

SECTION 10

## CONTRACT INSURANCE AND INDEMNIFICATION

### PREFACE

How can this Contract Insurance and Indemnification information help you?

- **Explains risk analysis:** Helps you to analyze the potential risks associated with the services or goods being obtained which forms the foundation of your decisions about choosing indemnification and insurance coverage language for your contract or procurement document.
- **Explains insurance coverage:** Explains what the various types of insurance coverage are and when and why you would require them in your contract or procurement document.
- **Helps determine what insurance coverage limits should be required:** Assists you with determining what limits of coverage to require from the contractor in your contract or procurement document.
- **Provides boilerplate for your contract:** Gives you actual indemnification and insurance requirement language that you can insert in your contract or procurement document.
- **Defines risk management and insurance terms:** Defines several risk management and insurance terms that you may come across as you are putting together your contract or procurement document.
- **Shows you how to verify insurance coverage:** Explains what a “Certificate of Insurance” is, why it’s important to ask for one and how to review it for important pieces of information contained on it.
- **Tells you who to call with questions:** Lets you know who to contact if you have questions regarding your contract or procurement document.

Supplements to these policies and procedures for insurance requirements will be issued periodically. They will provide updates on the subjects currently in these policies and procedures and add new information that is important for users to have. Risk Management welcomes your suggestions for improvements. Contact 655-8576.

**CLACKAMAS COUNTY  
CONTRACT INSURANCE AND INDEMNIFICATION**

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### I. INTRODUCTION

These policies and procedures for insurance requirements have been created to help you through the confusing world of insurance and indemnification requirements for writing contracts, bids and requests for proposals (RFPs). In Clackamas County, much of the development of contracts, bids and requests for proposals is done by County department staff, rather than the Department of Finance Purchasing staff, so it is important that knowledge of key contract components be easily available to all contract/bid/RFP preparers.

When you prepare a contract, you are transferring the responsibility for providing the services and the funds with which to provide them to an entity or person outside of the County.

When you include indemnification provisions of the contract, you are also transferring the responsibility for any claims that might arise from providing those services to the contractor - the entity responsible for the acts that led to the claim. And when you ask for certain kinds of insurance, you are guaranteeing that the contractor has the resources to pay defense costs and pay for any claims that might be filed.

### PURPOSE OF THESE POLICIES AND PROCEDURES FOR INSURANCE REQUIREMENTS

The purpose of these policies and procedures is (1) to define the kinds of insurance and indemnification clauses required for different types of County contracts and (2) to explain the various requirements so you will have a better context for understanding questions that may arise. These policies and procedures are divided into seven sections:

- Introduction
- Risk Analysis
- Indemnification Requirements
- Insurance Requirements
- Review of Insurance Certificates
- Staff Responsibilities
- Glossary
- Appendices

In using these policies and procedures, it's important to remember that the County contracts for services through a variety of mechanisms. These include:

- Contracts issued subsequent to a request for proposal (RFP) process.
- Contracts issued subsequent to a bid process.
- Personal/professional services contracts issued through an informal competitive process.
- Intergovernmental agreements.
- Memoranda of agreement or memoranda of understanding.
- Lease agreements.
- Facility or property use agreements.

Each of these "contracts" can give another party responsibility for acting on behalf of the County. Therefore, whoever in the County issues the "contract" must ensure that appropriate indemnification and insurance provisions are included in the agreement.

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In some instances, all necessary language is included in the form and no additional provisions are needed (for example, a purchase order used to purchase goods). In others, additional steps must be taken to ensure that the County has properly transferred liability.

You, as the contract/bid/RFP preparer, are most knowledgeable about the services being obtained by the contract, and you can best analyze what's needed. These policies and procedures attempt to define what insurance and indemnification provisions are needed in most circumstances, but its primary purpose is to serve as a reference for you to determine what's needed for your specific situation.

These policies and procedures will walk you through the steps you will use to select the appropriate insurance and indemnification provisions. These steps are:

1. Analyze the services or supplies being acquired to determine what risk they might expose the County to.
2. Given the risk(s) identified, select the proper indemnification provisions to limit the County's exposure to loss and to reflect the respective responsibilities of the contractor/bidder and the County.
3. Given the type of service or supply, the risks identified and the indemnification language selected, determine the insurance provisions that will protect both the contractor/bidder and the County in the event of loss.
4. Incorporate the indemnification and insurance provisions in all appropriate procurement documents (for example, in the bid/RFP as well as the contract).
5. Be sure you obtain proof of insurance (a certificate documenting that all required kinds and amounts of insurance coverage have been obtained) and a signed contract before you allow work to begin under the contract.

### WHERE YOU CAN GET HELP

The indemnification language and insurance requirements, as well as other contract boilerplate requirements, can be confusing to those without a legal or insurance background. We are not asking you to become experts. We are asking you to recognize the importance of these issues and to use these policies and procedures and your knowledge of the services being contracted for to develop a contract that protects the County's interests. Further, if you are uncertain about what your contract should include, please contact the Purchasing Division or Risk Management. Please do not negotiate changes to required language with the contractor until you have checked with Purchasing. Changes may be authorized by the Purchasing Manager, Risk Manager, and County Counsel.

In some instances, Purchasing may refer you to County Counsel's Office or to Risk Management for assistance with specific problems regarding contract language or insurance requirements. We'll try to answer your question as quickly as possible.

We welcome your response to these policies and procedures for insurance requirements and your questions. As an RFP/bid and contract preparer, you play a key role in County program delivery and loss prevention. You know the program delivery part; now read on for your crash course in contract loss control!

### II. RISK ANALYSIS

#### WHAT IS RISK ANALYSIS?

The foundation for decisions about insurance and indemnification requirements in contracts is the analysis of the potential risk to the County and others when we purchase goods and services being provided. That is, what could go wrong and who could be harmed if it did? As you analyze these activities and their potential risks, it is important to be honest with yourself and yet use common sense. For example, a contract with an environmental testing company to do soil testing prior to the County constructing a building would have different risk than a contract for that company to write an informational brochure on water quality.

Sometimes, the dollar amount of a contract will provide guidance, especially about the extent of the risk. A contract to provide services to hundreds of clients, for example, may need higher insurance limits than a contract to serve ten clients, although the final determination is based on many factors. A \$30 million contract to construct a new building will need higher limits and perhaps more kinds of insurance than a \$30,000 contract to construct cubicles and conference rooms in a newly leased building. However, a \$30,000 contract to demolish an old building and haul away potentially hazardous waste would need more and different insurance than the cubicle construction contract and perhaps as much as the \$30 million construction contract. Be aware that the amount of insurance isn't necessarily commensurate with the amount of the contract. There may be a need for substantial insurance limits even though the contract amount is low.

It is also important to remember that the requirements for indemnification and insurance that you will develop through this risk analysis will provide protection for both the County and the contractor. At times, contractors (especially small companies and sole proprietors) may not understand the insurance they have and the coverage it does and does not provide. Without the right types of insurance and adequate limits, the contractor might find itself with no coverage for a loss. For example, if you contract with a mental health professional for client assessments and the contractor doesn't have professional liability insurance, the contractor would have no protection if a client filed a claim alleging improper diagnosis. In such a situation, the contractor may have no resources for claim investigation or defense, and the County could be responsible for the claim.

In Section IV of these policies and procedures, you will find descriptions of categories of contracts that will help guide you in defining insurance requirements and inserting the right insurance-related language in your contract.

#### HOW DO I DO A RISK ANALYSIS?

As you analyze the risks associated with the services or goods being obtained, ask yourself these questions.

1. What product or service is being provided? What could go wrong? What are the potential losses that could occur? How large are the risks? Who is the provider? (An assessment of the provider is important.)

Analyzing these five questions and reviewing the insurance provisions in Section IV will provide you with the framework for each contract's insurance and indemnification requirements.

2. Is the contract one that could result in County employees, clients or property being harmed in any way?

If so, you will want to require commercial general liability insurance at levels adequate to cover the potential risk. If products are being provided, commercial general liability insurance will

provide coverage for product liability claims.

3. Does the contractor providing services have employees?

If so, there's a risk that those employees could be injured and you will need to be sure that the contractor provides workers' compensation insurance. If the work is being done by people who are not subject to the State workers' compensation coverage requirements (for example, sole proprietors), the contractor will need to certify this. See pages B-3 and B-4 of these policies and procedures for further information. If the services are being provided by a sole proprietor, be sure that this person is properly classified as a contractor. If you call a service provider a contractor when s/he is really an employee, you may create workers' compensation and other liability for the County.

4. Will the contractor be providing services that require professional expertise (see page IV-2) or advanced training?

If so, there are risks associated with errors (or allegations of errors) in their professional judgment. You will want to be sure that the County and the contractor have properly assigned responsibility for the acts of the contractor through the indemnification and insurance provisions. You will need to include professional liability insurance, because it is the only way to obtain coverage for their professional acts.

5. Will people be driving as they provide services under this contract? Will anyone or anything be transported under this contract?

If driving will occur, auto liability insurance will provide protection for the contractor and the County. If clients or materials (for example, hazardous waste) are being transported you must require commercial auto liability with adequate limits. (Transport of hazardous waste may also require additional types of coverage.)

6. What is the risk to the County if the contractor fails to provide the service in whole or in part?

If it is significant, you may want to require a performance bond or otherwise provide for guarantees in your contract language.

7. Are there special risks (for example, construction, possible pollution risks, handling of County cash, etc.)?

Review Section IV B and C for insurance provisions that will be necessary in these situations.

As you work with these policies and procedures, you will become familiar with the kinds of risk and the appropriate insurance and indemnification provisions you will need to use. Sections III and IV contain detailed explanations of indemnification and insurance provisions and the actual language you will need to insert in your contracts.

If you are using the contractor's boilerplate, you must have County Counsel review and approve it.

If you have questions about the risk analysis process, especially with new or unusual contracts, please call Risk Management or Purchasing for assistance.

### III. INDEMNIFICATION

#### BACKGROUND:

Indemnification is a contractual method of transferring risk. Through indemnification provisions, one party, called the "indemnitor", agrees to take financial responsibility for certain risks that otherwise would have to be paid by the other party, called the "indemnitee." In legal terms, the indemnitor agrees to "indemnify and hold harmless" the indemnitee from payment of any damages that result from acts of the indemnitor.

