Recent Trends in California Indemnity and Additional Insured Law Impacting Construction Disputes

I. INDEMNITY ISSUES

A. Indemnity Defined:

“In general, indemnity refers to the obligation resting on one party to make good a loss or damage another party has incurred.” Prince v. Pacific Gas & Elec. Co. (2009) 45 Cal.4th 1151, 1157.

B. Historical Classification of Indemnity Agreements

1. Type I - Indemnifies for losses arising from the indemnitee’s active and passive negligence. See, MacDonald & Kruse, Inc. v. San Jose Steel Co. (1972) 29 Cal.App.3d 413, 419 for a discussion of indemnity agreement types and active/passive negligence distinction.

   a) Active Negligence - The indemnitee personally participated in an affirmative act of negligence, was connected with negligent acts or omissions by knowledge or acquiescence, or has failed to perform a duty that the indemnitee had agreed to perform.

   b) Passive Negligence - Mere nonfeasance, such as the failure to discover a dangerous condition or to perform a duty imposed by law.

   c) Crawford v. Weather Shield Mfg. Inc. (2008) 44 Cal.4th 541 – Indemnity agreement may require defense even if no ultimate showing of liability.

2. Type II – This is a general indemnity agreement that does not specifically address the indemnitee’s active negligence. These provisions apply only to the indemnitee’s passive negligence.

3. Type III - This type of provision requires indemnity only where the damage was caused by the indemnitor and is not the result of either active or passive negligence by the indemnitee.

C. Selected Code Provisions Restricting The Use Of Indemnity Agreements (See Appendix A)

1. **Civ.C. § 2782** - An indemnity provision in a construction contract is unenforceable if it indemnifies the indemnitee against liability arising from the indemnitee’s sole negligence or willful misconduct.

2. **Civ.C. § 2782** also limits the use of indemnity agreements that indemnify for the negligence of a builder or contractor for construction defects in residential construction contracts to track the right to repair statute. (S.B. 800)

3. **Civ.C. § 2782.05** – Will take effect on January 1, 2013 and significantly impact the use of Type I indemnity agreement in public works contracts and commercial construction contracts.

4. **Civ.C. § 2782.9** – Voids indemnity agreements pertaining to residential construction projects covered by a wrap-up (consolidated) insurance program.

II. ADDITIONAL INSURED ENDORSEMENT

A. Additional Insured Endorsement Defined:

Either a provision in an insurance policy or a separate endorsement providing that the person or entity qualifies as an additional insured. Additional insured status gives that person or entity rights under the policy, including the rights of defense and indemnification, subject to the terms and conditions of the policy.

1. Standard vs. Manuscripted Endorsements

   a) ISO Forms – Forms prepared by the Insurance Services Office and used by many insurers.

   b) Manuscripted Endorsements – Forms written by an insurer for its own use.

   c) Hybrids – When an insurer uses an ISO form, but adds language that modifies the coverage.

B. Evolving Additional Insured Coverage: Ongoing Operations vs. Completed Operations (See Appendix B for sample Additional Insured Endorsements)

1. Historical Development

   a) **CG 20 10 11 85 Form** – “liability arising out of ‘your work’”

   (1) **Pardee Const. Co. v. Insurance Co. of the West (2000) 77 Cal.App.4th 1340, 1355–1356** – Under a CG 20 10 11 85 additional insured endorsement, there can be coverage for completed operations even
where the subcontractor policy with the additional insured endorsement is issued after construction is completed.

(a) **Completed Operations** – Defined in the ISO form under "products-completed operations hazard" to generally mean work or products that are completed and/or put to their intended use.

(b) **Ongoing Operations** – Not defined in the ISO form, but commonly equated with work or operations that are in progress.

