insured's products after the sale of the product or caused by the completed operations done by an insured. This type of coverage is subject to a separate annual aggregate limit.
Railroad Protective Liability	A specialized type of liability insurance required of Contractors by railroads to insure the railroad when Contractors enter on railroad property to perform work.
Retention	A self-insured layer that applies primary to the insured liability limits (similar to a deductible).
Self-Insurance	Self-retained risk of loss. A self-insurance program can be a formal document recognizing a self-retained risk of loss (such as a self-insurance certificate or a retention), an informal assumption of known risk or an unintended and unexpected risk of loss.

TERM OR PHRASE	MEANING
Special Liability	A type of liability insurance that is designed for specialized types of operations, such as asbestos liability, environmental liability and railroad protective liability.
Surplus Lines Insurer	An out-of-state insurer that transacts business on risks that admitted insurers have refused to write. To be acceptable, the surplus lines insurer must be authorized to conduct business in the state.
<i>USL&H</i>	An acronym for the <i>United States Longshore and Harbor Workers Act</i> .
Workers Compensation	Workers compensation insurance covers employees for injury or illness they incur in the course of their work. Workers compensation insurance is made up of workers compensation coverage and employers liability coverage. The workers compensation limit is a “statutory” limit in which the amount insured is established by the benefit levels stated in workers compensation statutes.

**COUNTY OF LOS ANGELES
LIABILITY COVERAGE AND LIMIT MATRIX¹³**

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Alarm Installation (Alarm installation work at a jail or penal facility or at a residential location housing over 50 persons should be considered "high hazard")	\$1 million	\$1 million	Statutory \$1 million EL						\$1 million Errors & Omissions
Asbestos Remediation	\$1 million	\$1 million ¹⁴	Statutory \$1 million EL						\$1 million Asbestos Liability
Air Conditioning, Heating or Refrigeration System Installation	\$1 million	\$1 million	Statutory \$1 million EL						
Architectural or Engineering Work	\$1 million	\$1 million	Statutory \$1 million EL						\$1 million Professional (E&O) Liability
Automatic Sprinkler Installation	\$1 million	\$1 million	Statutory \$1 million EL						

¹³ WC refers to workers compensation. EL stands for employers liability. *USL&H* stands for *United States Longshore and Harbor Workers Act* coverage. E&O stands for errors & omissions and refers to professional liability insurance.

² All railroad protective liability must be written in the name of the railroad that requires this coverage of the County. The limit insured must equal the limit required by the railroad. All asbestos and lead remediation work that includes transport of asbestos or lead waste away from the job site must also include automobile liability coverage that includes liability coverage for the transport of asbestos or lead.

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Beach Improvement (including facilities installation)	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	
Breakwater or Jetty Construction	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography		
Bridge Construction	\$2 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if over or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography		Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Bridge Painting	\$2 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if over or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type			Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Building Construction (General)	\$1 million	\$1 million	Statutory \$1 million EL				\$1 million required if aerial lifting of materials or aerial surveying or photography is performed	\$1 million required if pollutants are present	\$1 million contractor's professional liability required if the project is a design/build project and contractor does or subcontract s design.
Building Moving	\$2 million	\$2 million	Statutory \$1 million EL						
Catch Basin Clean Out	\$1 million	\$1 million	Statutory \$1 million EL						
Dam or Reservoir Construction	\$2 million	\$2 million	Statutory \$1 million EL				\$1 million required if Contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	
Dredging	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if over or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography		
Earthquake Retrofit Work	\$2 million	\$1 million	Statutory \$1 million EL						

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Environmental Assessment Work	\$1 million	\$1 million	Statutory \$1 million EL					Required as part of professional liability	\$1 million Professional (E&O) Liability
Excavation or Pile Driving	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if on or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type		\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Exterior fence or retaining wall installation	\$1 million	\$1 million	Statutory \$1 million EL						\$5 million Railroad Protective Liability (if work enters upon railroad property)
Fireproofing and Sprinkler Installation	\$2 million	\$1 million	Statutory \$1 million EL						
Flood control, cofferdam and sewer construction	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if over or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Golf Course Construction	\$1 million	\$1 million	Statutory \$1 million EL					\$1 million required if pollutants are present	