Example: County contracts with Painting Contractor to paint a County building. An indemnification clause in the contract requires the Painter (the "indemnitor") to defend and hold harmless the County (the "indemnitee") from any damages arising from the acts of the Painter in performing the contract. Painter drops a bucket of paint on a County customer. Customer sues Painter and County. Without an indemnification clause, both Painter and County would have to defend the suit and damages might be awarded against each of them. If there is an indemnification clause, Painter must defend herself and also defend County and also pay any damages that might be awarded against County because of what Painter did.

There are three general approaches to indemnification.

Broad Indemnification: The indemnitor agrees to take financial responsibility for any type of liability or loss that occurs under the contract, regardless of who is at fault, but only if it is not due to indemnitee's sole negligence.

Limited Indemnification: The indemnitor agrees to take financial responsibility only for the indemnitor's actions under the contract and those of the indemnitor's subcontractors, agents and employees. This form of indemnification will usually require the indemnitor to be financially responsible for injuries where the indemnitor's actions are the whole cause or partly the cause of the injury.

Mutual Indemnification: Each party to the contract agrees to indemnify the other for their respective actions under the contract. Each party then "indemnifies and holds harmless" the other for any loss or liability the other incurs because of its actions under the contract.

An agreement to indemnify usually also includes an agreement to defend the other party. Thus, if a County agency has a claim or action brought against it because of some act of a contractor during the performance of a contract, the agency can require the contractor to pay the cost to defend the County. The legal term of this is to "tender the claim" to the contractor. This provision can be especially important because the County is often named as a defendant in lawsuits against contractors over contracts in which the County had little or no active role. The County is often regarded as a "deep pocket," more likely to be able to pay damages than a small contractor. However, if the County determines that it has significant exposure in a claim or action, it generally will choose to handle its own defense rather than tender it to the contractor.

1. BROAD INDEMNIFICATION

*CONTRACTOR agrees to indemnify, defend, and hold harmless the COUNTY, [the State of Oregon,][and other funding sources] and its [their] officers, agents and employees against all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to County's sole negligence, arising from performance of this contract<sup>1</sup>.*

This broad provision is the preferred provision from the County standpoint, because it affords the maximum protection. The provision is one-sided, and may appear inequitable on the surface. In fact, the provision is reasonable when the contractor is performing the activity that creates the risk, while the County's only contractual duty is payment. If the County fails to pay, the contractor can sue for payment under the contract. Should the contractor fail to perform or perform negligently or with criminal intent, however, the County could be sued by any injured or allegedly injured party for damages far in excess of the contract payments.

2. LIMITED INDEMNIFICATION

*CONTRACTOR agrees to indemnify, defend and hold harmless the COUNTY [The State of Oregon][and other funding sources] and its [their] officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR'S officers, agents and employees, in performance of this contract.*

In this provision, the Contractor's liability extends only to loss or liability arising in whole or in part from its actions. In contrast, in the broad provision the Contractor is agreeing to cover the costs of any loss or liability arising under the contract, whether or not the County was also at fault, or even entirely at fault.

This type of provision is obviously less one-sided, and is appropriate in situations where the County agency has a larger role in performance of the contract. For example, a County agency might screen a client for referral to a professional provider, and provide follow-up. In this instance, the contractor is understandably reluctant to provide full indemnification for risks it cannot control.

In a variation of this form, CONTRACTOR may agree to indemnify only for loss or liability arising "solely and exclusively" from its activities under the contract. Usually contractors' professional insurance will not cover a provision any broader than this. Whether an agency will want to contract under these conditions depends on the factors discussed below in "Discussion."

In another variation of this form, Contractor may agree to indemnify for loss or liability arising from Contractor's negligent acts or omission.

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<sup>1</sup>Some funding sources (e.g., Oregon Mental Health and Developmental Disability Services Division) require that the County require its subcontractors to indemnify the County and the State. If so, Provision 1 indicates in brackets how indemnification of the State might be added. If there is no such requirement, omit the language in brackets.

### 3. MUTUAL INDEMNIFICATION

*CONTRACTOR agrees to indemnify, defend and hold harmless the COUNTY [The State of Oregon] [and other funding sources] and its [their] officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of CONTRACTOR, and CONTRACTOR'S officers, agents and employees, in performance of this contract.*

*Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, COUNTY agrees to indemnify, defend and hold harmless the CONTRACTOR [The State of Oregon] [and other funding sources] and its [their] officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of COUNTY, and COUNTY'S officers, agents and employees, in performance of this contract.*

In this type of indemnification, each party indemnifies the other party for loss or liability resulting from its own actions under the contract. In States with joint or comparative fault negligence schemes, this provision may do no more than reiterate the law (that is, "if you're found liable, you'll pay; if I'm found liable, I'll pay; if we're both liable, we each pay our part").

However, these provisions also allocate defense responsibilities, which can be costly even if no liability is ultimately established.

These "mutual" or "reciprocal" indemnification provisions are frequently used in intergovernmental agreements, subject to limitations in the Oregon Tort Claims Act and the Oregon Constitution. However, they should not be entered automatically with other governmental bodies if there is any question about the status or stability of the entity. The County normally does not agree to indemnify private parties or entities. This position is based partly on historical bargaining strength, but also on issues involving use of public funds. Any indemnification agreement by the County must be subject to the limitations the Oregon Tort Claims Act and the Oregon Constitution. An agency must not under any circumstances enter such a contract whereby the County assumes liability without prior discussion with both Risk Management and County Counsel.

#### DISCUSSION:

A primary purpose of this section on indemnification is to make the selection of an indemnification clause as routine as possible. Nonetheless, a risk analysis of each new contract situation is necessary. The types of factors to consider include the nature of the work to be performed, the numbers and types of people or entities affected by the work, any known data on the frequency of claims for the type of work involved and the contractor's history. The question to answer is how much risk is the agency undertaking in entering into this contract with this provider? If the agency is considering executing a high-risk contract with narrow or no indemnification, the proposed decision should be discussed with Risk Management.

In some cases, contractors may refuse to indemnify the County under any circumstances. At this point, the decision becomes a policy determination; that is, is there a reason to contract with this particular contractor that outweighs the risk incurred?

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These decisions should be weighed with Risk Management and possibly higher levels if the risk is significant.

Some funding sources (e.g. Oregon Mental Health and Developmental Disability Services Division) require that the County require its subcontractors to indemnify the County and the State.

Should the County fail to require the Contractor to provide indemnification in these cases, the County will be obligated to indemnify the State for the County's Contractor's activities should a problem arise.

### **INDEMNIFICATION BY SUBCONTRACTORS ON STATE CONTRACTS:**

The following indemnification language shall be used when the state contract involves sub-contractors:

*Contractor shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents and the County, its agents, officers, elected officials and employees ("Indemnatee") from and against any and all actions, liabilities, damages, losses, expenses (including attorneys' fees), or Claims arising from a tort (as now or hereafter defined in ORS 30.260) or any other cause or action caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of Contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the Contractor from and against any and all Claims.*

### **IV. INSURANCE BOILERPLATE WORDING BY TYPES OF SERVICES THE CONTRACT PROVIDES**

In Section II of these policies and procedures, you learned how to perform a risk analysis of the potential risk associated with the services or goods being obtained through your contract. Once this is done, you have a better understanding of what kinds of insurance should be required in your contract in order to protect the County and the contractor from losses. Section III explained the various kinds of indemnification clauses used in contracts, to help you select one that would be best for the kind of RFP/bid/contract you are preparing.

Section IV has been organized to provide you with the following:

- An overview of the various kinds of insurance often asked for in RFPs/bids/contracts.
- A listing of mandatory (section A-1) and additional insurance-related provisions (section B). These lists explain what each provision is used for and provides you with actual boilerplate language to insert into your RFP/bid/contract.
- A listing of eight common categories of contracts and the kind of insurance provisions and insurance limits that should normally be required. This will help you categorize your own RFP/bid/contract in order to determine what insurance-related provisions are needed.
- Provisions related to State contracts. (section A-2)
- A matrix (section E) that allows you to quickly scan what minimum insurance requirements you need for your RFP/bid/contract, based on the services or goods being obtained through the contract.

Once you have determined which category best applies to your contract, review the “Mandatory Provisions” and the “Additional Provisions” listed in this section beginning on Page IV-3. As you will see, each category requires all of the “Mandatory Provisions” with very few exceptions. The “Additional Provisions” that are required in the various categories are based on the type of services being provided in the contract.

After reviewing the “Mandatory Provisions” and “Additional Provisions” you should have a good understanding of the types and levels of insurance coverage you will be requiring in your RFP, bid and/or contract. **The wording that is italicized is the actual boilerplate language you’ll be inserting into the “insurance requirements” section of your contract.**

For any unusual contracts, or ones for which you are having trouble determining what category and insurance limits best apply, please contact Purchasing or Risk Management for assistance.

#### **SELF INSURANCE**

Sometimes the contractor will indicate that their company is self-insured for some or all of the insurance coverage you are requesting. In this case, you must require them to complete a self-insurance certification (see Sample in Appendix D) and submit it to you as proof of insurance. You will need to review this form in accordance with the instructions contained in Appendix D. If the contractor is self-insured for all required insurance coverages, some of the mandatory provisions (for example, Insurance Carrier Rating) will not be relevant.

If you need assistance in determining which provisions should be included, please contact Risk Management. Many, but not all, governments are self-insured for some or all required insurance coverages.

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**Before you accept self insurance from a non-government entity in lieu of regular insurance on any contract, you should consult Risk Management.**

The types of liability insurance generally relevant to most County personal/professional services contracts are workers' compensation insurance, professional liability insurance, and general liability insurance. In some cases, automobile liability insurance is also important. Each of these types is discussed below.

NOTE: There are specific provisions that should be considered in the following:

- State contracts with local governments obligating local government to provide services (not just personal services).
- State contracts providing financial assistance (grants) to local governments in support of services.
- See Appendix E for an explanation of the contribution process to follow when the parties are both governmental entities.

### COMMON TYPES OF INSURANCE

#### WORKERS' COMPENSATION COVERAGE

By state law, every employer employing one or more "subject workers" is required to provide workers' compensation coverage for those workers. Most of the contractors the County contracts with for services will need to show proof of this coverage, which provides medical treatment and wage subsidy for work-related injuries of their employees. In County contracts, there may be some contractors who are exempt from the requirement to provide this coverage as sole proprietors who qualify as independent contractors, partners who are not engaged in construction-related work and who qualify as independent contractors, and certain corporate officers who are directors of the corporation and have a substantial interest in the corporation. **It is imperative that you obtain proof of workers' compensation coverage or exemption from the law prior to allowing work to begin under the contract;** a failure to do so could mean that the County would be held responsible for the contractor's workers' compensation claims and would have to pay the cost of these claims out of the County's self-insurance fund. Any Contractor claiming to be exempt must complete the Workers' Compensation Exemption Certificate (see Appendix B-4). See Appendix B, B-3 for information on workers' compensation insurance requirements for out-of-state contractors.

#### PROFESSIONAL LIABILITY INSURANCE

If the contractor is providing services for which professional malpractice or liability insurance is available, you must consider requiring this coverage. This type of insurance is also known as professional "Errors and Omissions" insurance. Such insurance is available for most providers with advanced training beyond a bachelor's level degree, such as physicians, nurse practitioners, social workers, accountants, architects, engineers, and brokers. It covers professional errors made by such practitioners (for example, a misdiagnosis leading to damages) as opposed to problems with these services that might happen to any type of provider (for example, a fall on the office steps with injuries).

#### COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance, also sometimes called "comprehensive" or "general" liability insurance, is the type of insurance most comparable to your homeowner's policy. It normally covers personal injury and property damage. Policies may also include a provision covering "contractual liability."

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This provision is valuable if a contractor's professional liability insurance does not cover liability assumed under a contract, for example, a duty to indemnify a third party such as a County agency. All contractors should be required to carry commercial general liability insurance unless engaged in work which poses no risk to the County.

### AUTOMOBILE LIABILITY INSURANCE

If the contractor will be providing any sort of transportation to clients under the contract, the contractor must be required to carry business automobile liability insurance. Otherwise, the contractor should have a personal auto policy at the limits required in the following pages.

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### A-1. MANDATORY INSURANCE-RELATED PROVISIONS (For use with Non-State contracts and State contracts not involving subcontractors)

#### 1. Commercial General Liability Insurance

This coverage protects against liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations; and advertising and personal injury liability.

This insurance is required in most of the RFPs, bids and contracts. Uses include: whenever contractor will be doing work on County property, when the County could be partially blamed for damage or bodily injury caused by contractor, and to provide financial support to keep contractor in business if sued.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.*

*This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.*

#### 2. Automobile Insurance

##### Commercial Auto (also known as a Business Auto Policy)

To be required any time a business uses vehicles in the performance of the contract.

*Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 Million.*

##### Personal Auto Policy (PAP)

To be required when the contractor (provided they are not considered a business) will be driving in the course of their duties under the contract.

*Contractor shall also obtain at contractor's expense, and keep in effect during the term of the contract, Personal auto coverage. The limits shall not be less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.*

#### 3. Workers' Compensation Insurance

*CONTRACTOR, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. CONTRACTORS shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.*

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4. Professional Liability (Only if professional services are provided)

Professional Liability insurance is also called **Errors and Omissions** insurance. If this insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required.

*The CONTRACTOR agrees to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1 Million combined single limit per occurrence/\$2 Million general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.*

5. Additional Insured Provision

This coverage endorsement is required to gain protection for the County on another party's policy. However, the County can't be named as an additional insured on professional, pollution liability, workers' compensation, or personal automobile liability insurance policies. On the certificate of insurance provided by the contractor as proof of insurance coverage, "Clackamas County, its agents, officers, and employees" shall be listed as an additional insured.

The certificate should not just list a specific County department as additional insured.

*The insurance, other than Professional Liability(except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.*

(Construction contracts should contain the following alternative language)  
*The insurance, other than Professional Liability, Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured. Use form CG 20-10, (see samples next to Appendices) or it's equivalent. Proof of insurance must include a copy of the endorsement showing "Clackamas County, its agents, officers, and employees" as a scheduled insured.*

6. Subcontractor Insurance.

*For contracts where the amount of the contract is \$1 Million or less, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) in an amount no less than \$1 Million occurrence/\$2 Million aggregate unless lower limits are approved by Risk Management. For contracts where the amount of the contract is over \$1 Million, subcontractor sub limits shall be no less than \$1 Million each occurrence and \$2 million aggregate Commercial General Liability, \$1 Million combined single limit per accident Auto Liability and Statutory Oregon Workers' Compensation.*

7. Notice of Cancellation

*There shall be no cancellation, material change, exhaustion of aggregate limits or*

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## RISK MANAGEMENT MANUAL

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*intent not to renew insurance coverage without 60 days written notice by the "contractor", "consultant", "vendor", etc. to the County.*

8. Insurance Carrier Rating

*Coverages provided by the contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.*

9. Certificates of Insurance

*As evidence of the insurance coverage required by this contract, the contractor shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received, approved and accepted by the County. A renewal certificate will be sent to the Clackamas County Purchasing Division 10 days prior to coverage expiration.*

10. Independent Contractor Status

*The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265.*

11. Primary Coverage Clarification

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

12. Cross-Liability Clause

*Liability claims by one insured against another insured (both named as insureds in the same policy) are usually referred to as "cross liability" claims. There is a condition in a Commercial General Liability (CGL) policy which allows for the policy to provide protection against a claim by one insured (like the named insured, for example, the contractor) against another insured (like an additional insured, for example, the County). This is the "Separation of Insureds" Condition. It specifies the insureds' protection under the policy as if each had a separate policy, with the exception of the limits of liability and any rights or duties that are designated to be for the first named insured only. A CGL policy incorporates this kind of coverage in the policy, but this change is necessary to provide coverage under other policies required.*

*A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.*

13. Waiver of Subrogation

*Contractor agrees to waive their rights of subrogation arising from the work performed under this contract.*

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## RISK MANAGEMENT MANUAL

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### A-2. MANDATORY INSURANCE-RELATED PROVISIONS (For use with State contracts where subcontractors will be used)

#### 1. Commercial General Liability Insurance

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$4 Million per occurrence/\$4 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.*

*This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.*

#### 2. Automobile Insurance

##### Commercial Auto (also known as a Business Auto Policy)

To be required any time a business uses vehicles in the performance of the contract.

*Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 Million.*

##### Personal Auto Policy (PAP)

To be required when the contractor (provided they are not considered a business) will be driving in the course of their duties under the contract.

#### 3. Workers' Compensation Insurance

Standard Language

#### 4. Professional Liability (Only if professional services are provided)

Professional Liability insurance is also called **Errors and Omissions** insurance. If this insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required.

*The CONTRACTOR agrees to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$4 Million combined single limit per occurrence/\$4 Million general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.*

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## RISK MANAGEMENT MANUAL

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### 5. Additional Insured Provision

This coverage endorsement is required to gain protection for the State and the County on another party's policy. However, the State and the County can't be named as an additional insured on professional, pollution liability, workers' compensation, or personal automobile liability insurance policies. On the certificate of insurance provided by the contractor as proof of insurance coverage, The State of Oregon, its agents, officers and employees; Clackamas County, its agents, officers, and employees, shall be listed as additional insured.

The certificate should not just list a specific County department as additional insured.

*The insurance, other than Professional Liability(except to the extent the coverage only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "The State of Oregon, its agents, officer and employees and Clackamas County, its agents, officers, and employees" as additional insured.*

(Construction contracts should contain the following alternative language)

*The insurance, other than Professional Liability, Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "The State of Oregon, its agents, officers and employees and Clackamas County, its agents, officers, and employees" as additional insured. Use form CG 20-10, (see samples next to Appendices) or it's equivalent. Proof of insurance must include a copy of the endorsement showing "The State of Oregon, its agents, officer and employees and Clackamas County, its agents, officers, and employees" as scheduled insured.*

### 6. Subcontractor Insurance

*For all contracts of any size involving the State of Oregon as a party to the contract, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Agreement unless otherwise excepted.*

### 7. Notice of Cancellation

Standard Language

### 8. Insurance Carrier Rating

Standard Language

### 9. Certificates of Insurance

Standard Language

### 10. Independent Contractor Status

Standard Language

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## RISK MANAGEMENT MANUAL

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11. Primary Coverage Clarification

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

12. Cross-Liability Clause

Standard Language

13. Waiver of Subrogation

*Contractor agrees to waive their rights of subrogation arising from the work performed under this contract.*

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### B. ADDITIONAL INSURANCE-RELATED PROVISIONS

#### 1. Commercial General Liability - Construction/Installation/Renovation

Higher limits on both an occurrence and an aggregate basis may be appropriate based on job size and degree of hazard involved. (See chart on page 10-37)

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" basis. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Coverage shall be provided for all "xcu" (explosion, collapse, and underground) hazards.*

#### 2. Extended Reporting Coverage ("Tail Coverage")

This insurance extends coverage after a "claims made" policy term has ended. "Claims made" policy means that any claim under the policy must be reported during the policy period.

*If any required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.*

#### 3. Builder's Risk

This provision addresses the loss of or damage to a County building, construction supplies, or construction equipment during new construction.

##### A. Contractor

*Unless otherwise provided, the CONTRACTOR agrees to furnish the COUNTY evidence of property insurance (Builders Direct Risk insurance) upon the entire work at the site to the full insurable value thereof. This policy shall insure against the perils of fire and extended coverage and shall include all risk insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief (and earthquake and flood).*

*The policy shall be extended to include extra expense coverage (including but not limited to legal/professional fees, debt service payments, insurance premiums, etc.) and with limit equal to 5% of the building value but not less than \$50,000. This policy shall be extended to covered property stored off the site or in transit when the COUNTY is to be responsible for the cost of that identified property. The COUNTY, at its option, may require a complete copy of the above policy.*

##### B. Owner

*Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof subject to the deductible provided for below.*

*This insurance shall include the interests of Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance of physical loss or damage including, without duplication of coverage, theft, vandalism or malicious mischief.*

*If the Owner does not intend to purchase such insurance for the full insurable value of the entire Work, Owner shall inform the Contractor in writing prior to commencement of the Work.*

*The Contractor may then affect insurance which will protect the interests of Contractor, any Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto. If not covered under the all risk insurance otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Contractor's tools, materials, equipment, appliances and all other facilities and incidentals required by this project will not be insured by the Owner.*

*Any deductible related to the required coverage (when provided by Contractor) in this section (excepting Earthquake and Flood coverages) shall be the responsibility of the Contractor and shall not exceed \$25,000 per occurrence unless prior consent for a higher deductible has been given by the County.*

4. Property Insurance

This insurance is necessary in contracts and agreements where the County wants to require another party to provide coverage for personal property at County-owned buildings or on County premises. This coverage is required in situations except for leases or rental agreements.

*(Legal name of the Insured), will at its sole expense, procure and maintain a property insurance policy (ISO "Special Form" policy, or its nearest equivalent available) covering (party's) personal property, including but not limited to mobile equipment, located at the Premises, providing coverage on an all-risk basis, including coverage (as available), for the perils of earthquake, flood, and windstorm. Limits of coverage shall be no less than the replacement cost of all scheduled property. (Party) shall solely be responsible for the Property Policy's deductible and such policy will not contain a coinsurance requirement.*

5. Umbrella Liability Coverage

To be required when there is an activity which could result in catastrophic bodily injury or property loss (for example, major building renovation or new construction) and the basic limits of insurance may not be sufficient. Call Risk Management with this.

*Umbrella coverage in the sum of \$\_\_\_\_\_ shall be provided and will apply over all liability policies, except Professional Liability, Pollution Liability and Cyber Liability, and will include but not be limited to Commercial General Liability, Automobile Liability and Employers' Liability. If coverage is being provided under a professional liability policy, umbrella coverage that applies specifically to professional liability shall be provided in the sum of \$\_\_\_\_\_.*

6. Garage Liability and Garagekeepers' Legal Liability

This wording should be used when a subcontractor will be taking possession of County vehicles or acting as a bailee in some manner relating to County vehicles. Garage Liability covers liability arising out of the garage operations. Garagekeepers' Legal Liability insures the physical damage to the vehicle while in the custody of the contractor/garage.

A. Garage Liability

*Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Garage Liability Insurance in the amount of \$1 Million Each Accident/\$2 Million Aggregate.*

B. Garagekeepers' Legal Liability

*Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Garagekeepers' Legal Liability Insurance with \$250 comprehensive deductible and \$500 collision deductible. Coverage is to be provided on a Direct Primary Coverage basis.*

7. Marine Protection and Indemnity

For any contract involving the use of watercraft of any type.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Marine Protection and Indemnity Insurance. Collision and Jones Act coverages shall be included. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent.*

8. Pollution and Asbestos Liability

*The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the contract.*

*The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.*

*The policy's limits shall not be less than \$1 Million each loss/\$1 Million aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the COUNTY for review and approval.*

*In the event the CONTRACTOR encounters on the site materials reasonably*

*believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the COUNTY in writing.*

*The work in the affected area shall not thereafter be resumed except by written agreement of the COUNTY and CONTRACTOR if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the COUNTY and CONTRACTOR.*

*The CONTRACTOR shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).*

9. Abuse and Molestation Liability

For any contract involving services that will involve a contractor having any kind of custodial care over a client. Examples of services contracted with where this coverage should be considered includes, but is not limited to: Day care services, assisted living facilities, long term care and/or skilled nursing facilities, training centers, group homes (that are contracted with), etc.

*Abuse and Molestation Insurance as part of the Commercial General Liability policy in a form and with coverage that are satisfactory to the County covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000.*

10. Crime and (when applicable) Money and Securities

Should be required when the contractor and/or contractor's employees will have access to medium or large amounts of County cash receipts, negotiable securities, or especially valuable property. A standard limit should equal or exceed the maximum amount of cash, negotiable securities or valuable property at risk at any time. You should require a larger limit if the contractor and/or contractor's employees would have multiple opportunities to steal before the County's loss would be discovered.

You can require a smaller limit if the contractor and/or contractor's employees will have limited access to cash, negotiable securities, or valuable property, or if the contact they have with cash, negotiable securities or valuable property is supervised by the County at all times.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of the contract, Employee Dishonesty and (when applicable) Inside/Outside Money and Securities coverages for County-owned property in the care, custody and control of the contractor. Coverage limits shall not be less than the amount(s) scheduled in the*

*Request for Proposal.*

11. Waiver of Subrogation (When County is Lessee)

*Lessor agrees to insure the building on the premises against fire with extended coverage. So long as this provision does not invalidate or limit the extent of Lessor's coverage under such insurance policies, Lessor does hereby waive the right of subrogation against Lessee, Lessee's agents or employees, under such fire insurance policy or policies.*

*If the leased portion of the building on the premises which is the subject of this lease so insured shall be damaged by some cause covered by such insurance to the extent of less than thirty percent (30%) thereof, Lessor shall promptly remove all debris therefrom and repair and rebuild the same, restoring the premises in substantially the same condition in which it was previous to the destruction.*

*If the structure shall be damaged more than thirty percent (30%), Lessor shall not be required to build but may do so at Lessor's option. Percentage of damage shall be determined by the fire insurance underwriter. If Lessor shall elect to rebuild and repair the premises in the last mentioned instance, Lessor shall give written notice of Lessor's intention to do so to the Lessee within thirty (30) days of the date of the damage. If Lessor fails to give such notice within thirty (30) days, this Lease shall terminate. If the premises shall be damaged by some cause not covered by insurance and Lessor does not elect to rebuild or repair the premises within sixty (60) days from date of damage, Lessee may terminate this lease at Lessee's option.*

*During any period of time during which the premises shall be unusable, rental shall abate entirely and if the operation of the business on the premises shall be impaired in part, rental shall abate during the terms of repairs or rebuilding proportionate to loss of use of the premises and said impairment of business. If the fire insurance premium rates shall increase in any way by reason of Lessee's activities on the premises, Lessee shall reimburse the Lessor promptly for the cost of any premium in excess of the amount the Lessor would have been required to pay for insurance had it not been for the Lessee's activities or use and shall be added to the rent as charge against the Lessee.*

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## RISK MANAGEMENT MANUAL

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### C. CATEGORIES OF CONTRACTS

The following categories (1 through 4) serve as a guide in determining what mandatory provisions, additional provisions and minimum insurance limits you may need to require in your contract.

Boilerplate contract language for each of these provisions is set out below.

The County reserves the right to increase limits.

#### **CATEGORY 1. Contracts providing Goods and Services (including trade related services, but excluding contracts providing Professional Services).**

These contracts will vary widely as to their exposure to risk. While some discretion as to limits will be necessary with smaller contractors, the following provisions are required, regardless of exposure. Keep in mind also that this category may involve state contracts and the previous language considerations should be used.

##### Commercial General Liability Insurance

This coverage protects against liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations; and advertising and personal injury liability.

This insurance is required in most of the RFPs, bids and contracts. Uses include: whenever contractor will be doing work on County property, when the County could be partially blamed for damage or bodily injury caused by contractor, and to provide financial support to keep contractor in business if sued.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract.*

*This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.*

##### Automobile Insurance

###### Commercial Auto

To be required when the contractor is providing any sort of transportation to clients under the contract or delivering goods.

*Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 million.*

###### Exception:

Commercial auto can be waived if delivery of goods or transportation of people is not being performed by the Contractor.

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## RISK MANAGEMENT MANUAL

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### Personal Auto Policy (PAP)

To be required when the contractor will be driving in the course of their duties under the contract.

*Contractor shall also obtain at contractor's expense, and keep in effect during the term of the contract, Personal auto coverage. The limits shall not be less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.*

### Workers' Compensation Insurance

*CONTRACTOR, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. CONTRACTORS shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.*

### Additional Insured Provision

This coverage endorsement is required to gain protection for the County on another party's policy. However, the County can't be named as an additional insured on professional, pollution liability, workers' compensation, or personal automobile liability insurance policies. On the certificate of insurance provided by the contractor as proof of insurance coverage, "Clackamas County, its agents, officers, and employees" shall be listed as an additional insured.

The certificate should not just list a specific County department as additional insured.

*The insurance, other than Professional Liability(except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.*

(Construction contracts should contain the following alternative language)

*The insurance, other than Professional Liability, Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured. Use form CG 20-10, (see samples next to Appendices) or it's equivalent. Proof of insurance must include a copy of the endorsement showing "Clackamas County, its agents, officers, and employees" as a scheduled insured.*

### Subcontractor Insurance.

*For contracts where the amount of the contract is \$1 Million or less, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Agreement. For contracts where the amount of the contract is over \$1 Million, subcontractor sub limits shall be no less than \$1 Million each occurrence and \$2 Million aggregate Commercial General Liability, \$1 Million combined single limit per accident Auto Liability and Statutory Oregon Workers' Compensation.*

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## RISK MANAGEMENT MANUAL

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### Notice of Cancellation

*There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the "contractor", "consultant", "vendor", etc. to the County.*

### Insurance Carrier Rating

*Coverages provided by the contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.*

### Certificates of Insurance (sample next to Appendices)

*As evidence of the insurance coverage required by this contract, the contractor shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received and approved by the County. A renewal certificate will be sent to the Clackamas County Contract Purchasing Division 10 days prior to coverage expiration.*

### Independent Contractor Status

*The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265.*

### Primary Coverage Clarification

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

### Cross-Liability Clause

Liability claims by one insured against another insured (both named as insureds in the same policy) are usually referred to as "cross liability" claims. There is a condition in a Commercial General Liability (CGL) policy which allows for the policy to provide protection against a claim by one insured (like the named insured, for example, the contractor) against another insured (like an additional insured, for example, the County). This is the "Separation of Insureds" Condition. It specifies the insureds' protection under the policy as if each had a separate policy, with the exception of the limits of liability and any rights or duties that are designated to be for the first named insured only. A CGL policy incorporates this kind of coverage in the policy, but this change is necessary to provide coverage under other policies required.

*A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.*

### Waiver of Subrogation

*Contractor agrees to waive their rights of subrogation arising from the work performed under this contract.*

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## RISK MANAGEMENT MANUAL

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### Umbrella Liability Coverage

To be required when there is an activity which could result in catastrophic bodily injury or property loss (for example, major building renovation or new construction) and the basic limits of insurance may not be sufficient. Call Risk Management for assistance with this.

*Umbrella coverage in the sum of \$\_\_\_\_\_ shall be provided and will apply over all liability policies, except Professional Liability, Pollution Liability and Cyber Liability, and will include but not be limited to Commercial General Liability, Automobile Liability and Employers' Liability. If coverage is being provided under a professional liability policy, umbrella coverage that applies specifically to professional liability shall be provided in the sum of \$\_\_\_\_\_.*

### Garagekeepers' Legal Liability

This wording should be used when a subcontractor will be taking possession of County vehicles or acting as a bailee in some manner relating to County vehicles. *Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Garagekeepers' Legal Liability Insurance. Combined single limit per occurrence shall not be less than \$1 Million.*

### Pollution and Asbestos Liability

*The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance and shall be written on a "claims made" basis.*

*The policy's limits shall not be less than \$1 Million each loss/\$1 Million aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the COUNTY for review and approval.*

*In the event the CONTRACTOR encounters on the site materials reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the COUNTY in writing.*

*The work in the affected area shall not thereafter be resumed except by written agreement of the COUNTY and CONTRACTOR if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless.*

*The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the COUNTY and CONTRACTOR.*

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## RISK MANAGEMENT MANUAL

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*The CONTRACTOR shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).*

### Crime and (when applicable) Money and Securities

Should be required when the contractor and/or contractor's employees will have access to medium or large amounts of County cash receipts, negotiable securities, or especially valuable property. A standard limit should equal or exceed the maximum amount of cash, negotiable securities or valuable property at risk at any time. You should require a larger limit if the contractor and/or contractor's employees would have multiple opportunities to steal before the County's loss would be discovered. You can require a smaller limit if the contractor and/or contractor's employees will have limited access to cash, negotiable securities, or valuable property, or if the contact they have with cash, negotiable securities or valuable property is supervised by the County at all times.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of the contract, a Third Party Fidelity Bond and (when applicable) inside/outside Money and Securities coverages to cover the financial loss to the County caused by a dishonest act of the contractor's employee (as an option the County may accept an employee dishonesty bond that has been endorsed to name the County as an additional insured.) Coverage limits shall not be less than the amount(s) scheduled in the Request for Proposal.*

### **CATEGORY 2. Contracts providing Personal and Professional Services. (Non-trade)**

Examples would include medical, engineering, accounting, architectural, counseling, and insurance services. (Additional Insured Provision does not apply to Professional Liability Insurance or Auto Liability, but does apply to other required insurance coverages.)

#### Commercial General Liability Insurance

Standard Language

#### Automobile Insurance

Standard Language

#### Workers' Compensation Insurance

Standard Language

#### Professional Liability

Standard Language

#### Additional Insured Provision

Standard Language only on the Commercial General Liability policy

#### Subcontractor Insurance

*For contracts where the amount of the contract is \$1 Million or less, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including*

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*additional insured provisions) and limits identical to the insurance required of the Contractor under this Agreement. For contracts where the amount of the contract is over \$1 Million, subcontractor sub limits shall be no less than \$1 Million each occurrence and \$2 Million aggregate Commercial General Liability, \$1 Million combined single limit per accident Auto Liability and Statutory Oregon Workers' Compensation.*

### Notice of Cancellation

Standard Language

### Insurance Carrier Rating

Standard Language

### Certificates of Insurance

Standard Language

### Independent Contractor Status

Standard Language

### Primary Coverage Clarification

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

### Cross-Liability Clause

Standard Language

### Waiver of Subrogation

*Contractor agrees to waive their rights of subrogation arising from the work performed under this contract.*

### Technology Errors and Omissions

Tech E&O insurance is intended to cover two basic risks : (1) financial loss of a third party arising from failure of the insured's product to perform as intended or expected, and (2) financial loss of a third party arising from an act, error, or omission committed in the course of the insured's performance of services for another.

This insurance is required in most of the RFPs, bids and contracts. Uses include: whenever contractor will be doing work on County property, when the County could be partially blamed for damage or bodily injury caused by contractor, and to provide financial support to keep contractor in business if sued.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Technology Errors and Omissions insurance on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Limits are \$1 Million per claim/annual aggregate.*

### Cyber Risk

This coverage protects against liability claims for information or identity theft, misuse or disclosure of third party data, loss of data, outages or spread of viruses, attacks, destruction or disclosure of data or electronic information arising out of premises, operations, products and completed operations; and advertising and personal injury liability.

This insurance is required in most of the RFPs, bids and contracts. Uses include: whenever contractor will be doing work on County property, when the County could be partially blamed for damage or bodily injury caused by contractor, and to provide financial support to keep contractor in business if sued.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Cyber Risk insurance on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Limits are \$1Million per claim/annual aggregate.*

### Extended Reporting Coverage ("Tail Coverage")

This insurance extends coverage after a "claims made" policy term has ended. "Claims made" policy means that any claim under the policy must be reported during the policy period.

*If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this contract.*

### **CATEGORY 3. Public Improvements.**

These contracts will primarily deal with public works projects, remodeling or repair.

#### Commercial General Liability - Construction/Installation/Renovation

Higher limits on both an occurrence and an aggregate basis may be appropriate based on job size and degree of hazard involved. (See following chart)

Uses include: whenever contractor will be doing work on County property, when the County could be partially blamed for damage or bodily injury caused by contractor, and to provide financial support to keep contractor in business if sued.

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" basis.*

*This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Coverage shall be provided for all "xcu" (explosion, collapse, and underground) hazards.*

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## RISK MANAGEMENT MANUAL

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### Automobile Insurance

Standard Language

### Workers' Compensation Insurance

Standard Language

### Installation Floater

*Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, a Builder's Risk Installation Floater for coverage of contractor's labor, materials and equipment to be used for completion of work performed under this contract.*

*The minimum amount of coverage to be carried shall be equal to the full amount of the contract. This insurance shall include as additional insured Clackamas County, the contractor and its subcontractors as their interest may appear.*

**Use:** in contracts for remodeling or repairing an existing facility or for the installation of equipment or fixtures; when contractor is responsible for project materials in-transit, on-site and/or incorporated into project until accepted by the County upon satisfactory completion.

**Examples are the replacement of an old roof or the installation of an HVAC system.**

### Professional Liability (Only if professional services are provided)

Standard Language

### Pollution and Asbestos Liability

Standard Language

### Additional Insured Provision

Standard Language

### Subcontractor Insurance

*For all contracts of any size involving the State of Oregon as a party to the contract, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Agreement unless otherwise excepted.*

OR

*For contracts where the amount of the contract is \$1 Million or less, Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Agreement. For contracts where the amount of the contract is over \$1 Million, subcontractor sub limits shall be no less than \$1*

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## RISK MANAGEMENT MANUAL

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*Million each occurrence and \$2 Million aggregate Commercial General Liability, \$1 Million combined single limit per accident Auto Liability and Statutory Oregon Workers' Compensation.*

### Notice of Cancellation

Standard Language

### Insurance Carrier Rating

Standard Language

### Certificates of Insurance

Standard Language

### Independent Contractor Status

Standard Language

### Primary Coverage Clarification

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

### Cross-Liability Clause

Standard Language

### Extended Reporting Coverage ("Tail Coverage")

Standard Language

### Umbrella Liability Coverage (If new)

Standard Language

### Crime and (when applicable) Money and Securities

Standard Language

### Bid Security Bond (Large Jobs)

This bond can protect the County if the Contractor makes a mistake in bidding the project. If the Contractor leaves out an important portion of the project in the bid, and the bid is subsequently accepted, the surety would be obligated to pay the difference between what was bid and the actual cost to complete the project.

*Each bid shall be accompanied by a Bid Security in an amount of 10% of the Bid, including additive Alternatives, if any, in the required form and amount, pledging that the Bidder will enter into a Contract with the County on terms stated in their Bid. Should the Bidder refuse to enter into such Contract or fail to furnish such Bonds of*

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## RISK MANAGEMENT MANUAL

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*Insurance Certificates, the amount of the Bid Security shall be forfeited to the County as liquidated damages, not as a penalty.*

*The Bid Security shall be in the form of a Surety Bond, a Cashier's Check or a Certified Check made payable to the County. The Surety Bond shall be written by a Bonding Company deemed acceptable by the County. The Attorney-in-Fact who executes the Bond on behalf of the Surety shall affix to the Bond a certified and current copy of the Power of Attorney. The County will have the right to retain the Bid Security of Bidders until either (a) the Contract has been executed and Bonds have been furnished, or (b) the specified time has elapsed so that bids may be withdrawn, or (c) all Bids have been rejected.*

### Performance and Payment Bonds

To be required for all Public Improvement contracts over \$50,000 except in the case of an emergency or if the Performance Bond has been exempted. A Performance Bond is the key bond on a work project when the County not only wants the work completed but wants it done on time and according to specifications.

The Payment Bond guarantees that suppliers of labor or materials or subcontractors will be paid.

*To guarantee the faithful performance of the contract, the successful bidder will be required to furnish a performance bond and a payment bond in an amount equal to the full amount of the contract.*

*Said bonds shall be in the form herein prescribed or approved substitute form and shall be the surety bonds of an incorporated surety company licensed to transact surety business in the State of Oregon, and said bonds shall be in all respects satisfactory and acceptable to the County.*

*The Contractor also agrees that the Faithful Performance Bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five (365), after acceptance of the work by County as a guarantee of repair or replacement of any item(s) or work found to be defective by reason of faulty workmanship or defective materials.*

### Waiver of Subrogation (When County is Lessee only)

Note: A department or agency should not waive the County's rights to subrogate without checking with the Risk Manager.

### Standard Language

#### New Construction \*

The County may require Builder's All Risk.

### Builder's Risk

This provision addresses the loss of or damage to a County building, construction supplies, or construction equipment during new construction.

### A. Contractor

*Unless otherwise provided, the CONTRACTOR agrees to furnish the COUNTY evidence of property insurance (Builders Direct Risk insurance) upon the entire work at the site to the full insurable value thereof. This policy shall insure against the perils of fire and extended coverage and shall include all risk insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief (and earthquake and flood).*

*The policy shall be extended to include extra expense coverage (including but not limited to legal/professional fees, debt service payments, insurance premiums, etc.) and with limit equal to 5% of the building value but not less than \$50,000.*

*This policy shall be extended to covered property stored off the site or in transit when the COUNTY is to be responsible for the cost of that identified property. The COUNTY, at its option, may require a complete copy of the above policy.*

### B. Owner

*Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof subject to the deductible provided for below.*

*This insurance shall include the interests of Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance of physical loss or damage including, without duplication of coverage, theft, vandalism or malicious mischief.*

*If the Owner does not intend to purchase such insurance for the full insurable value of the entire Work, Owner shall inform the Contractor in writing prior to commencement of the Work.*

*The Contractor may then affect insurance which will protect the interests of Contractor, any Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto. If not covered under the all risk insurance otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Contractor's tools, materials, equipment, appliances and all other facilities and incidentals required by this project will not be insured by the Owner.*

*Any deductible related to the required coverage (when provided by Contractor) in this section (excepting Earthquake and Flood coverages) shall be the responsibility of the Contractor and shall not exceed \$25,000 per occurrence unless prior consent for a higher deductible has been given by the County.*

*\*Risk Management should be advised of any new construction. The County may decide to provide some level of coverage itself.*

### **CATEGORY 4. Facilities Use Agreements**

Discretion must be used in requiring insurance from entities wishing to use County facilities. Significantly large users and/or higher risk uses must show the County adequate coverage.

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

Standard Language

#### **Workers' Compensation Insurance**

Standard Language

#### **Additional Insured Provision**

Standard Language

#### **Notice of Cancellation**

Standard Language

#### **Insurance Carrier Rating**

Standard Language

#### **Certificates of Insurance**

Standard Language

#### **Independent Contractor Status**

Standard Language

#### **Primary Coverage Clarification**

*Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.*

#### **Cross-Liability Clause**

Standard Language

#### **Waiver of Subrogation** (When County is Lessee only)

Note: A department or agency should not waive the County's rights to subrogate without checking with the Risk Manager.

Standard Language

### **Equipment Rental or Lease Agreements**

Often, the vendor will require that the vendor's own agreement or contract be signed prior to taking possession of the piece of equipment. Normally, the indemnity clause is extremely broad in these agreements. Most of these equipment rental agreements require that the equipment be returned in the same condition as it was when it was rented.

The County's property insurance policy provides coverage for property in the County's care, custody, and control. This includes leased and rented equipment. The County's \$25,000 property deductible applies. Coverage for any subcontractor activity is not included.

(The County has no coverage for equipment rented by a contractor.) Equipment licensed for highway use is not covered for collision. Equipment used for fire fighting is not covered.

### D. BONDS

#### Bid Security Bond

This bond can protect the County if the Contractor makes a mistake in bidding the project. If the Contractor leaves out an important portion of the project in the bid, and the bid is subsequently accepted, the surety would be obligated to pay the difference between what was bid and the actual cost to complete the project. *Each bid shall be accompanied by a Bid Security in an amount no greater than 10% of the Bid, including additive Alternatives, if any, in the required form and amount, pledging that the Bidder will enter into a Contract with the County on terms stated in their Bid. Should the Bidder refuse to enter into such Contract or fail to furnish such Bonds or Insurance Certificates, the amount of the Bid Security may, at the County's discretion be forfeited to the County as liquidated damages, not as a penalty.*

*The Bid Security shall be in the form of a Surety Bond, a Cashier's Check or a Certified Check made payable to the County. The Surety Bond shall be written by a Bonding Company deemed acceptable by the County. The Attorney-in-Fact who executes the Bond on behalf of the Surety shall affix to the Bond a certified and current copy of the Power of Attorney. The County will have the right to retain the Bid Security of Bidders until either (a) the Contract has been executed and Bonds have been furnished, or (b) the specified time has elapsed so that bids may be withdrawn, or (c) all Bids have been rejected.*

#### Performance and Payment Bonds

To be required for all Public Improvement contracts over \$50,000 except in the case of an emergency or if the Performance Bond has been exempted. A Performance Bond is the key bond on a work project when the County not only wants the work completed but wants it done on time and according to specifications.

The Payment Bond guarantees that suppliers of labor or materials or subcontractors will be paid.

*To guarantee the faithful performance of the contract, the successful bidder will be required to furnish a performance bond and a payment bond in an amount equal to the full amount of the contract. Said bonds shall be in the form herein prescribed or approved substitute form and shall be the surety bonds of an incorporated surety company licensed to transact surety business in the State of Oregon, and said bonds shall be in all respects satisfactory and acceptable to the County.*

*The Contractor also agrees that the Faithful Performance Bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five (365), after acceptance of the work by County as a guarantee of repair or replacement of any item(s) or work found to be defective by reason of faulty workmanship or defective materials.*

## RISK MANAGEMENT MANUAL

### E. MINIMUM INSURANCE REQUIREMENTS FOR CONTRACTS

**All contracts must contain an indemnification clause and workers' compensation language (insurance or proof of exemption). The following minimum limits of insurance are on a "per occurrence" basis. Aggregate limits are listed in detail in Section IV.**

| Reason for Contract                            | Category Number | Commercial General Liability | Auto Liability* Commercial | Personal Auto Policy | Property Damage | Professional Liability  | Additional Provisions; See Section IV |
|--|-----------------|------------------------------|----------------------------|----------------------|-----------------|-------------------------|---------------------------------------|
| Busses/Cabs                                    | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Public Improvements over \$1Million            | 3               | \$4Million/\$5 Million       | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | Yes                                   |
| Public Improvements under \$1 Million          | 3               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | Yes                                   |
| Consulting Services/ Non-Professional Services | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Consulting Services/ Professional              | 3               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | \$1 Million/\$2 Million | Yes                                   |
| Design Services                                | 3               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | \$1 Million/\$2 Million | Yes                                   |
| Engineers                                      | 3               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | \$1 Million/\$2 Million | Yes                                   |
| Equipment/ Supplies                            | 1               | \$1 Million/\$2 Million      | ---                        | ---                  | ---             | ---                     | No                                    |
| Janitorial                                     | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Landscaping                                    | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Non-Professional Services (direct services)    | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Professional Services                          | 3               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | \$1 Million/\$2 Million | Yes                                   |
| Repair Work/Low Risk Service                   | 1               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Security Services                              | 2               | \$1 Million/\$2 Million      | \$1Million                 | \$250,000/\$500,000  | \$100,000       | ---                     | No                                    |
| Facilities Use Agreements                      | 4               | \$1 Million/\$2 Million      | ---                        | ---                  | ---             | ---                     | Yes                                   |

\*The County reserves the right to adjust these limits depending on the level of exposures in the contract.

\*\*See Section IV for exceptions.

### V. CERTIFICATES OF INSURANCE

A certificate of insurance is commonly used to represent the existence of insurance coverage. However, a certificate is not a legally binding document. It cannot alter coverage terms, add additional insured's to a policy, or otherwise modify insurance policy terms and conditions.

Certificates are usually issued by insurance brokers and agents. Any error in these certificates does not bind the insurance carrier to modify their insurance contract, which is a contract between the insurance carrier and the named insured.

When reviewing a certificate of insurance, a checklist approach is suggested. The checklist used should be tailored to the individual contract for which the certificate is representing compliance. **A sample checklist format is attached.**

Insurance policies expire for various reasons; they can be canceled by the insurance company, the agent or broker, or the named insured; they can lapse for non-payment of premium, or they can be discontinued by the insured.

**A sample "Certificate of Insurance" is attached for review. The following numbers listed below correspond with the sample "Certificate of Insurance Form" included in this section for your reference.**

1. The certificate actually states that it is a matter of information only.
2. Insurance carriers can differ greatly in terms of size and financial strength. The "Best's Key Rating Guide" is the source most commonly used to confirm the financial strength of an insurance company. The contract in question may also specify minimum financial ratings. The County has minimum requirements for insurance carriers (see Section IV).
3. Most of the time "occurrence" coverage is specified in contractual requirements. The boxes are simply checked to represent the existence of the liability policy type. Check to be sure this certificate indicates that the right type of insurance is being provided. If "claims made" is checked, Extended Reporting coverage (listed in Section IV) will be required.
4. Note that you are dealing with an annual policy. When does it expire? Have provisions been made to have the Purchasing Division receive the renewal certificate when needed?
5. The limits shown here are critical to contract compliance. Add the limits here to the limits shown in the "Excess Liability" section below to see the representation of actual limits in existence.
6. "Symbol 1" coverage, as defined by policy language, provides coverage for "any auto" owned, hired, or non-owned.
7. The limits shown here are excess over (in addition to) the following primary limits: Commercial General Liability, Automobile Liability, and Employers Liability.
8. This area deserves special review, as the certificate issuer may attempt to represent additional coverage not actually included in the policy. For example, additional insureds are often represented to be added to the policy with wording in this section. Remember, the only firm proof of coverage is a copy of policy language.

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## RISK MANAGEMENT MANUAL

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9. This is where Clackamas County would typically be shown as a "Certificate Holder." Remember, just because the County is shown as such does not mean that the insurance company has any contractual obligation to the County. Coverage must be endorsed in the insurance policy to gain a contractual right.
10. The cancellation wording that is standard on Certificates of Insurance uses the word "endeavor" to describe their obligation to notify the Certificate Holder of policy cancellation. To gain contractual rights, the County must be named as an additional insured by endorsement, and the policy must be endorsed to show cancellation extensions to additional insureds.

Certificates of insurance are a commonly used tool in the industry. They are generally accepted without question by many parties. Be aware of their limitations. You can ask to review the contractor's insurance policy(ies) at any time, and you should consider doing this in situations with significant exposure. Risk Management can assist you with this review process.

**CLACKAMAS COUNTY**  
**CERTIFICATE OF INSURANCE CHECKLIST**

Contractor \_\_\_\_\_ Contract #:  
Purpose of Contract \_\_\_\_\_

Term of Contract \_\_\_\_\_

General Provisions Checklist

To be used with all Certificates. Those involving major construction contracts or unusual events may require additional provisions.

The numbers in parentheses refer to the sample certificate of insurance included for your reference.

|  | Yes                      | No                       | N/A                      |
|--|--------------------------|--------------------------|--------------------------|
| A. Is Clackamas County named as Additional Named Insured? (#8)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Is occurrence coverage checked? (#3)  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Is there a minimum of 60 days' written notice of cancellation? (#10)                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Is carrier admitted to do business in Oregon, <b>or</b> rated "A- or Better" by Best's? (#2)        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Are limits adequate? (#5)   |                          |                          |                          |
| General Liability  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Automobile   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Workers' Compensation  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other Coverage   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Is "Symbol 1" Automobile Coverage specified? (#6)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Are the Policy effective dates appropriate? (#4)<br>(Will it be effective when contract performed?) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| H. Does "Type of Insurance" shown match bid and/or contract specifications? (#5)                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I. Is certificate signed by a licensed agent? (#10)  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| J. Have you set a reminder for 60 days prior to expiration?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Completed by \_\_\_\_\_ Date \_\_\_\_\_

### VI. GLOSSARY

**Additional Insured:** This coverage endorsement is required to gain protection for the County on another party's policy. An additional insured is not a "named insured" or an "additional named insured," both of which denote specific policy definitions and imply specific rights and duties (such as payment of premium).

**Aggregate Limit:** An aggregate limit is a cumulative limit that applies to all claims within a given period of time, usually within the policy term. For example, if a policy has an occurrence limit of \$1,000,000 and an aggregate limit of \$1,000,000, the policy could be exhausted by a sequence of losses totalling \$1,000,000 or by one big loss of that amount.

**Bailee:** An individual or company who has temporary possession of property belonging to another. Bailees may be liable to the owners of the property (bailors) for damage or loss of the property while it is in their possession.

**Boilerplate:** A colloquialism, used to identify standard terms and conditions incorporated in solicitations, contracts, or purchase orders.

**Builder's Risk:** This coverage is provided to protect against fire and other related peril damage, typically to new buildings or other structures under construction. Coverage can also apply to temporary or permanent buildings, sheds, fences, tool houses, machinery, tools, and supplies used in conjunction with a construction project. This insurance can be purchased by either the Contractor or the County, depending upon the amount of control deemed necessary by the County.

**Businessowner's Insurance Policy:** A package policy that provides both property and liability coverage for eligible small businesses.

**Certificate of Insurance:** Evidence that an insurance policy has been issued, showing the amount and type of insurance provided. The effective date and expiration date of the policy are also shown.

**Claims Made Coverage:** This liability coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. This coverage is much more restrictive than Occurrence coverage, and is typically seen in Professional Liability, Pollution Liability, Errors and Omissions, and lines of insurance that are difficult to insure.

**Commercial General Liability (CGL) Coverages:** Broad insurance coverage for losses for which the insured is legally liable. The following are usually insured by a CGL policy: false arrest, damage to the property of others, defamation of character, invasion of privacy, assault, malicious prosecution, and bodily injury. All professional liability is excluded from a CGL policy.

**Comprehensive General Liability:** Now referred to as "commercial general liability" (see above). The word "comprehensive" in the original title may have implied that coverage is broader than it really is. "Comprehensive" is an outdated term. Use "commercial" in your contract insurance language.

**Contract Bond:** This bond assures the faithful performance of a construction contract and guarantees that all labor and material expenses will be paid for. In those situations where two bonds are required, a "performance bond" will cover the performance and a "payment bond" covers labor and material costs.

**Contractual Liability:** Liability assumed by contract beyond what the contractor would normally be liable for. A basic liability policy does not provide this coverage. It is an additional coverage for a specific exposure.

**Cross Liability:** Refers to the loss exposure created when one insured under a policy sues another.

**Cross Liability Clause:** Allows the County to litigate against the named insured, if necessary.

**Defend:** The contractor will pay the cost of defense against any claim (for example, legal costs) made against the County as a result of the contractor's activities related to the contract.

**Directors and Officers (D&O) Liability Coverage:** Coverage designed to protect corporations and their directors and officers against liability exposures they may face. An example may be someone suing the directors for breach of corporate duties.

**Employee Dishonesty:** Coverage is provided to an employer for loss arising from the dishonest acts of his or her employees. Dishonest acts include theft, fraud, and misappropriation of employer's property, including cash and other negotiable instruments.

**Employer Liability Coverage** - This coverage is provided by Part 2 of the basic workers compensation policy and pays on behalf of the insured (employer) all sums that the insured shall become legally obligated to pay as damages because of bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his employment by the insured.

**Endorsements:** Additional documents that modify the agreements in the policy to which they are attached.

**Errors & Omissions Coverage:** See definition for "Professional Liability."

**Extended Reporting Coverage:** This coverage (also known as "Tail Coverage") is written in conjunction with claims-made insurance policies and extends the window within which claims can be made. This coverage can be provided by either keeping a claims-made policy in force, or it can be purchased separately by policy endorsement. Extended Reporting Coverage is required to ensure that coverage will be in place in future time periods to protect against today's wrongful professional acts, errors, or omissions.

**Garagekeeper's Legal Liability:** This coverage form is meant to insure vehicles in someone's care, custody, or control. Examples would include parking lot operators, and garages (which should also carry "Garage Liability" for the completed operations exposure arising out of vehicle repair). Limits of liability required should approximate the maximum value of property (vehicles) in the vendor's care, custody, or control at any one point in time.

**Hold Harmless:** The contractor is agreeing not to seek recourse against the County for any damages, including judgments, settlement of claims, etc. that may arise out of the contractor's activities associated with the contract.

**Indemnify:** The contractor will be responsible to pay for any loss or damage caused by the contractor or anyone acting on the contractor's behalf, while performing activities pursuant to the contract.

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## RISK MANAGEMENT MANUAL

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**Installation Floater:** This coverage is normally purchased to cover materials, tools, and equipment for building projects. Coverage applies in transit, on site, and while partially installed. Typically, this protection is purchased on remodeling and/or minor building addition contracts.

**Lease:** An agreement in which one party, the lessor, relinquishes his right to immediate possession of property while retaining ultimate legal title to the property.

**Lessee:** One who holds property through a lease.

**Lessor:** One who grants a lease to another.

**Named Insured:** Any person, or organization, or any of its members, specifically designated by name as insured(s) in a policy.

**Occurrence Limit Coverage:** Occurrence liability coverage insures accidents or events that happen during the policy term, even if the plaintiff does not make a claim until months or years later. Occurrence limits are available for each accident or event, subject to the aggregate limit. Most liability policies are written on an occurrence basis, and it is normally thought to be a preferred coverage arrangement.

**Personal Injury Liability:** This coverage insures liability for certain injuries of a non-physical nature, such as false arrest, detention, libel, slander, defamation, wrongful entry, and eviction. This coverage is also included in "Commercial General Liability" coverage, and is provided whenever CGL coverage is in force.

**Pollution Liability:** All Commercial General Liability policies exclude pollution totally. Any vendor handling, disposing, or transporting hazardous materials should have this protection to protect themselves and the County. Specific insurance wording may be required from Risk Management since pollution liability policies are always claims-made, and standard insurance agreements are not used by pollution insurers.

**Products/Completed Operations:** This coverage insures liability for bodily injury or property damage resulting from products sold, handled or distributed by a supplier, or faulty work completed by a contractor. Typically, this coverage is included in "Commercial General Liability" coverage, and should be required from all contractors as well as all suppliers of hazardous or dangerous products.

**Professional Liability:** Separate insurance for professional activities is necessary because all professional liability is excluded from the Commercial General Liability policy. This typically claims-made coverage needs to be required from all professionals including but not limited to medical practitioners, physicians, engineers, attorneys, accountants, and architects. It is also sometimes referred to as "Errors and Omissions" coverage.

**Surety Bond:** This bond protects the County when the contractor fails to perform his/her specified duties. The surety agrees to answer to the County for the resulting situation that occurs when the contractor defaults.

**"Symbol 1" Commercial Automobile Insurance:** This coverage protects against liability claims arising from the use of "any automobile," either owned, hired, or non-owned (employee vehicles). Symbol 1 should always be specified and confirmed when requiring automobile coverage.

**Tail Coverage:** See definition for "Extended Reporting Coverage."

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## RISK MANAGEMENT MANUAL

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**Third Party Fidelity Bond:** Coverage designed to protect the County's financial loss caused by the dishonest acts of another entities' (contractor) employees.

**Umbrella Liability Coverage:** Umbrella coverage means higher limits over and above "primary" or "underlying" policies. This coverage extends limits over Commercial General Liability, Commercial Automobile and Employers Liability policies.

Umbrellas do not extend limits over Professional Liability (Errors and Omissions), Cyber Liability or Pollution Liability contracts. Care should be taken to check Umbrella coverage extensions to ensure that adequate levels of protection are in place.

**Waiver of Subrogation:** Waiver of subrogation means the relinquishment of a right to seek reimbursement for a loss from the responsible party. A typical example is a lease of premises agreement where the parties agree that the lessee will not be ultimately liable for fire or other damage to premises, but rather that the lessor's insurer will respond to the loss under the lessor's property policy without seeking damage from the lessee's liability insurer.

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POLICY NUMBER:

**COMMERCIAL  
GENERAL  
LIABILITY  
CG 20 10 10 01**

**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

|  |
|--|
| <b>Name of Person or Organization:</b> |
|--|

(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.

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### APPENDIX A

#### WHEN THE COUNTY IS PROVIDING THE SERVICE (THE COUNTY AS CONTRACTOR)

These policies and procedures primarily address situations where the County issues the contract. However, at times the County is the contractor. This section addresses the indemnification and insurance requirements we are willing to consent to as a contractor.

##### Indemnification

If the party issuing the contract to the County does not require the County to indemnify it, you do not need to volunteer. If the County is asked to indemnify the party issuing the contract, the mutual indemnification clause (see Section III) can be rewritten as follows:

*Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, COUNTY agrees to indemnify, defend and hold harmless the (party issuing the contract) and its officers, agents, and employees against all liability, loss and costs arising from actions, suits, claims, or demands attributable solely and exclusively to acts or omissions of COUNTY, and COUNTY'S officers, agents and employees, in performance of this contract.*

*(Party issuing the Contract) agrees to indemnify, defend and hold harmless the COUNTY and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of (Party issuing the Contract) and (Party's) officers, agents and employees, in performance of this contract.*

If you are requested to include indemnification language that is different from this in a contract in which the County is the contractor, please contact County Counsel for assistance.

##### Insurance

The County is self-insured for workers' compensation, and general, auto and professional liability. Therefore, if the County is the contractor, we cannot agree to provide purchased insurance coverage. **You need to be sure that you do not agree to use insurance language that the County does not and will not comply with.** You can agree to the following insurance provision:

*Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272 to: \$XXX,XXX/XXX,XXX [contact Risk Management for these amounts] property damage and \$X Million total damages per occurrence.*

If the party with which you are negotiating the contract wishes to include language other than this, contact County Counsel's Office for assistance.

You may also be requested to provide additional information about the County's self insurance program or its insurance fund. Please contact Risk Management for assistance.

### APPENDIX B

#### WORKERS' COMPENSATION INFORMATION AND FORMS

The following information represents a broad overview of one facet of workers' compensation law. These general guidelines will not apply in every situation and should not be relied on as clear legal authority. Please seek legal advice if you have any questions or confusion.

Oregon law (ORS 656.023) states that every employer employing one or more "subject workers" is required to adhere to the workers' compensation statutes. "Subject workers" are all employees except certain domestic workers, certain kinds of casual workers (people earning less than \$500 in a 30-day period), and certain groups of employees covered by federal compensation programs (for example, Longshore and Harborworkers). Also excluded from the definition of subject workers are sole proprietors who qualify as independent contractors, partners who are not engaged in construction-related work and who qualify as independent contractors, and certain kinds of corporate officers who are directors of the corporation and have a substantial ownership interest in the corporation. Other workers excluded from the definition of subject workers are people performing services for room and board or other nominal compensation for religious, charitable, or relief organizations, foster parents, certain sports-related workers, and volunteers participating in certain ACTION programs for seniors.

Generally, most organizations with which the County contracts for services either by contract or purchase order will be required to provide proof of workers' compensation insurance coverage. The only exceptions to this requirement are likely to be found in contracts with individuals or partners who are independent contractors.

**It is critical to obtain proof of workers' compensation insurance prior to allowing work to begin under the contract.** By Oregon law (ORS 656.029), the person (in our case, the County) awarding the contract is responsible for providing workers' compensation insurance "unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences." What this means is that if a worker, employed by an agency with which the County contracts, is injured and the contractor has failed to obtain workers' compensation coverage, the County would become the workers' compensation coverage provider for that worker's injury. The County, because it is self-insured, would pay for the worker's medical costs, any time lost from work, and compensation for any permanent disability. Depending on the severity of the injury, this could be quite costly.

**The only way to protect the County from these kinds of losses is to require proof of workers' compensation coverage prior to executing and/or allowing work to begin under the contract.** The proof of insurance must cover the start date of the contract. If the insurance coverage will expire during the term of the contract, the contract should specify that the contractor or its insurer will notify the County at least 30 days prior to the expiration of the coverage.

**If your contractor is from out-of-state,** you do not need to require them to purchase Oregon workers' compensation coverage. You must, however, require the contractor to show proof of workers' compensation coverage in his/her home state.

Sometimes, the organization with which the County is contracting will be self-insured. That is, it will have received approval from the State to be its own workers' compensation insurer, rather than being required to purchase insurance. These self-insured employers are generally governments and other large employers which can provide guarantees of their ability to fund their workers' compensation obligations under the law.

In these instances, the organization should be able to provide documentation of its self-insured status, either by providing a letter from a person authorized to make such representations (for example, the chief financial officer or risk manager) or by providing a copy of its State Certification of Compliance. (See Appendix D.)

In some instances, contractors will maintain that they are exempt from the requirement to provide workers' compensation insurance. In order for this to be true, the contractors must be (1) sole proprietorships, (2) partnerships, or (3) corporate officers who are directors of the corporation and have a substantial ownership interest in the corporation (subject to certain limitations). Certain limited liability companies and non-profit corporations may also qualify for exemption. When labor or services are performed under the contract or purchase order, the contractor must qualify as independent contractor.

Independent contractors are defined by Oregon Law (ORS 670.600). Generally, an independent contractor is an individual or business entity that provides labor or services under its own direction and control, obtains its own business/professional licenses and registrations, furnishes its own tools or equipment, hires and fires its own employees, and is paid upon completion of a project or by retainer. In addition, an independent contractor must operate as a business: registering with the State if appropriate, filing business tax returns, and presenting itself to the public as an independently established business.

**If a contractor states that (s)he is exempt from State requirements to provide workers' compensation coverage, the contractor must sign the "Certification Statement for Corporation or Independent Contractor" and "Workers' Compensation Exemption Certification" forms (pages B-3 and B-4).**

**If the contractor is exempt from workers' compensation requirements, (s)he must provide the signed statement of exemption and certification statement to the County prior to any work being done on the contract. These forms, when signed prior to the commencement of the contract, protect the County from having to pay for any workers' compensation claims that might be brought by employees hired by the contractor.**

It is not clear whether the County would be protected from a workers' compensation claim if the County had knowledge that the contractor was not exempt, even though the statement of exemption had been signed. Therefore, in the event a County employee learns that a contractor who has signed the exemption certificate has one or more employees working under the contract, (s)he should contact her/his department contract person. County Counsel should then be called for assistance in addressing this matter.

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**CLACKAMAS COUNTY SERVICES CONTRACT**  
Contract No. \_\_\_\_\_  
**CERTIFICATION STATEMENT FOR CORPORATION**  
**OR INDEPENDENT CONTRACTOR**

**NOTE: Contractor Must Complete A or B below:**

**A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.**

I certify under penalty of perjury that Contractor is a [check one]:

\_\_\_\_ Corporation

\_\_\_\_ Limited Liability Company

\_\_\_\_ Partnership

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.**

**Contractor certifies under penalty of perjury that the following statements are true:**

1. If Contractor is providing labor or services under this Contract for which registration is required under ORS Chapter 701, Contractor has registered as required by law, **and**
2. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
3. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business, **and**
4. All of the statements checked below are true.

**NOTE: Check all that apply. You must check at least four (4) to establish that you are a Independent Contractor.**

\_\_\_\_ A. The labor or services I perform is primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence which is set aside as the location of the business.

\_\_\_\_ B. I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.

\_\_\_\_ C. My business telephone listing is separate from my personal residence telephone listing.

\_\_\_\_ D. I perform labor or services only under written contracts.

\_\_\_\_ E. Each year I perform labor or services for at least two different persons or entities.

\_\_\_\_ F. I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance or liability insurance, or providing warranties relating to the labor or services I provide.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

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### CLACKAMAS COUNTY SERVICES CONTRACT WORKERS' COMPENSATION EXEMPTION CERTIFICATE

(To be used only when Contractor claims to be exempt from Workers' compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (check the appropriate box).

☐ **SOLE PROPRIETOR**

- ☐ Contractor is a sole proprietor, and
- ☐ Contractor has no employees, and
- ☐ Contractor will not hire employees or subcontractors to perform this contract.

☐ **CORPORATION - FOR PROFIT**

- ☐ Contractor's business is incorporated; and
- ☐ All employees of the corporation are officers and directors and have a substantial ownership interest\* in the corporation; and
- ☐ All work will be performed by the officers and directors; Contractor will not hire other employees or subcontractors to perform this contract.

☐ **CORPORATION - NONPROFIT**

- ☐ Contractor's business is incorporated as a nonprofit corporation, and
- ☐ Contractor has no employees; all work is performed by volunteers, and
- ☐ Contractor will not hire employees or subcontractors to perform this contract.

☐ **PARTNERSHIP**

- ☐ Contractor is a partnership, and
- ☐ Contractor has no employees, and
- ☐ All work will be performed by the partners; Contractor will not hire employees or subcontractors to perform this contract; and
- ☐ Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.\*\*

☐ **LIMITED LIABILITY COMPANY**

- ☐ Contractor is a limited liability company, and
- ☐ Contractor has no employees, and
- ☐ All work will be performed by the members; Contractor will not hire employees or subcontractors to perform this contract; and
- ☐ If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.\*\*

\*NOTE: Under OAR436-50-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

\*\*NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who will perform construction work.

\_\_\_\_\_  
Contractor Printed Name

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Date

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### APPENDIX C

#### REQUEST FOR CERTIFICATE OF INSURANCE

Here is a sample letter that will assist you in requesting a Certificate of Insurance from your contractor. This letter clarifies for the contractor what insurance policies and insurance limits must be in force prior to beginning any work associated with the contract.

Date \_\_\_\_\_

Dear Contractor:

Prior to beginning the work you will be performing for Clackamas County, the following insurance policies must be in force (as outlined in your contract):

*Limits*

|  |                                     |
|--|-------------------------------------|
| Commercial General Liability                     | _____ /Occurrence; _____ /Aggregate |
| Professional Liability                           | _____ /Occurrence; _____ /Aggregate |
| Other: _____                                     | _____ /Occurrence; _____ /Aggregate |
| Auto Liability - "Symbol 1"                      | _____ /Occurrence                   |
| Workers' Compensation<br>(or proof of exemption) | Statutory                           |

Work may not commence nor can payment be made until evidence of the insurance coverage required by this contract is submitted to the County. As evidence of the insurance coverage required by this contract, you must provide a Certificate of Insurance to Clackamas County. This can be obtained from your insurance agent/broker. The certificate needs to specify and document all provisions within this contract, including naming County as an expressly scheduled additional insured. A renewal certificate must be sent to Clackamas County Purchasing Division, 2051 Kaen Rd, Oregon City, OR 97045, 10 days prior to coverage expiration.

Thirty days written notice must be given to Clackamas County Purchasing Division if there is going to be a cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage.

If you have any questions, please contact: \_\_\_\_\_ at \_\_\_\_\_  
(Department/Division/County contact) (Phone number)  
as soon as possible.

Thank you.

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### APPENDIX D SELF-INSURANCE CERTIFICATION

This form or a replica containing the same information must be submitted as "proof of insurance" by self-insured organizations. If the answers to questions 3 or 4 are "no," if the answer to question 5 is greater than 3 years, or if the answer to question 6 is less than 70%, please contact Risk Management for further information.

*Your organization has been selected as a contractor for services funded by Clackamas County. As a County contractor, you must provide proof of certain required insurance coverages or, for self-insured organizations, certification of your organization's self-insurance program. You have indicated that your organization is self-insured. Please have an authorized representative of your organization answer the following questions:*

1. How long have you been self-insured for:

Workers' compensation?

General/Auto liability?

Professional Liability? \_\_\_\_\_

2. What is your self-insured retention (SIR) in each program?

Workers' Compensation

General/Auto Liability

Professional Liability \_\_\_\_\_

3. Do you maintain a dedicated fund to pay losses? \_\_\_\_ yes \_\_\_\_ no

4. Do you require actuarial studies of the fund to establish funding requirements? \_\_\_\_ yes \_\_\_\_ no

5. How often are your actuarial studies conducted?

6. At what confidence level do you fund? \_\_\_\_\_%

*Please attach a copy of your State of Oregon Certificate of Self-Insurance for Workers' Compensation.*

*I certify that the preceding is true.*

\_\_\_\_\_  
Signature

Title

\_\_\_\_\_  
Name

Date

\_\_\_\_\_  
Name of Your Organization

Name of Clackamas County Department  
Issuing Contract

**APPENDIX E****Contribution**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonable incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

**Alternative Dispute Resolution**

The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.