(2) **Presley Homes, Inc. v. American States Ins. Co.** (2001) 90 Cal.App.4th 571, 576 - Unless the policy provides otherwise, the additional insured carrier owes a duty to defend both covered and non-covered claims joined in the suit against the additional insured. The duty to indemnify is still subject to the scope of the additional insured coverage.

b) **CG 20 09 Form** – Excluded completed operations. Form not used anymore, but several newer forms are now in use which the insurers argue limit or eliminate completed operations coverage.

2. **CG 20 10 10 93 and CG 20 10 03 97 Forms** – Liability arising out of your “ongoing operations.”

a) **Pardee Construction Co. v. Insurance Co. of the West** (2000) 77 Cal.App.4th 1340 - The court found that the ISO CG 20 10 11/85 endorsement language provided for completed operations coverage. The court noted that the carriers could have eliminated completed operations coverage by adding policy language limiting the AI coverage to a specific time frame or project. In reaching this conclusion, the court recognized that the carriers could have used an updated version of the ISO CG 20 10 AI form [such as the 1993 or 1997 version] which limited AI coverage to liability arising out of [the named insured’s] “ongoing operations.” The court stated that the post-1993 version of the 20 10 form “effectively precludes application of the endorsement’s coverage to completed operations losses.”

b) **Tri-Star Theme Builders, Inc./PCL Construction v. OneBeacon Ins. Co.,** United States Court of Appeal, 9th Cir., (2011) 426 Fed.Appx. 506 (not for publication) - The Ninth Circuit Court of Appeals found that the reference to “ongoing operations” with no temporal limitation or definition was ambiguous. The Court found that the additional insured coverage could be triggered as long as there was work during the policy period. Case arose out of the District of Arizona.

c) **McMillin Construction Services, LP v. Arch Specialty Ins. Co.,** United States District Court for the Southern District of California, 2012 WL 243321 - The Federal District Court followed the holding in Tri-Star
and found that the reference to “ongoing operations” was ambiguous. The Court also found that Exclusions (j)5 and (j)6 did not preclude the potential for coverage.

3. **CG 20 33 07 04 Form** – Liability caused in whole or in part by your acts or omissions. Coverage provided for “ongoing operations,” with express exclusions for damages occurring after operations completed or work put to intended use.

4. **CG 20 37 Form** – Current Completed Operations Coverage Form.

C. **Overview of Additional Insured Documentation**

1. **Certificate of Insurance vs. Additional Insured Endorsement (See Appendix C)**
   
a) A certificate of insurance is typically issued as evidence of the subcontractor’s insurance, but does not constitute a contract with the insurer. *Pardee Const. Co. v. Insurance Co. of the West* (2000) 77 Cal.App.4th 1340, 1347.


3. **Contractual Requirement**
   
a) Some additional insured endorsements are triggered by a provision in a contract requiring additional insured coverage.

b) Some additional insured endorsements state that “completed operations” coverage is only provided if the contract specifically requires “completed operations” additional insured coverage.
APPENDIX “A”

Selected Code Provisions Impacting Indemnity Agreements
§ 2782. Construction contracts; void and unenforceable indemnification provisions; agreements between subcontractors, builders, or general contractors

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable; provided, however, that this section shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) (1) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into before January 1, 2013, that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(2) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into on or after January 1, 2013, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(c) (1) Except as provided in subdivision (d) and Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract entered into on or after January 1, 2013, with the owner of privately owned real property to be improved and as to which the owner is not acting as a contractor or supplier of materials or equipment to the work, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the owner from, liability are unenforceable to the extent of the active negligence of the owner, including that of its employees.

(2) For purposes of this subdivision, an owner of privately owned real property to be improved includes the owner of any interest therein, other than a mortgage or other interest that is held solely as security for performance of an obligation.

(3) This subdivision shall not apply to a homeowner performing a home improvement project on his or her own single family dwelling.

(d) For all construction contracts, and amendments thereto, entered into after January 1, 2009, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to insure or indemnify, including the cost to defend, the builder, as defined in Section 911, or the general
contractor or contractor not affiliated with the builder, as described in subdivision (b) of Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the builder or contractor or the builder's or contractor's other agents, other servants, or other independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. Nothing in this subdivision shall prevent any party from exercising its rights under subdivision (a) of Section 910. This subdivision shall not affect the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571. Nor shall this subdivision affect the obligations of a builder or subcontractor pursuant to Title 7 (commencing with Section 895) of Part 2 of Division 2.

(e) Subdivision (d) does not prohibit a subcontractor and builder or general contractor from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (d) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a builder or general contractor for a construction defect claim unless and until the builder or general contractor provides a written tender of the claim, or portion thereof, to the subcontractor which includes all of the information provided to the builder or general contractor by the claimant or claimants, including, but not limited to, information provided pursuant to subdivision (a) of Section 910, relating to claims caused by that subcontractor's scope of work. This written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a builder or general contractor tenders a claim for construction defects, or a portion thereof, to a subcontractor in the manner specified by this provision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the builder or general contractor:

(1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the builder or general contractor within a reasonable time period following receipt of the written tender, and in no event later than 90 days following that receipt. Consistent with subdivision (d), the defense by the subcontractor shall be a complete defense of the
builder or general contractor of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the builder or general contractor resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the builder, general contractor, or any other party. Any vicarious liability imposed upon a builder or general contractor for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the builder, general contractor, or claimant.

(2) Pay, within 30 days of receipt of an invoice from the builder or general contractor, no more than a reasonable allocated share of the builder's or general contractor's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (d), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The builder or general contractor shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the builder or general contractor actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory and consequential damages, as well as for interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, and for the builder's or general contractor's reasonable attorney's fees incurred to recover these amounts. The builder or general contractor shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting damages. If, upon request by a subcontractor, a builder or general contractor does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim as described above, the subcontractor shall have the right to pursue a claim against the builder or general contractor for any resulting compensatory and consequential damages, as well as for interest on the fees, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260, and the subcontractor's reasonable attorney's fees incurred in connection therewith. The subcontractor shall bear the burden of proof to establish both the failure to
reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section.

(g) A builder, general contractor, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section.

(h) Nothing in this section limits, restricts, or prohibits the right of a builder, general contractor, or subcontractor to seek equitable indemnity against any supplier, design professional, or product manufacturer.

(i) As used in this section, "construction defect" means a violation of the standards set forth in Sections 896 and 897.
§ 2782.05. Construction contracts; void and unenforceable indemnification provisions; agreements between general contractors, construction managers, or subcontractors

2782.05. (a) Except as provided in subdivision (b), provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract and amendments thereto entered into on or after January 1, 2013, that purport to insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor, by a subcontractor against liability for claims of death or bodily injury to persons, injury to property, or any other loss, damage, or expense are void and unenforceable to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, other servants, or other independent contractors who are responsible to the general contractor, construction manager, or other subcontractor, or for defects in design furnished by those persons, or to the extent the claims do not arise out of the scope of work of the subcontractor pursuant to the construction contract. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. This section shall not affect the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571, nor the rights of an insurance carrier under the holding of Buss v. Superior Court (1997) 16 Cal.4th 35.

(b) This section does not apply to:

(1) Contracts for residential construction that are subject to any part of Title 7 (commencing with Section 895) of Part 2 of Division 2.

(2) Direct contracts with a public agency that are governed by subdivision (b) of Section 2782.

(3) Direct contracts with the owner of privately owned real property to be improved that are governed by subdivision (c) of Section 2782.

(4) Any wrap-up insurance policy or program.

(5) A cause of action for breach of contract or warranty that exists independently of an indemnity obligation.

(6) A provision in a construction contract that requires the promisor to purchase or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations.

(7) Indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and a contracting project owner's lender are parties.

(8) General agreements of indemnity required by sureties as a condition of execution of bonds for construction contracts.
(9) The benefits and protections provided by the workers' compensation laws.

(10) The benefits or protections provided by the governmental immunity laws.

(11) Provisions that require the purchase of any of the following:
(A) Owners and contractors protective liability insurance.
(B) Railroad protective liability insurance.
(C) Contractors all-risk insurance.
(D) Builders all-risk or named perils property insurance.

(12) Contracts with design professionals.

(13) Any agreement between a promisor and an admitted surety insurer regarding the promisor's obligations as a principal or indemnitor on a bond.

(c) Notwithstanding any choice-of-law rules that would apply the laws of another jurisdiction, the law of California shall apply to every contract to which this section applies.

(d) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable.

(e) Subdivision (a) does not prohibit a subcontractor and a general contractor or construction manager from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (a) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a general contractor or construction manager for a claim unless and until the general contractor or construction manager provides a written tender of the claim, or portion thereof, to the subcontractor that includes the information provided by the claimant or claimants relating to claims caused by that subcontractor's scope of work. In addition, the general contractor or construction manager shall provide a written statement regarding how the reasonable allocated share of fees and costs was determined. The written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a general contractor or construction manager tenders a claim, or portion thereof, to a subcontractor in the manner specified by this subdivision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the general contractor or construction manager:

(1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the
general contractor or construction manager within a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Consistent with subdivision (a), the defense by the subcontractor shall be a complete defense of the general contractor or construction manager of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the general contractor or construction manager resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the general contractor or construction manager, or any other party. Any vicarious liability imposed upon a general contractor or construction manager for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the general contractor, construction manager, or claimant. All information, documentation, or evidence, if any, relating to a subcontractor's assertion that another party is responsible for the claim shall be provided by that subcontractor to the general contractor or construction manager that tendered the claim.

(2) Pay, within 30 days of receipt of an invoice from the general contractor or construction manager, no more than a reasonable allocated share of the general contractor's or construction manager's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (a), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The general contractor or construction manager shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the general contractor or construction manager actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, consequential damages, and reasonable attorney's fees incurred to recover these amounts. The general contractor or construction manager shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting
damages. If, upon request by a subcontractor, a general contractor or construction manager does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim, the subcontractor shall have the right to pursue a claim against the general contractor or construction manager for any resulting compensatory damages with interest, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section.

(g) For purposes of this section, "construction manager" means a person or entity, other than a public agency or owner of privately owned real property to be improved, who is contracted by a public agency or the owner of privately owned real property to be improved to direct, schedule, or coordinate the work of contractors for a work of improvement, but does not itself perform the work.

(h) For purposes of this section, "general contractor," in relation to a given subcontractor, means a person who has entered into a construction contract and who has entered into a subcontract with that subcontractor under which the subcontractor agrees to perform a portion of that scope of work. Where a subcontractor has itself subcontracted a portion of its work, that subcontractor, along with its general contractor, shall be considered a general contractor as to its subcontractors.

(i) For purposes of this section, "subcontractor" means a person who has entered into a construction contract either with a contractor to perform a portion of that contractor's work under a construction contract or with any person to perform a construction contract subject to the direction or control of a general contractor or construction manager.

(j) A general contractor, construction manager, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section.

(k) Nothing in this section limits, restricts, or prohibits the right of a general contractor, construction manager, or subcontractor to seek equitable indemnity against any supplier, design professional, product manufacturer, or other independent contractor or subcontractor.

(l) This section shall not affect the validity of any existing insurance contract or agreement, including, but not limited to, a contract or agreement for workers' compensation or an agreement issued on or before January 1, 2012, by an admitted insurer, as defined in the Insurance Code.
(m) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to indemnify, including defending or paying the costs to defend, a public agency against any claim arising from the alleged active negligence of the public agency under subdivision (b) of Section 2782 or to indemnify, including defending or paying the costs to defend, an owner of privately owned real property to be improved against any claim arising from the alleged active negligence of the owner under subdivision (c) of Section 2782.

(n) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to provide or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations pursuant to a construction contract with a public agency under subdivision (b) of Section 2782 or an owner of privately owned real property to be improved under subdivision (c) of Section 2782.
2782.9. (a) All contracts, provisions, clauses, amendments, or agreements contained therein entered into after January 1, 2009, for a residential construction project on which a wrap-up insurance policy, as defined in subdivision (b) of Section 11751.82 of the Insurance Code, or other consolidated insurance program, is applicable, that require an enrolled and participating subcontractor or other participant to indemnify, hold harmless, or defend another for any claim or action covered by that program, arising out of that project are unenforceable.

(b) To the extent any contractual provision is deemed unenforceable pursuant to this section, any party may pursue an equitable indemnity claim against another party for a claim or action unless there is coverage for the claim or action under the wrap-up policy or policies. Nothing in this section shall prohibit a builder or general contractor from requiring a reasonably allocated contribution from a subcontractor or other participant to the self-insured retention or deductible required under the wrap-up policy or other consolidated insurance program, if the maximum amount and method of collection of the participant's contribution is disclosed in the contract with the participant and the contribution is reasonably limited so that each participant may have some financial obligation in the event of a claim alleged to be caused by that participant's scope of work. The contribution shall only be collected when and as any such self-insured retention or deductible is incurred by the builder or general contractor and in an amount that bears a reasonable and proportionate relationship to the alleged liability arising from the claim or claims alleged to be caused by the participant's scope of work, when viewed in the context of the entirety of the alleged claim or claims. Any contribution shall only be collected from a participant after written notice to the participant of the amount of and basis for the contribution. In no event shall the total amount of contributions collected from participants exceed the amount of any self-insured retention or deductible due and payable by the builder or general contractor for the claim or claims. However, this requirement does not prohibit any legally permissible recovery of costs and legal fees to collect a participant's contribution if the contribution satisfies the requirements of this subdivision and is not paid by the participant when due.

(c) This section shall not be waived or modified by contractual agreement, act, or omission of the parties.
APPENDIX “B”

Sample Form Additional Insured Endorsements
The ISO CG 20 10 11 85 Additional Insured Endorsement provides:

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

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

Name of Person or Organization:

**SCHEDULE**

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

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

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The ISO CG 20 10 03 97 Additional Insured Endorsement provides:

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

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

<table>
<thead>
<tr>
<th>Name of Person or Organization</th>
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(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of your ongoing operations performed for that insured.
The ISO CG 20 33,07 04 Additional Insured Endorsement provides:

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or part, by:

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

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

A person’s or organization’s status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

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

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

2. “Bodily injury” or “property damage” occurring after:
   a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
   b. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
The ISO CG 20 37 07 04 Additional Insured Endorsement provides:

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s):</th>
<th>Location And Description Of Completed Operations</th>
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Information required to complete this Schedule, if not shown above, will be in the Declarations.

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

Certificate of Insurance
# Certificate of Insurance

**Issue Date (MM/DD/YYYY):**

<table>
<thead>
<tr>
<th>Producer</th>
<th>Insured</th>
<th>Companies Affording Coverage</th>
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<td></td>
<td>Sample</td>
<td>Company Letter A</td>
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<td>Company Letter D</td>
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<td></td>
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<td>Company Letter E</td>
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</tbody>
</table>

## Coverage's

This is to certify that the policies of insurance listed below have been issued to the Insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>Co Ltr</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (MM/DD/YYYY)</th>
<th>Policy Expiration Date (MM/DD/YYYY)</th>
<th>Limits</th>
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<tr>
<td></td>
<td>GENERAL LIABILITY</td>
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<td>Claims Made Occur.</td>
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</table>

## Description of Operations / Locations / Vehicles / Special Items

**Project Name & Location:**

## Certificate Holder

Should any of the above described policies be cancelled before the expiration date therefore, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative.

**Authorized Representative:**