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Heating System Installation	(See Air Conditioning)								
Interior Renovation	\$1 million	\$1 million	Statutory \$1 million EL						\$1 million asbestos liability if work involves asbestos removal or encapsulation
Iron or Steel erection - Buildings or Structural Work	\$2 million	\$1 million	Statutory \$1 million EL						Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Irrigation and Water System Construction	\$1 million	\$1 million	Statutory \$1 million EL				\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Landscaping, Planting and Arbor Work	\$1 million	\$1 million	Statutory \$1 million EL						
Park, Playing Field or Playground Construction	\$1 million	\$1 million	Statutory \$1 million EL					\$1 million required if pollutants are present	
Paving	(See Street, Road and Highway Construction)								

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Pipeline or Sewer Construction	(See Water Main Construction)								
Streetlight Installation, Maintenance and Repair	\$2 million	\$2 million	Statutory \$1 million EL						
Street, Road and Highway Construction (including slurry sealing)	\$1 million	\$1 million	Statutory \$1 million EL	\$1 million required if Contractor's employees will use boats of any type	Required if over or next to navigable waters	\$1 million required if Contractor's employees will use boats of any type	\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Swimming Pool Construction	\$1 million	\$1 million	Statutory \$1 million EL						
Traffic Signal Light Installation, Maintenance and Repair	\$2 million	\$2 million	Statutory \$1 million EL						
Tree Planting and Trimming	(See Landscaping)								
Tunneling Work	\$2 million	\$1 million	Statutory \$1 million EL					\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)

Type of Project	General Liability (use Table 2 for final limit)	Automobile Liability (use Table 4 for final limit)	Workers Compensation			Professional and Special Liability (use Table 5 for final limit)			
			Workers Comp	WC - Jones Act	WC - USL&H	Marine Liability	Aircraft Liability	Pollution Liability	Other Liability ²
Water Main Construction	\$1 million	\$1 million	Statutory \$1 million EL				\$1 million required if contractor uses or will hire others to use aircraft to perform aerial survey or photography	\$1 million required if pollutants are present	Railroad Protective Liability - at limit required by Railroad (if work enters upon railroad property)
Waterworks Construction	\$1 million	\$1 million	Statutory \$1 million EL					\$1 million required if pollutants are present	
Wrecking Work	\$2 million	\$2 million	Statutory \$1 million EL					\$1 million required if pollutants are present	\$1 million asbestos liability required if asbestos is present

**INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR LOS ANGELES COUNTY SERVICE AGREEMENTS**

Include Sections I and II in all County Service Agreements.

- I. **Indemnification:** Contractor shall indemnify, defend and hold harmless County, and its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Agreement.

Instruction to Analysts: Include all sections of Section II below in all County service contracts. If you need assistance with a lease, construction or other specialized contract or agreement, please contact the CEO Risk Management Branch – Risk Management Operations Section staff for specialized provisions and further assistance.

Do not ask Contractors to send certificates to CEO Risk Management.

- II. **General Provisions for All Insurance Coverages:** Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections II and III of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract.

- A. **Evidence of Coverage and Notice to County:** A certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.

Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.

Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.

Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Contracting Department Name, Division/Section
Contracting Department Address
Attention of: Name and Title of Dept. Contact Person

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

- B. Additional Insured Status and Scope of Coverage:** The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.
- C. Cancellation of Insurance:** Except in the case of cancellation for non-payment of premium, Contractor's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.
- D. Failure to Maintain Insurance:** Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.
- E. Insurer Financial Ratings:** Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.
- F. Contractor's Insurance Shall Be Primary:** Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall not contribute to any Contractor coverage.

- G. **Waivers of Subrogation:** To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Contract. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.
- H. **Sub-Contractor Insurance Coverage Requirements:** Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.
- I. **Deductibles and Self-Insured Retentions (SIRs):** Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- J. **Claims Made Coverage:** If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- K. **Application of Excess Liability Coverage:** Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.
- L. **Separation of Insureds:** All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

- M. **Alternative Risk Financing Programs:** The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.
- N. **County Review and Approval of Insurance Requirements:** The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

Instruction to Analysts: At a minimum, all County service contracts should include the Commercial General Liability, Automobile Liability and Workers Compensation and Employer's Liability insurance requirements with limits of not less than those noted below.

