



Contractual Risk Transfer 101

AKA, what you need to know about
Risk Transfer but were afraid to ask

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About David Clovis

35+ years in public sector risk management

- Risk Manager for several public agencies
- GM of the California Joint Powers Risk Management Authority
- Past President of California Association of Joint Powers Authorities
- Past President of PARMA

Today's Session

What are we covering today?

- Contractual Risk Transfer Defined
- Identifying agency risk transfer exposures
- Understanding parts of a contract/agreement/MOU/Mutual Aid Agreement
- Identifying exposures based on type of services provided
- Establishing effective contract language for Hold Harmless/Indemnification
- Insurance Requirements
- Developing an effective Risk Transfer Program
- Questions

*“Do what you do best,
and contract the rest.”*

- Peter Drucker

This is a powerful piece of advice that can help you grow your business and achieve your goals. When you outsource, you're delegating tasks to experts who can do them better and more efficiently than you can.

Contracts

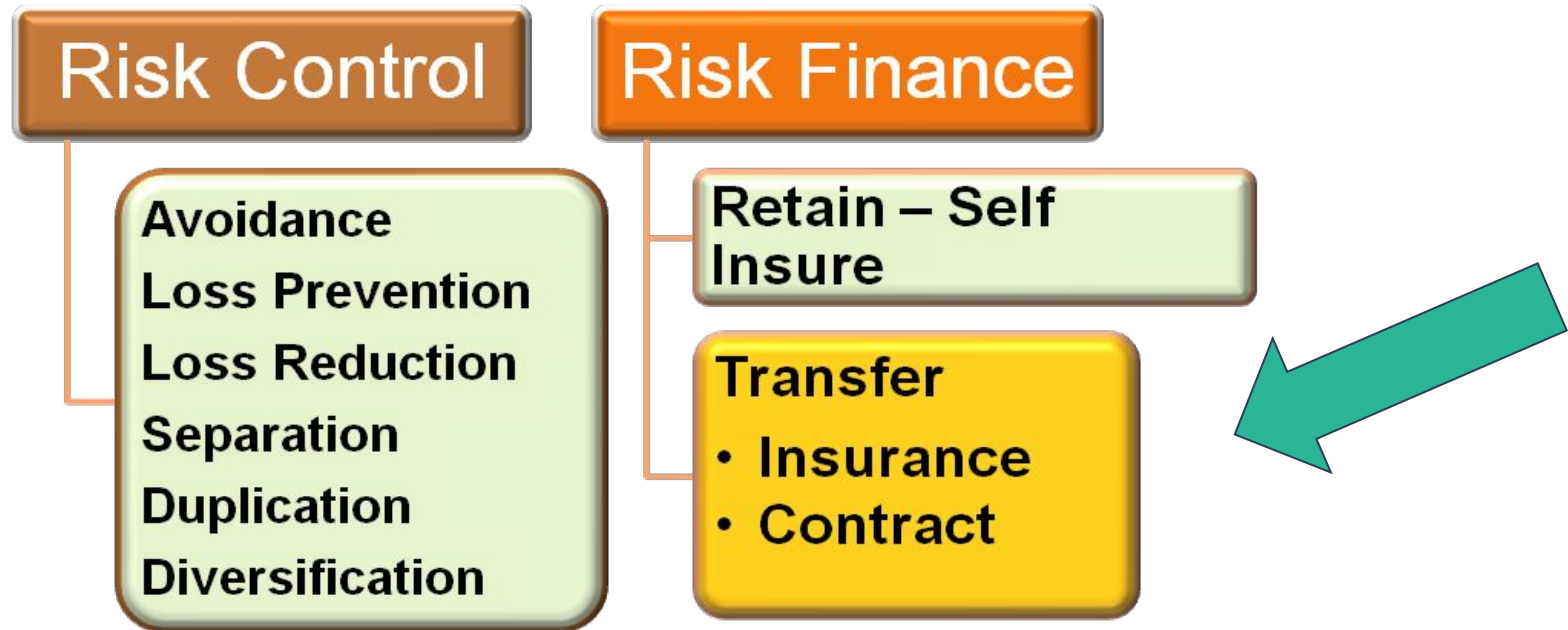
The adage "*Do what you do best and contract the rest*" is a popular business strategy attributed to management consultant Peter Drucker.

It encourages businesses and individuals to focus their efforts and resources on their unique strengths and delegate or outsource tasks that are not central to their core competencies. This approach can lead to several benefits.

The Risk Management Process

- Identify and analyze exposure to risk
- Analyze risk exposures
- Identify risk Management options
- IMPLEMENT THE APPROPRIATE RISK MANAGEMENT OPTION
- Monitor and review the results

Contractual Risk Transfer



What is contractual risk transfer?

- Contractual Risk Transfer is a tool in the Risk Management Process
- Transfers risk from your agency and creates a legal obligation on the
- Effectively minimizes the exposure to loss for your agency,
- Identifies responsibilities for both parties to the agreement,
- IF YOU DO NOT TRANSFER THE RISK YOU RETAIN IT!!!!!!!

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8307



11:02 57°



Agreement / Contract Types

- CONSULTANT AGREEMENTS
- CONTRACT FOR SERVICES
- PURCHASE AGREEMENTS
- SPECIAL USE AGREEMENT
- ENCROACHMENT AGREEMENTS
- PUBLIC WORKS CONTRACTS
- HEALTH SERVICES AGREEMENTS
- PUBLIC WORKS/CONSTRUCTION PROJECTS
- LABOR AGREEMENTS
- PURCHASE ORDERS
- PROFESSIONAL SERVICES CONTRACTS
- LEGAL AGREEMENTS/MEDICAL SERVICES
- ETC., ETC., ETC.!!!!

Contract Management Basics

Not just adding additional paperwork to your job—We need Insurance requirements to protect your organization!

Managing Contractual Exposures

- Responsible Party should be the one best able to control the risk
 - Proper Contract Requirements
 - Contract specifics
 - Legally transfers the financial responsibility for adverse exposures to contractor, the one doing the work!

Elements of a Contract

- Define the services within the agreement (scope of Services)
- Define expectations of the Contractor and your Agency,
- Defines compensation
- Details performance objectives

Key Risk Transfer Elements of a Contract

- Hold Harmless
- Indemnity Provisions
- Insurance Requirements
- Insurance Limits

Contract Basics

- Who's responsible? Are we covered?
- **What the contract says will provide the answer!**
- Vicarious liability, Joint and Several liability, "Deep pockets"
- Want to protect your agency, but not kill the service by being unreasonable.

Pre-Session Exercise

Hold Harmless / Indemnity

A hold harmless clause is a statement in a contract that states that an organization or individual will not be held liable for any injuries or damages caused to the other party.

A hold harmless clause is also called a release of liability, a waiver of liability, a save harmless clause, or a hold harmless letter or release.

These agreements are usually seen in leases, contracts, and easements, in an attempt to protect either one party or both.

Indemnity

Indemnity is the specific contract language that requires a Contractor to agree to assume the liability of the Public Agency.

- This contract clause will trigger Contractual liability coverage, a definition included within an insurance policy that obligates and insurer to pay liability assumed under contract.
- The new insurance forms require a contract requiring insurance must be specific and will limit coverage to the limits required in a contract.

Types of Liability to Transfer

- Vicarious Liability
 - Vicarious liability—Liability as a function of law regardless of the actions of the Public Entity. No Negligence is required to have vicarious liability!
- Joint and Several
 - Joint and several liability is a legal concept where multiple defendants are responsible for the full amount of damages awarded to a plaintiff, and the plaintiff can collect the entire judgment from any one of them

Types of Tort Liability to Transfer

- Negligence
 - Active Negligence
 - Passive Negligence
 - (a) Vicarious liability—Liability as a function of law regardless of the actions of the Public Entity. No Negligence is required to have vicarious liability!

Types of Liability (continued)

- (b) Negligent Tort liability—Party causes harm through their negligence
 - (i) Active liability—What you did caused the harm, including sole negligence
Passive liability—What you did not do, but could have, caused the harm; you could have prevented it – Most Common for Public Entities
 - (1) Passive examples: Failure to discover, supervise, inspect; or prevent the harm—an omission of a duty
 - (2) If you contracted with them, or it happened on your property, you will be responsible!

Types of Liability (continued)

- (c) Joint & Individual (Several) Liability and its effect = deep pockets
- (d) Contractual Liability—Liability of others assumed by Contract; Liability because the Contract says so! What the Contractor does to indemnify you.
- (e) Employee injuries/Employers Liability

Types of Liability (continued)

- (f) Professional Liability—Different from General (tort) Liability in that it includes Financial Harm even if no Bodily Injury or Property Damage happens; it covers financial loss from an error or omission
 - Design & other Professionals: Consultants, Engineers, Medical, etc.
 - *Professional liability Insurance usually excludes Contractual liability, and Additional Insured coverage for the Public Agency; usually only covered by the General Liability policy i.e., for BI and PD
 - Cyber & Tech Professional Liability – Loss or destruction of data is NOT tangible property damage and is not usually covered. ; Your Data can be endorsed onto the Professional’s Tech liability, or onto the Cyber Policy

Types of Liability (continued)

- (g) Physical & Sexual Abuse – not accidental or unintentional
 - Usually not insured; or insured with a low CAP on limits; in limited instances CGL may provide some defense
 - Need for strong Risk Management practices!