If you are uncertain or have questions about the appropriate types and limits of insurance coverage for your specific contract, please contact the CEO Risk Management Branch – Risk Management Operations Section staff for assistance.

III. **Insurance Coverage Requirements**

- A. **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

- B. **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- C. **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

Instructions to Analysts: The Alternate Employer endorsement also should be required if your department will (1) lease or rent equipment and an equipment operator is provided by the supplier, or (2) exercise control over the *details of the work performed by the employees of your contractor*. Please contact the CEO Risk Management Branch – Risk Management Operations Section staff if you need assistance.

Instructions to Analysts: One or more of the following insurance coverages also may be required, depending upon the type of contract service. Please review and select coverages only as needed.

If you are uncertain or have questions about the appropriate types and limits of insurance coverage for your specific contract, please refer to the "Insurance Manual for Service Agreements" on the CEO website [http://riskmanagement.mylacounty.info/cms_088390.pdf], or contact the CEO Risk Management Branch – Risk Management Operations Section staff for assistance.

Instructions to Analysts: Coverage for Sexual Misconduct Liability should be required when the contract work involves care or supervision of children, seniors and other vulnerable persons. This may include services such as child care, foster care, group homes, emergency shelters, medical and/or mental health care service delivery, residential treatment, mentoring, schools, camp operations, school bus transport, and security services.

- D. **Sexual Misconduct Liability:** Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 million per claim and \$2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed

any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

Instructions to Analysts: Professional Liability/Errors and Omissions coverage is required for medical and legal Contractors, as well as Contractors in non-traditional professions including, but not limited to accountants, appraisers, architects, billers, computer programmers, engineers, interpreters, staffing/temporary services agencies, and consultants. **NOTE:** A minimum \$3 million aggregate limit is recommended for medical and legal service providers.

- E. **Professional Liability/Errors and Omissions:** Insurance covering Contractor's liability arising from or related to this Contract, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

Instructions to Analysts: Property Coverage provides protection against losses due to perils such as fire, vandalism, theft, and water damage, and is only required when a Contractor takes custody of County owned or leased property (for example, Contractor occupies a County building, or is given County computers to use at non-County locations, such as the Contractor's business premises).

- F. **Property Coverage:** Contractors given exclusive use of County owned or leased property shall carry coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP 10 30) form. The County and its Agents shall be named as an Additional Insured and Loss Payee on Contractor's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.

Instructions to Analysts: Crime Coverage is only required when the contracted services involve pick up, carry, guard or otherwise handle County money and securities (ex. cash, checks, warrants, bonds, vouchers), or other highly valued County property (ex. property to be auctioned).

- G. **Crime Coverage:** A Fidelity Bond or Crime Insurance policy with limits of not less than \$ [insert Dept. estimate of the probable maximum loss exposure] per occurrence. Such coverage shall protect against all loss of money, securities, or other valuable property entrusted by County to Contractor, and apply to all of Contractor's directors, officers, agents and employees who regularly handle or have responsibility for such money, securities or property. The County and its Agents shall

be named as an Additional Insured and Loss Payee as its interests may appear. This insurance shall include third party fidelity coverage, include coverage for loss due to theft, mysterious disappearance, and computer fraud/theft, and shall not contain a requirement for an arrest and/or conviction.

Instructions to Analysts: Miscellaneous Coverage for one or more of these specialized types of insurance coverage(s) may also be required for contracted services involving unique services and/or risk exposures such as property renovations, vehicle maintenance and repair, aircraft, pollutants, watercraft, rail operations, etc. Contact the CEO Risk Management Branch – Risk Management Operations Section staff for assistance.

- H. **Other Miscellaneous Coverages:** Garage, Builder's Risk, Installation Floater, Owners and Contractors Protective Liability, Pollution (Environmental) Liability, Asbestos Liability, Railroad Protective Liability, Earthquake, Flood, Terrorism, Motor Truck Cargo Liability, Equipment Breakdown, Aircraft Liability, Marine Protection and Indemnity, Fine Art, Fiduciary.

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