Indemnity Code Section Examples

Civil Code sections 2772-2779 provide rules re construction of indemnity agreements.

- 2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.
- 2773. An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

Anti-Indemnity Rules Regarding Public Agencies

- Civil Code section 2782 - no indemnity for active negligence on public agency construction contracts
- Civil Code section 2783 - what is construction under the statute
- Civil Code section 2782.05 - subcontractors
- Civil Code section 2782.2 – engineers, inspection services
- Civil Code section 2782.6 – engineers and geologists
- Civil Code section 2782.8 – design professionals

Indemnity Types

- Type 1
- Type 2
- Type 3
- Mutual Indemnification Agreement

Indemnity Type 1 (Broad Form)

The Contractor agrees to save the Public Agency free and harmless of and from any loss or liability, of any nature whatsoever arising out of or in any way connected with the contractor's performance of this Agreement, including loss or liability caused by the Public Agency active negligence, except loss or liability caused by the Public Agency's sole willful conduct or active negligence.

SB 474

SB474—effective 1-1-2013

Type 1 indemnity-for contracts with Public Entity construction related contracts will be in violation of law effective 1-1-2012

Indemnity Type 2 (Intermediate Form)

A typical Type II clause is as follows:

The Contractor agrees to save the Public Agency's free and harmless of and from any loss or liability except that caused solely by the Public Agency's negligence of any nature whatsoever.

Indemnity Type 3 (Limited Form)

Type 3.

A Type 3 indemnity agreement provides that the indemnitor will indemnify the indemnitee for liabilities caused solely by the indemnitor's negligence. If there is any negligence on the part of the indemnitee or any third party, whether "active" or "passive," it will bar any claim against the indemnitor, even if negligent conduct by the indemnitor contributed to the loss.

Professional Liability

Professional Liability - Assembly Bill 573, effective January 1, 2007 (Section 2782.8 of the California Civil Code) prohibits public agencies (but not the State) from requiring Design professionals to indemnify for the public agencies' negligence or other fault (not just active), unless caused by that design professional i.e., limited to the proportionate percentage of fault

Professional Liability

Senate Bill 496 effective January 1, 2018 applies this limitation to defense costs as well – “only to the extent” - Proportional

Example Language by a County

For professional services provided under this agreement, Contractor shall indemnify, defend, and hold harmless County, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees and other costs of litigation, arising out of or in connection with the Contractor's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

Indemnification: Recommended Language

A. Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

Insurance Language

B. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder

Example Language for Design Professional

In connection with the performance of the design professional services required hereunder, CONSULTANT shall, to the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, indemnify, defend and hold harmless COUNTY, and its agents, officers, officials, employees and volunteers, from any claim, liability, loss, injury or damage (referred to collectively as “Litigation”) that arises out of, pertains to, relates to, or is connected with, performance of this Agreement due to the negligence, recklessness or willful misconduct of CONSULTANT and/or its agents, employees or subconsultants. CONSULTANT shall reimburse COUNTY for all costs, attorneys’ fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

County Language for Non-Design Professional

In connection with the performance of the non-design professional services required hereunder, if any, CONSULTANT shall hold harmless, defend and indemnify COUNTY and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense and costs of any kind or nature, including, without limitation, costs and fees of Litigation, arising out of, or in connection with, CONSULTANT's performance of, or failure to comply with, any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY. CONSULTANT shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

Mutual Indemnity

MUTUAL INDEMNIFICATION – NOT PRACTICAL USED EXTENSIVELY BY PUBLIC AGENCIES

- Recreation Facilities
- Public safety services
- Health and Welfare services

General Insurance Requirements

- General Liability
 - Sexual Molestation
 - Alcohol
- Auto Liability
- Worker's Compensation
- Professional Liability
- Property Insurance
- Aircraft Liability
- Pollution Coverage
- Errors & Omissions
- Cyber Exposure
- Fiduciary
- Builder's Risk

Insurance Requirements (continued)

- BASED UPON EXPOSURES WITHIN THE AGREEMENT
- MUST IDENTIFY THE POTENTIAL FINANCIAL EXPOSURE
- THE INSURANCE REQUIREMENT MUST ALSO BE REASONABLE BASED UPON THE TOTAL COST OF THE AGREEMENT
- INSURANCE SHOULD ONLY BE REQUIRED FOR ACTUAL EXPOSURES i.e.. Auto

Apolo Ohno

Most decorated US Olympic Speed Skater

Hard Pivot: Embrace Change, Find Purpose, Always Show Up!

Insurance Limits

- Must be consistent with exposures
- Standard should be set at \$2million/\$4 million aggregate
- Ceiling limit based upon exposure
- W. Comp Statutory with \$1 million employee liability

California Joint Powers Risk Management Authority - Contractual Risk Transfer Limits

Type of Agreement	General Liability Occur/Aggregate	Auto Liability	Workers' Comp.	Errors & Omissions	Builder's Risk	Pollution Liability	Professional Liability	Bonds	Cyber Coverage
Aircraft Operations **	2/4	10 (Aircraft)	(Statutory)						
Airport Facility Lease	2/4	2	(Statutory)			1 (fueling)			
Airport FBO Agreement	2/4	2	(Statutory)			1 (fueling)			
Construction Contract Minor	2/4	1	(Statutory)		Bldg. Value			X	
Construction Projects-Major *	5/10	5	(Statutory)		Bldg. Value	2		X	
Consultant Agreement	1/2	1	(Statutory)	1					
Design Professional (Architect/Engineers/etc.)	2/4	1	(Statutory)				2		
Encroachment Permits - Major	3/6	2	(Statutory)						
Encroachment Permits - Minor	1/2	1	(Statutory)						
Environmental services	3/6	2	(Statutory)	2		2	2		
Explosives/Tunneling	10	5	(Statutory)					X	
IT Service (software)	1/2		(Statutory)	1					1
Land Surveyor Agreement	2/4	2	(Statutory)	1			1		
Lease Agreement	2/4	1	(Statutory)						
Lease Agreement/food operations	3/6	1	(Statutory)						
Petroleum/Propane/fuel provider	5/10	5	(Statutory)			5			
Professional service agreements (doctors, lawyers, accountants, etc.)	2/4	1	(Statutory)	2			2		1 (IT/Software Related)
Purchase Order Materials	2/4	1	(Statutory)						

Insurance Coverage Requirements

Primary and Non-Contributory

Occurrence Based

Additional Insured Endorsement

Completed Operations

On going work restrictions

Insurer Rating

30 Day Notice Clause

Waiver of subrogation

Insurance Forms & Coverage

Additional Insured

An additional insured is a person or organization not automatically included as an insured under an insurance policy who is included or added as an insured under the policy at the request of the named insured.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <input type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)								

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CERTIFICATE HOLDER

CANCELLATION

City of X named as an
additional insured

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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AI Endorsements, “Other Insurance” and “Primary Language”

Schools Excess Liability Fund v. Westchester Ins. Co. (2004) 117 Cal.App.4th 1275

(pooled self-insurance coverage is not “other insurance” for OI clause).

Insurance Requirements

Avoiding large self-insured retention (SIR)

Forecast Homes Inc. vs. Steadfast Insurance Company—Carrier not obligated to provide coverage to Additional Insureds where the Named insured failed to pay the SIR. The Additional insured could not satisfy the SIR on behalf of the Named insured in order to trigger coverage.

FORECAST HOMES, v. STEADFAST INS

Court of Appeal of California, Fourth District, Division Three. Jan 12, 2010

HOLDING

Affirmed. The language of the insurance policy controls. Here, the policy endorsements regarding SIRs specifically defined and identified the named insured (not an additional insured) as the entity required to satisfy the SIR as a precondition to coverage. Who may satisfy an SIR depends on a policy's express terms.

General Liability

"Commercial insurance endorsements" is a phrase commonly used by insurance companies, brokers, and the legal community, but few business owners know what an endorsement actually is.

In short: A commercial insurance endorsement is a document attached to your insurance policy that adds, removes, or changes your coverage in some type or fashion.

A Declaration Page will list all endorsements to a policy!!!!

ISO Forms

- CG 20 10, Additional Insured--Owners, Lessees or Contractors-- Scheduled Person or Organization
- CG 20 01, Primary and Noncontributory--Other Insurance Condition
- CG 20 12, Additional Insured--State or Governmental Agency or Subdivision or Political Subdivision--Permits or Authorizations
- CG 20 13, Additional Insured--State or Governmental Agency or Subdivision or Political Subdivision--Permits or Authorizations Relating to Premises

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

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

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

CG 20 10 11 85

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

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

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

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

2. Exclusions

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

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 10 01

Ongoing Operations

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

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

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

•CG 20 10 07 04

Ongoing Operations

ISO Forms (continued)

- CG 20 26, Additional Insured--Designated Person or Organization
- CG 20 33, Additional Insured--Owners, Lessees or Contractors--Automatic Status When Required in Construction Agreement with You
- CG 20 37, Additional Insured--Owners, Lessees or Contractors--Completed Operations
- CG 20 38 04.13, (Introduced in 04.13) Additional Insured--Owners, Lessees or Contractors--Automatic Status for Other Parties When Required in Written Construction Agreement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

CG 20 37 04 13

Your Work

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

CG 20 38 04 13
Addtl. Insured
when required
by WRITTEN
Contract

More ISO Forms - 2019 Versions

- CG 20 39 12 19 – Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement With You (Completed Operations) [Designed to use with the CG 20 33 that applies only to Ongoing Operations] CG 20 33, Additional Insured--Owners, Lessees or Contractors--Automatic Status When Required in Construction Agreement with You
- CG 20 40 12 19 – Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement (Completed Operations) – [Designed to use with the CG 20 38 that applies only to Ongoing Operations]

Additional Insured Requirements

- MUST NAME AS ADDITIONAL INSURED
- MUST STATE WITHIN AGREEMENT THE ADDITIONAL INSURED IS REQUIRED
- ADDITIONAL INSURED STATEMENT CAN BE PROVIDED VIA THE AGREEMENT AND NOT REQUIRE A SPECIFIC ADDITIONAL INSURED ENDORSEMENT
- MUST COVER ONGOING WORK
- MUST INCLUDE COMPLETED OPERATIONS IF THERE IS AN EXPOSURE 3-5 YEARS
- MUST PROVIDE COPY OF DECLARATION PAGE TO KNOW THE EXTENT OF EXCLUSIONS

PROPER INSURANCE REQUIREMENTS

AVERY VS. CITY OF ROSEVILLE & MV TRANSPORTATION

- Record Jury Verdict In Placer County
- Proving up the nature and extent of the damages as well as liability against the transportation service were key components of the action. This matter was tried with Christopher Wood, a partner in the firm. The pretrial offer was \$2 million.
- Roger A. Dreyer and Chris Wood obtain \$6.4 million verdict in Placer County for brain injury that resulted from Mr. Avery being dropped between four and six feet off of a wheelchair lift onto his head. This is the largest personal injury verdict in Placer County history.

IRMI Definition

- Amendment of Insured Contract Definition endorsement
- The standard Amendment of Insured Contract Definition commercial general liability (CGL) endorsement (CG 24 26) alters the policy's definition of "insured contract," which determines the scope of coverage for contractually assumed liabilities, to require that the injury or damage for which coverage is sought was caused "in whole or in part" by the named insured or those acting for it.

IRMI - A Resource

International Risk Management Institute, Inc., now known as IRMI, was founded in 1978, primarily to educate risk managers, insurance agents/brokers, underwriters, and other insurance professionals by conducting seminars. In conjunction with these programs, we developed risk and insurance publications to provide what we felt was much-needed information in an evolving industry.

Contractual Liability

“That part of any contract or agreement pertaining to your business under which you (the Named Insured Vendor/Contractor) assume the tort liability of another party (the Public Entity) to pay for "bodily injury" or "property damage" to a third person or organization.” (definition “f.” of “insured contract” definition)

Do not accept endorsements that exclude Contractual Liability coverage, or other endorsements that exclude or change the insured contract definition that provides coverage.

Required Coverages

- OTHER COVERAGES
 - AIRCRAFT
 - CYBER COVERAGE
 - SEXUAL MOLESTATION
 - FIDUCIARY COVERAGE

Additional Required Coverages

- Auto Liability
 - Owned and Non-Owned Auto
 - Transportation requirements for commercial vehicles
 - Additional Insured not required

Additional Insured Auto

Policy Number:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following.

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement is effective on the inception date of the policy.

SECTION II - LIABILITY COVERAGE 1. WHO IS AN INSURED is amended to include as an "insured" the person(s) or organization(s) named in the Schedule below, but only with respect to their legal liability for acts or omissions of a person for whom Liability Coverage is afforded under this policy. You are authorized to act for the additional insured named in the Schedule in all matters pertaining to this insurance.

SCHEDULE

Additional Insureds:

The State of California; the Trustees of the California State University; California State University, Fullerton; and the officers, employees, volunteers and agents of each of them are additional insureds, except for professional liability and workers' compensation insurance.

All other terms and conditions of this Policy remain unchanged.

Worker's Compensation

- Statutory Limits
- Employers Liability
 - \$1,000,000

Construction -related Agreements

- Builders Risk
- Value of Project
- Payment Bonds
- Public Works Project Requirements

WRAP UPS / OCIP

- USED FOR SIGNIFICANT PUBLIC CONSTRUCTION CONTRACTS
- MAY HAVE IMPACT ON THE ABILITY TO HOLD CONTRACTOR RESPONSIBLE FOR THEIR ACTIVITIE
- IMPACT TO THE OVERALL COST OF THE PROJECT
- MANAGEMENT OF THE PROCESS

Verification of Insurance

- A Cert of Insurance provides no coverage/must receive endorsement to policy to confirm coverage.
 - Additional insured provisions
 - Policy modifications/exclusions

Ongoing Monitoring

- Multi year agreements
- Department roles
- Recordkeeping
- Tracking
- Document Retention

Risk Transfer Best Practices

PRE – BID SPECIFICATIONS INCLUDE ALL INDEMNITY PROVISIONS AND INSURANCE REQUIREMENTS

REQUIRE VERIFICATION BY BIDDERS THAT THEY HAVE THE ABILITY TO BE COMPLIANT

Tools to Use (cont)

Use Agency Approved Contract language & Additional Insured endorsements!

Use a Summary of “Indemnity and Insurance Requirements” with signature for RFPs, RFQs, Purchase Orders, MOUs, etc. to identify problems earlier, trigger coverage, and make the process simpler & quicker!

Tools to Use (cont)

Having a signed “Summary” triggers available “written” coverage provision for:

Failure to comply with these requirements shall be considered a material breach of contract.

I have read and understand the above requirements and agree to be bound by them for any work performed for the Entity.

Authorized Signature: _____

Date: _____

By: Contractor (Print Name) _____

Verification of Insurance

- Require liability policy declarations pages
- Understand the type of coverage and what may be excluded. Excluded coverage means no coverage!

Risk Transfer Failures

- Training
- Accountability
- Documentation
- Annual Renewals
- Organizational Communication

Contract Review

- Establish an organization policy/procedure for contract enforcement and review
- Establish a review process of key clauses
- Track insurance and verify coverage

Lessons Learned

- Effective Risk Management begins with pre-planning
- If an outside provider is performing the service-they must protect the city from financial harm
- An effective contract management program minimizes potential for adverse impacts to your agency

Resources

- Clovis Consultants and Associates
- IRMI
- AGRIP – Association of Government Risk Pools
- County Groups
- Alliant Insurance Group: Insurance Requirements in Contracts Manual
- State Risk Management Associations- PARMA, CAJPA etc.
- Florida Association of Counties
- Risk Sharing Pools Joint Powers
- Public Risk Insurance Management Association (PRIMA)

The greater danger for most of us lies not in setting our aim too high and falling short; but in setting our aim too low, and achieving our mark.

- Michelangelo

Questions?

Contact David

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Upcoming Sessions

- **Compliance Coffee Talk:** Practical Tips + Expert Q&A, new theme each month (3rd Tuesdays)
- **Contractual Risk Transfer 101 & 201:** Workshops to build solid foundations (quarterly)

... and lots more. For invites, follow Evident on [LinkedIn](#), or shoot us an [email](#).

About Evident

Evident's platform gives risk leaders the flexible, AI-powered automation and insight they need to find blind spots, fix bottlenecks, and close the compliance gaps that leave them exposed to third-party risk.

Why Cities & Towns Trust Evident

Cities everywhere depend on a complex network of vendors that are critical to their success, but also a growing source of risk. When managing these risks is high-stakes, Risk & Compliance teams need more than manual reviews, spreadsheets, and narrow point solutions. They need robust systems that they can easily adapt to *their unique risk environment*, with automation to verify *actual evidence*, not just checklists.

That's where cities and counties turn to Evident to verify COIs and contracts, streamline diligence, and reduce 3rd-party risk, all with a consumer-grade experience that makes compliance easier for everyone.

Our Impact



Avoid Losses



Reduce Admin Overhead



Fast Results, Full Verification

Trusted by:

