Owner Controlled Insurance Program

Feasibility Study

for

Multnomah County
Sellwood Bridge Project

September 21, 2011
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Executive Summary

Background

The Sellwood Bridge was built in 1925 to replace the Spokane Street Ferry which carried passengers and cargo across the Willamette River between Sellwood and Southwestern Portland in Multnomah County. For over 85 years, the bridge has served as an important link to Portland and its surrounding communities. Over the years the bridge has undergone rehabilitation to fix structural problems involving the span, foundations, and west and east approaches. In addition, the bridge is located in a geologically unstable area and experts believe the bridge could not withstand a major earthquake. Efforts have been made over the years to extend the bridge’s life. Most recently, the County imposed weight restrictions on vehicles, trucks, and buses crossing the bridge. Despite all efforts, the bridge has come to the end of its useful life.

Recognizing the need for a solution, Multnomah County, in conjunction with the City of Portland, the Oregon Department of Transportation, and the Federal Highway Administration, began developing alternatives ranging from not replacing the bridge to construction of a new span. An environmental impact study was completed outlining various alternatives and community input was encouraged. Transportation and public officials along with other stakeholders including the public and interested business leaders conducted hearings. Based on responses from the hearings, enhancements were incorporated into the final design to improve the usefulness of the bridge. The new bridge will be designed to withstand a major earthquake, will improve the connections between the west and east side, will support a higher weight limit, and will improve safety for bicyclists and pedestrians.

An early work package involving configuration of a detour bridge, known as the “Shoofly” bridge, is set to begin November 2011. After a second early work package is let February 2012 to stabilize the west side approach, construction of the new span is planned for June 2012. Project management officials estimate the new span will be open to live traffic December 2015. Finally, the temporary “Shoofly” bridge will be demolished following completion of the new span. Total estimated construction value for this project is roughly $156 million. It is the largest construction project undertaken by the County in recent years.

Study Objective and Scope

Multnomah County commissioned this feasibility study to assess whether an Owner Controlled Insurance Program (OCIP) would provide sufficient benefits to justify the use of this risk management technique to finance and control risks arising out of construction of the Sellwood Bridge Project. This study also evaluates the feasibility of other risk financing options such as a Contractor Controlled Insurance Program (CCIP) and/or traditional risk financing in which contractors purchase their own insurance and name the County as an additional insured.
This study also outlines a risk profile for the project followed by a discussion of financing techniques to treat the project-specific risks, identifies key considerations pertaining to the feasibility of an OCIP, provides a cost/benefit analysis between an owner and contractor's cost of insurance, and outlines additional decision factors when considering an OCIP.

What is an OCIP?

An OCIP is a technique for consolidating the workers’ compensation insurance and general liability insurance coverage for most participants in a large construction project. The project owner, also referred to as the OCIP “sponsor,” buys insurance coverage for qualified parties and recovers from the contractors and subcontractors the amount each would have spent on these types of insurance absent the OCIP. From an insurance underwriting standpoint, OCIP is a way to underwrite the project, rather than separately underwriting, through multiple insurers, each of the individual construction companies constructing the project. Usually the OCIP sponsor also arranges coverage for the property under construction, called “builder’s risk” or “course of construction” insurance.

Consolidation of coverage increases the volume of insurance premium for a single insurer or insurance group and should generate discounts on that basis alone. In an OCIP there is one insurer and one insurance broker instead of many. If losses are kept low through a concerted safety and claims management effort, additional savings can accrue to the OCIP sponsor (the project owner) as return premium. A variant of this consolidated concept is called a “contractor controlled insurance program” (CCIP) in which a contractor or construction manager acts as sponsor.

As mentioned above, the alternative to consolidation is the so-called “traditional” approach where each party buys its own workers’ compensation and general liability coverage. Depending on its relationship to others in the overall program, the participant may agree to indemnify, defend, and add other parties to its liability policies as additional insureds. In a traditional situation, the owner of the project acquires some protection through the indemnification agreement and status as additional insured on the contractor policies. As noted in several places in this report, such coverage as may be afforded to an additional insured is increasingly unreliable as a source of financial protection.

Findings and Conclusions

As in most major decisions involving a project, there are factors for and against a particular course of action. OCIP is no exception. In this situation, we have identified the following factors in favor of and against OCIP.

Factors in favor of OCIP

1. Removes insurance barrier for small and emerging contractors

County personnel stated one of the goals for an OCIP is to remove the insurance barrier for small and emerging contractors. Under an OCIP the owner arranges basic insurance for the construction project. This eliminates a situation whereby prime contractors pass down onerous insurance requirements to their subcontractors, a practice which tends to reduce the pool of subcontractors eligible to work on the project. Eliminating the insurance barrier would make the construction program more attractive to small and emerging contractors and may result in more bids on the project.

2. Certainty of coverage

ORS 30.140 permits indemnity only to the extent of the indemnitor's negligence. *Walsh Constr. Co. v. Mutual of Enumclaw*, 189 Or. App. 400, 76 P.3d 164 (2003) determined that the statute prohibits also the contractual requirement of additional insured status that would provide coverage equivalent to one of the prohibited
forms of indemnity. An OCIP will include the County as named insured and provide added protection, including coverage for the County’s sole negligence. It is important to have an insurance program in place that provides protection to all parties involved. If the County choses to use an insurance program provided by the CMGC, the County should be a named insured on the general and excess liability policies.

Further, a contractor's liability insurance limits or CCIP program could be reduced by losses on other projects unless special limits are arranged for the owner’s project. In general, insurers loathe to pay out large losses on behalf of additional insureds and additional insured endorsement forms often contain many restrictions and limitations, some subtle. Furthermore, the project involves some unusual and significant risks that might better addressed under an OCIP. If the County arranged for coverage, it would be reassured coverage was in place to protect all interests.

3. Better coverage

OCIPs usually contain coverage benefits unavailable to contractors. They are non cancelable, except for very limited circumstances. They provide dedicated high limits. In addition, an OCIP will provide completed operations coverage (coverage for losses caused by the contractor’s work that do not occur or manifest until after construction is complete) to the insureds out to the statute of repose (6 years in Oregon). Without the benefit of OCIP completed operations protection, the County would have to rely on contractors’ ability to negotiate and renew proper coverage for the six-year statutory period. With the potential for catastrophic loss, it may be unwise to rely on the contractors’ ability to follow through to maintain coverage and stay in business.

Factors against OCIP

1. Minimal Project Size and Uncertain Construction Value

OCIPs smaller than $100 million may not yield cost savings. This is because of reduced economies of scale for insurance purchasing, and because of minimum cost to set up OCIP administration which offsets premium discounts obtainable by the owner. Preliminary hard cost construction value estimates for this project range from $122 million to $156 million, depending on when an OCIP could be put in place. The final GMP will not be established until early 2012.

Our pro forma analysis indicates some savings, however, those savings are at very low loss levels. Based on our assumptions, the County might not be better off financially under an OCIP even if losses are minimized. To further complicate matters, the final GMP has not been established by the County and the selected CMGC. Project Management understandably seeks to agree to this significant expenditure at a date much closer to the start of construction. If the project construction value shrinks, feasibility becomes less likely.

2. Potential for Less Than Optimal Carrier Participation

Low construction value is a less attractive risk to OCIP insurance carriers. Some may not quote, or if they do, their rates may be high due to lack of competition and lack of enthusiasm for the project because of its size. If only a few carriers participate in a competitive OCIP procurement, the County may not achieve the economies of scale necessary to make the OCIP financially viable. Reduced carrier competition may escalate OCIP costs. However, the current soft market may encourage some insurers that might have traditional minimum size requirements for an OCIP to pursue this opportunity regardless.

The project involves some risks OCIP underwriters may exclude, such as demolition. It is our understanding the CMGC is responsible for demolishing a portion of a condo housing complex on the east side of the project to make way for the new span. In addition, it is our understanding the CMGC is responsible for demolishing the “Shoofly” bridge once the new span is open to live traffic. OCIP underwriters may exclude
demolition activities or decline to quote the risk if demolition is included in the project. The combination of limited hard cost construction value and demolition activities may limit OCIP carrier participation.

3. Administrative Concern and No Prior Experience with OCIP

Even with the most efficient and experienced broker administering a consolidated insurance program, OCIPs place a demand on internal staff resources to properly oversee, administer, and monitor the program. The County has not previously been involved with an OCIP. County risk management personnel indicated they were not available to devote the necessary time and resources to manage the OCIP due to their existing job obligations. Further, additional burdens have been placed on the County’s risk management department from recent budget cuts resulting in elimination of two staff positions.

4. Protracted Timetable & Schedule Risk

The CMCG is scheduled to begin the “Shoofly Bridge” construction beginning November 2011 by way of an early work package. Unfortunately, the proper mechanisms are not yet in place for implementation of an OCIP. A broker must be selected to market the planned OCIP to carriers and administer the program. Coverage must be obtained, and contractors enrolled before the start of construction. If construction begins in November 2011, the County will be limited to arranging an OCIP when construction begins summer 2012 on the new span. Although in this scenario it would appear there is enough time to procure a broker and OCIP program by summer 2012, the potential for savings reduces with lower construction values as discussed in #5 below.

Setbacks to the construction schedule are possible with their own unique consequences. Project management indicated the current construction could be delayed if permits, right of way acquisitions, and FHWA approvals are not obtained by November 2011. OCIP insurers prefer to underwrite programs that have a finite construction schedule. Delays can be problematic when it comes to extension of policy periods and reinsurance. It may be easier for a contractor to obtain an extension under their existing CCIP program than it is for an owner to obtain an extension on a larger-scale consolidated program.

5. Limited Savings Potential

County personnel indicated achieving savings was another goal for the OCIP. The proposed construction program may have limited potential for owner savings under an OCIP. Given the assumptions made in our pro forma estimates, a loss level of approximately 60% of maximum premium (loss ratio) or higher produces no savings. Loss ratios of 30% or less generate some estimated savings. Thus, to show a positive economic outcome, our pro forma indicates that average, or even above average results may be inadequate from an economic perspective. The program may need to meet a fairly high standard to break even. It is possible that, with high losses, an OCIP may be more costly than a traditional program or a CCIP, although the total loss is limited by a device known as “stop loss insurance” as explained in the report.

Although the project appears to have a large payroll component to it which can elevate potential savings, this is partially offset by the fact the State Accident Insurance Fund (SAIF) along with Liberty Mutual Northwest dominate the Oregon workers’ compensation market and have kept rates among the lowest in the country. This can reduce the potential for savings as lower rates generate lower premiums thus reducing the spread between an owner’s and contractor’s cost for insurance.

6. Contractor Provided CCIP

It is our understanding if an OCIP is not selected, the CMGC may elect to utilize its ongoing CCIP program to meet the County’s general liability insurance requirement. It would appear the CMGC and its subcontractors
would report payroll to their individual workers' compensation carriers as the CMGC’s CCIP does not include workers’ compensation insurance.

CCIPs can offer many of the same benefits as an OCIP including uniform coverage, less litigation, high liability limits, and broad protection for all enrolled participants. It should be possible to include the County as a named insured on a CCIP, which would be our recommendation if a CCIP is used.

A CCIP can provide benefits to owners along with transferring the administrative burden of implementing and managing such programs to the CMGC. A CCIP may ultimately be a less costly for the County than establishing an OCIP as this administrative burden is shifted to the CMGC. However, the lack of inclusion of workers’ compensation in the CCIP in this case may increase the risk of costly cross-actions. For example, a workers’ compensation insurer for a subcontractor will likely attempt to subrogate against another contractor to recover amounts paid as workers’ compensation benefits. In an OCIP with workers’ compensation insurance included, this would not happen as the general liability and workers’ compensation insurers come from the same holding company.

**Recommendations**

Weighing the factors above, we conclude that a OCIP may not be an economically preferred risk financing option for this project. Although the OCIP may meet the County-stated goal of eliminating the insurance barrier for small and emerging businesses, the OCIP may not meet other County-stated goals such as achieving savings. OCIP administrative and oversight costs offset potential savings, even at relatively low loss ratios. The range of financial outcomes, given the limited data available, indicate a worst case scenario additional cost of over $700,000 for an OCIP compared to a CCIP. The best case scenario with the available data shows a potential savings of slightly less than $600,000, but this result is only obtainable with very low losses.

Further, we are uncertain if the County can acquire insurance at a lower price than an established CCIP program given the minimal size in construction value. These factors along with schedule risk and limited County resources for this undertaking make an OCIP less attractive for this project.

Despite these risk factors, an OCIP offers benefits that could outweigh the financial risk. If the County decides to use an OCIP despite the financial risks, it should aggressively pursue the following:

1. **Risk management support**

If the County chooses to move forward with an OCIP, we recommend outsourcing risk management support to assist with OCIP implementation and ongoing management. The County’s risk management department will need assistance to procure an insurance broker and prepare the underwriting specifications for the broker to present to the market once their contract is executed. In addition, the County may also need assistance with selecting an OCIP insurer to ensure comprehensive coverage is put in place and proper protocols are established before construction begins. Finally, the County will need ongoing assistance throughout the OCIP to properly manage the program. An estimated cost for such services has been included in the pro forma analysis in the chapter “Cost/Benefit Analysis.”

2. **Firm-up numbers before OCIP marketing**

Numbers such as projected construction hard costs, GMP, and sources of financing for the project should be determined before marketing coverage on the potential OCIP. Estimated construction value that dwindles as the project moves forward and cost related delays may prevent the County from capturing savings on the project. At worst, it may lead to an OCIP that is doomed to poorly perform.
Background

Project Scope

Multnomah County’s Sellwood Bridge Project is the most complex and expensive construction project undertaken by the County in recent history. The project’s preliminary estimated hard cost construction value submitted by the CMGC August 1, 2011 is $156,059,268. This excludes insurance, bonds, CMGC fee, and pre-construction costs. This figure is preliminary until additional submittals are made including the risk management plan and other GMP deliverables. The estimated start of construction is planned for November 1, 2011 with substantial completion anticipated by December 31, 2015. Although one joint venture partnership was selected as the single CMGC for the construction program, the project will be broken up into different bid packages:

• **Detour Bridge**: Known as the “Shoofly” detour bridge, the CMGC will realign the existing bridge northward beginning November 2011 after constructing temporary piers in the water along the west and east banks of the river. The existing bridge will then be moved via hydraulics 40 feet to the north, connect with the temporary piers, and serve as a temporary bridge while construction of the new bridge begins in July 2012. Approximate construction value is $20,000,000. This realignment is expected to be completed by June 2012 from which it will be open to live traffic.

• **Landslide Stabilization**: This package is set to begin February 2012 and will involve stabilizing the west hillside to support the new bridge alignment. Approximate construction value is $15,000,000.

• **Bridge Span, Approach, Interchange and Demolition of Shoofly Bridge**: This package involves construction of the new span, approach structures, Highway 43 interchange, and demolition of the “Shoofly” structure. Estimated hard cost construction value is $121,059,268. Construction is anticipated to begin July 1, 2012 and is expected to open to live traffic December 2015.

Project Construction Value

For the purposes of this report, two scenarios will be outlined:

• **Scenario One**: This first scenario assumes hard cost construction value of $156,059,268. It includes the two early work packages (detour bridge and landslide stabilization project) and the new span, approaches, and interchange. This figure was obtained from County project management personnel based on a submittal from the joint venture dated August 1, 2011. Scenario one is derived by taking the “Cost of the Work” plus “Risk/Contingency Items” outlined in this preliminary GMP submittal. This scenario assumes the
early work packages will be delayed until Spring/Summer 2012 should the County not receive permitting and other approvals by November 1, 2011.

- **Scenario Two:** This second scenario only includes the span, approaches, and interchange estimated to be $121,059,268. This scenario does not include the two early work packages consisting of approximately $35,000,000 of work ($156,059,268 - $35,000,000 = $121,059,268). According to County project management personnel, the two early work packages are estimated to be $20,000,000 and $15,000,000 ($35,000,000). This scenario assumes the two early work packages will start November 2011 and February 2012 respectively and the OCIP will be established for construction of the new span, approaches and new interchange only.

According to the County’s project management personnel, the commencement of construction is dependent on a variety of factors that could result in significant project delays. For instance, at the time of this feasibility study, the County was still acquiring rights of way, obtaining County approvals and permits, and waiting for FHWA approvals. If these approvals and acquisitions are not secured by November 1, 2011, construction will be delayed until at least June 2012. According to County project management, this is the next “window” to begin construction following environmental restrictions along the Willamette River during the height of the salmon season. Therefore, the project could be delayed 9 - 12 months if proper permits, approvals, and land acquisitions are not secured by November 1, 2011.

**Project Funding**

The Sellwood Bridge Project will be funded by multiple sources including local, state, and federal funds. Although the County has designated the following sources of funds for the construction program, at the present time, these funds are not enough to finance the entire construction program. According to County finance personnel, they are looking at securing additional State or Federal monies, pursuing cost savings through phasing, or refining project costs. Interviews with County finance officials indicated they are not concerned about securing additional capital for the project as the County currently has ample debt capacity. At the time of this report, however, the following sources of funds have been identified:

- $127 million - Multnomah County Bonds;
- $63 million - Multnomah County Vehicle Registration Fund;
- $72 million - City of Portland;
- $30 million - State Appropriation;
- $15.4 - Federal Appropriation; and
- $9.4 - HBP Reallocation.

The Multnomah County bonds are pledged by County revenue and backed by the full credit of the County. The County is prepared to issue the bonds once the GMP figures are finalized and all program costs are known. Although actual proceeds from the County’s newly adopted vehicle registration tax are unknown, the County estimates $63 million will be generated from new car registration fees over the next 7 fiscal years. The proceeds of $72 million from the City of Portland is backed by an intergovernmental agreement with the City and is based on the bridge’s project costs. The $30 million State appropriation is designated for the realignment of State Route 43. Both the Federal Appropriation and HBP Reallocation are the least secure funds, according to County finance personnel. If these funds are not secured, however, County finance personnel believe they can secure other sources of funds including a possible TIGER grant (a Federal grant...
program, “Transportation Investment Generating Economic Recovery”) or tap into additional County debt capacity.

Financial certainty is an important factor in the successful creation and implementation of an OCIP. Though financing for the Sellwood Bridge has yet to be secured in its entirety, the County is moving forward to obtain key funding and keeping the project on schedule. Since GMP will be finalized early 2012, the County can determine all funding sources including any shortfall long before a potential OCIP is bound.

**Project Site**

The existing Sellwood Bridge was built in 1925 to replace the Spokane Street Ferry connecting Sellwood with West Portland. The bridge is located south of Portland and crosses the over the Willamette River from west to east. The west side of the bridge connects State Route 43 while the east side connects State Route 99 East by way of SE Tacoma Street. The project involves relocating the existing bridge north, known as “Shoofly” approach in the construction trades. The existing bridge will be moved north once temporary piers are erected and the steel deck truss is slid over via hydraulics connecting it with the new temporary piers. New construction will then take place where the old bridge stood saving construction costs and expediting schedule.

The west side of the bridge is mostly open space with park and recreational facilities. In addition, a cemetery and funeral home is located near the new west side bridge alignment. The east side of the bridge is densely populated with condo complexes, single family dwellings, and multi-dwelling units. To a lesser extent than the west side, the east side has some areas of open space including a few areas of general employment. An aerial depiction of the project site is provided below.

**Exhibit 1 - Project Site**
Project Principals

The designer of record for the new span and connectors is lead by T.Y. Lin International and CH2M Hill. David Evan and Associates is the County’s project manager for the construction program. As part of a competitive process from a field of six, the joint venture of Slayden/Sundt was awarded the project under a CMGC (construction manager/general contractor) project delivery method. The chosen CMGC is a joint venture between Slayden Construction Group of Stayton, Oregon and Sundt Construction, Inc. from Tempe, Arizona. The CMGC partners are the architects of record for the “Shoofly” detour bridge.

Risk Financing Options

There are two principal ways of financing bodily injury and property damage risks on a project: “traditional” and “consolidated.” Consolidated programs include owner controlled (OCIP) and contractor controlled (CCIP). “Consolidation” means that a single party buys insurance coverage for multiple parties on the project or program. Not all coverage can be consolidated. Not all coverage types must be included in a consolidated program. Some consolidation is optional and independent of other coverage.

The principal types of construction risk coverage and ways in which they may be handled are illustrated below in Exhibit 2. Other variations also are possible.

Exhibit 2 - Coverage arrangements under different risk financing designs

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Traditional</th>
<th>OCIP</th>
<th>CCIP</th>
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<tbody>
<tr>
<td>General and XS Liability</td>
<td>Each contractor, sub, owner, CM, designer, buys own—renews annually</td>
<td>Owner buys for all parties for length of project plus extensions (e.g., completed operations)</td>
<td>General contractor (GC) buys for all parties. Owner is “additional insured” or may be named insured</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Each contractor, sub, owner, CM, designer, buys own—renews annually</td>
<td>Owner buys for all parties for length of project</td>
<td>General contractor buys for all tiers of contractors</td>
</tr>
<tr>
<td>Builder’s Risk</td>
<td>Owner or GC could buy</td>
<td>Usually owner, but GC may buy</td>
<td>GC, but owner could buy</td>
</tr>
<tr>
<td>Errors and Omissions</td>
<td>Design firms, but owner could buy project policy</td>
<td>Owner sometimes buys, but design firms still carry practice coverage</td>
<td>Owner, contractor or design firms could buy</td>
</tr>
<tr>
<td>Pollution Liability</td>
<td>Contractor to extent available. Owner may also buy</td>
<td>Owner may buy to protect its own interests</td>
<td>General contractor may buy</td>
</tr>
<tr>
<td>Surety Bonds</td>
<td>Contractor</td>
<td>Contractor</td>
<td>Contractor</td>
</tr>
<tr>
<td>Auto Liability</td>
<td>Contractor</td>
<td>Contractor</td>
<td>Contractor</td>
</tr>
<tr>
<td>Contractors’ Equipment</td>
<td>Contractor</td>
<td>Contractor</td>
<td>Contractor</td>
</tr>
<tr>
<td>Force Majeure (rare)</td>
<td>Contractor</td>
<td>Owner or contractor</td>
<td>General contractor</td>
</tr>
</tbody>
</table>

Only the first two coverage lines shown above are “wrapped” (bought on behalf of all participants by one party) for shared risks. Other coverage may also be necessary but is bought principally on behalf of the party who “owns” the risks. Additional characteristics of the different risk financing approaches are provided below.
Traditional
Traditionally, construction insurance is a patchwork program of coverage, indemnities, policies, brokers and insurers all covering varied pieces of a major project or program. Each contractor and subcontractor arranges insurance for its business “practice” at the beginning of the coverage period, after which multiple projects will likely be added as the contractor acquires new business. The coverage is tailored to the estimated current and future needs of the contractor's business during the forthcoming year (policy period) without factual knowledge of the particular needs of many of the projects it will eventually cover. As a result, many contractors attempt to purchase coverage to comply with the broadest possible range of requirements they may encounter, and insurers price accordingly. This is an inefficient way to arrange insurance for a specific project.

Additional project participants, including construction managers, project owners, design professionals and others, also arrange their own insurance programs that are aligned with the needs of their respective professions, which may not include construction risks. In many cases, these participants expect a contractor or subcontractors to pick up the construction risks and protect those parties to the project that are not in the construction business. This is accomplished through indemnity requirements in contracts and risk-shifting provisions. Often these requirements are over-broad, unrealistic, unattainable, or inappropriate. This is also an inefficient way to manage risk.

Parties may attempt to obtain financial protection with an insurance backup through a process of contractual agreements by one party to protect another with specific insurance. Protection comes from additional insured status for the protected or indemnified party on the protector or indemnitor’s liability insurance policies.

As indemnitees have become more sophisticated over recent years, the burden on the indemnitor and their insurers sometimes has increased to oppressive levels. Typically the risk is pushed down through the contractor ranks to the lowest-tier subcontractors. As a result, subcontractors and their insurers have developed their own countermeasures to reduce their risk. These countermeasures include legislation, litigation, and narrowing the scope of coverage provided to additional insureds through modification of insurance policy endorsements. The result of all this “positioning” is greater uncertainty of protection.

Consolidated
As a result of the inefficiency of the system described above and the increasing uncertainty of contractual risk transfer as a protection method, a system for consolidating coverage and insuring on a project basis, rather than on an individual practice basis, has gained acceptance and prominence in large projects or construction programs. Such programs are known variously as “consolidated programs,” “coordinated programs,” or “wrap-ups.” The industry uses abbreviations such as “OCIP” for Owner Controlled Insurance Program, “CCIP” for contractor controlled insurance program, or just “CIP” for consolidated (or “coordinated”) insurance programs.

A “sponsor,” which could be an owner, general contractor, or construction manager, puts the insurance program together and requires the remaining construction contractors and subcontractors to subscribe to the program. To make the program financially viable, the sponsor requires the participants to exempt the project from coverage under their regular insurance programs. This step produces a premium credit to the insured, the amount of which the subcontractor is supposed to remove from their contract cost or give back to the sponsor through a construction change order.

The only insurance coverage to which this consolidation technique technically applies are general liability (including excess liability) and workers’ compensation. These two lines may account for 75% or more of a project’s direct insurance cost.
OCIP

OCIP is a technique for consolidating the workers’ compensation insurance and general liability insurance coverage for most participants in a construction program. Throughout the construction program, contractors and subcontractors “roll in” (enroll into the program) and “roll out” (un-enroll after construction completion) of the program over a defined period. From an underwriting standpoint, an OCIP is a way to underwrite the projects themselves, rather than underwriting each of the individual construction companies participating in the program.

Consolidation increases the volume of insurance premium for a single insurer or insurance group and should generate discounts on that basis alone. The project now has a single insurer for the basic coverage, instead of possibly dozens, and one insurance broker instead of possibly hundreds. If losses are kept low additional savings can accrue to the OCIP sponsor (the project owner) through return of the portion of the premium allocated to pay losses. A variant of this concept is called a “contractor controlled insurance program” in which a contractor or construction manager acts as sponsor.

CCIP

Contractor Controlled Insurance Programs (CCIP) are similar to owner controlled programs. The principal difference is that the general contractor arranges the consolidated coverage instead of the owner. There are a number of subtle differences in the way the two types of programs interact with the parties.

- First is the matter of control. In a CCIP, the owner relinquishes control of the risk financing to the general contractor. In doing so, the owner gives up most control over claim settlements, including any community relation benefits.
- The other main difference pertains to savings. Most CCIP sponsors offer the owner a fixed price for the insurance component with little or no saving opportunities. Even if a sharing agreement applied, the owner would find it very difficult to verify savings in a CCIP for a variety of reasons, not the least of which is the problem with obtaining information.

Contractor controlled programs can work, despite the issues described above, when a single general contractor or joint venture is responsible for the work and if the contractor has such a program in place. In multiple prime contractor situations, a CCIP is no different from a traditional program from the owner’s perspective as multiple insurance programs are brought to the construction project.
Risk Profile for Multnomah County

Construction activity brings with it some significant risks of loss. For instance, losses can arise from bodily injury, property damage, business interruption, design, environmental liability, time element (such as delay and business interruption), and other economic losses. This section discusses the types of risk generally arising out of construction activities while identifying some specific risks for the Sellwood Bridge Project.

The construction activities planned for this construction program involve most of the usual hazards and risks inherent in construction. Among these are:

- Worker injuries due to falls, striking objects, electrocution, unsafe tool use, hazardous materials, equipment accidents and more
- Damage to the work, including equipment-caused damage, fires, explosions, floods, windstorm, earthquake
- Release of hazardous substances
- Working over navigable waterways
- Injuries to third parties not involved in the work including pedestrians and residents
- Damage to nearby property
- Interruption of nearby business, and/or interruption of the use and enjoyment of nearby residential property
- Noise violations as a result of construction activity
- Vehicular accidents
- Use of cranes and heavy equipment
- Excavation

Because part of the project site is close to street traffic, shopping, businesses, and residential neighborhoods - especially on the east side of the project - third parties, including bystanders and neighbors, are at greater risk of loss than would be the case on more remote or isolated project sites. Most construction activity will take place during the day when third parties conduct personal or business activities within or near the bridge location. Though a large portion of the work will take place over the water and away from third parties, the west and east side connectors are more developed. County project management indicated they
will fence off the job site as landscape allows to protect the public and preclude unwanted foot traffic and curious passersby.

**Bodily Injury**

Contractor employees and owner employees can be injured on the construction site by common construction perils including: falling materials, equipment accidents, collapse, falls from structures, trips and falls, explosions, fire, and many other injury sources. Injuries could also occur in owner offices or on the way to and from the job site.

The west and east side of project is bounded by occupants such as retail establishments, residences and both small and large businesses. Noise, vibration, and dust abatement controls will need to be in place at all times throughout the project to avoid lawsuits, interruption of surrounding business, and disruption of residences. Because these establishments will most likely be open for business during construction activities and visited by employees, clients, and patrons, there is potential for accidents involving the general public. The public will need to be isolated from the site, especially near the condos, multi-dwelling, and single family residences on the east side of the project.

Other bodily injury risks can occur from falling debris during construction of the new span. The bridge will be constructed over the Willamette River which is an active navigable water way for ships, barges, commercial traffic, and personal watercraft. Debris such as forms, rebar, tools, and other construction materials could fall into the water during the course of construction. The CMGC will need to exercise greater care to protect the public from falling debris during construction to avoid the risk of bodily injury to third parties.

Some of the construction sites may also constitute an “attractive nuisance” to minors, unless adequately secured. Under the doctrine of attractive nuisance, a property owner may be subject to liability for injuries occurring to minors on the property as a result of a potentially dangerous condition existing on the property and known to the property owner. Onlookers viewing the construction also constitute a potential for premises liability. Therefore, it will be important to ensure that the project site is secure and that access is denied to the public to the maximum extent possible.

Injury can also occur after project completion due to design error or faulty workmanship. An example of such injury occurred in the collapse of a skywalk at the Hyatt Regency Hotel in Kansas City resulting in more than 100 deaths and multiple injuries. Another is the terminal collapse at the Paris Airport. A more recent example is the collapse of roof panels in the Boston Central Artery tunnel that resulted in a fatality and a multi-million dollar loss. Such risks are why completed operations coverage is needed.

The Program’s principal risk of bodily injury claims would likely come from workers at the construction site, the general public around the project site, or from nearby vehicular traffic. The principal basis of claims against the County likely would be failure to protect the public from the worksite, failure to maintain a safe worksite, noise violation interrupting the quiet of nearby home and business-owners, and possible vehicle damage due to the transit of heavy construction vehicles in the area.

Workers’ compensation is the most appropriate method of compensating injured employees. Within the state of Oregon, workers’ compensation is the sole remedy for the injured worker. If a contractor carries worker’s compensation insurance or is a qualified self-insurer in the State, workers’ compensation benefits are the remedy for medical treatment and compensation for lost wages for job-related injuries.

General liability insurance covers injuries to third parties arising out of premises, operations, and completed operations issues. Losses involving transportation which do not occur on the construction site may be covered by other forms of coverage such as auto, watercraft, or aircraft insurance.
Property Damage

Losses to property of others can arise out of just about any type of accident imaginable including falling objects, collapse, explosion, fire, smoke, vehicle collision, pollution, flood, and many other causes. Dust is a common source of alleged property damage in a construction program, especially where demolition, excavation, or grading is involved.

Damage to owned property could be caused by the same perils applicable to third-party property and by carelessness of a contractor during construction. Property damage can also occur after project completion due to inadequate design or faulty workmanship. Damage to third-party property would be covered by liability insurance policies if negligence were involved.

Third-party claims for property damage from large projects can result from excavation and grading activities that damage existing underground utilities. Damages can arise from the use of construction equipment. Subsidence could also be a possible exposure caused by construction activity. Nearby businesses and residents may claim damage to their structures from noise and vibration.

Property damage can also occur to equipment, tools, materials, buildings, vehicles, structures, and land owned by the County. Collapse and subsidence are possibilities. Property subject to damage could belong to contractors, contractor employees, County employees, or others involved in the project as participants.

Some of the risk involves relocation of utilities such as electrical and cable for instance. Excavation could rupture buried pipelines or sewer lines, and utilities such as fiber optic cable. Heavy construction traffic could cause damage to the street surface, which could further damage vehicles traveling nearby. Other property damage risks involve falling debris onto the navigable waterways during construction of the new span.

Property belonging to the County and contractors can be covered under property insurance policies. County property under the course of construction would be covered under builder’s risk insurance. Contractors frequently insure their equipment and tools under property policies known as “Contractor’s Equipment Floaters.”

Business Interruption Liability

 Interruption of business and residents located near the construction site may be one of the biggest exposures in terms of potential cost. Many perils could cause business closures or interruptions to basic residential utilities such as power, lighting, or other utilities. Business losses could result in loss of revenues caused by noise, dust, pollution, traffic blockage and just about any type of accident imaginable. Residential losses could result in food spoilage due to long term interruption of power or other claims for economic loss caused by a construction accident.

There is a potential for business interruption resulting from construction activities and construction traffic. The project could curtail access to residences or retail establishments and could potentially hinder their service providers. Utility relocation or installation could result in such events as power outages, floods, and release of harmful substances. Rupture of natural gas lines could be particularly hazardous and could result in shutdowns for nearby businesses and mandatory residential evacuations.

The Tri-Metropolitan Transit Authority in Oregon sustained numerous business interruption claims when it ruptured a water main in downtown Portland shutting down many retail businesses in the central city. The Alameda Corridor project in Southern California severed a number of fiber-optic cables during excavation and utility relocation, cutting off important communications systems such as a major ATM network and communications to Los Angeles International Airport.
The types of construction activities required of the Sellwood Bridge could result in any of the business interruption losses described above. Some of the activities could also cause traffic disruptions affecting businesses or restricting access to a business by customers, suppliers or delivery persons. Although it is unlikely given the site’s physical location, any residents restricted from accessing their living quarters due a construction accident could submit economic damage claims.

Claims for interruption of businesses from third parties may be covered by general liability insurance, although there must be some form of property damage, including loss of use, or bodily injury to trigger coverage.

**Design Liability**

Structural design involves a fairly large number of people making decisions on a multitude of factors to coordinate a project involving thousands of parts. A few of the types of loss that can arise from design include:

- Unsuitability of materials or components chosen for the design
- Structural failure of components when subject to real world usage resulting in substantial repairs
- Unexpected contamination such as mold growth resulting from the material selected
- Noncompliance with regulations or ordinances
- Owner dissatisfaction with results
- Unusable design in real world settings
- Quality of component unacceptably low
- Incompatibility or inability to interface with existing structures, systems or components
- Untested or unfamiliar concepts that require special training or modification to work

Design liability is somewhat of a quandary for a project owner, especially in the public sector. Insurance for this exposure is relatively scarce and expensive. Many, if not most, design professionals have inadequate limits to cover a significant loss. Furthermore, establishing that a loss is due to a design error rather than a construction error or failure of materials can prove difficult. All of this is complicated by the fact that the owner is the most likely claimant against a design professional other than the prime construction contractor.

As a result of the complexity in this area, an owner generally bears a significant risk of design error, regardless of imposed insurance requirements or indemnity/hold harmless agreements. The vast majority of design-related claims are attributed to allegations of cost overruns and time delays. Contractually assumed liability for professional errors and omissions is virtually uninsurable by the designer.

The County selected the CMGC method of project delivery to encourage partnership between construction and design during the pre-construction phases. According to project management staff, the CMGC is the designer of record for the “Shoofly” bridge, while TY Lin International, Inc. and CH2M Hill are the architects of record for the new span, connectors, and new approach. The design and engineering that is required to relocate the existing bridge involves substantially more risks than design and engineering required of a new span. Fortunately the selected CMGC has designed, engineered, and successfully constructed a “Shoofly” approach in a previous bridge construction project. Although experience with this specialized technique reduces the risk of design liability, the risk still exists until the temporary structure is demolished and the new span is open to live traffic.
Environmental Remediation

Construction often requires some level of environmental remediation or containment before construction starts. Environmental conditions may be discovered during excavation activities or created through spillage of toxic substances during construction operations. In either case, contaminants causing the pollution condition(s) need to properly identified, removed, and disposed of by a qualified environmental remediation contractor.

Any excavation activities in an urban or suburban environment can uncover hazardous materials or substances. Pollutants can range from fluids in buried pipes accidentally ruptured to discovery of unauthorized disposal sites. Contaminants may be drawn onto premises by construction activities such as excavation below the water table. Sometimes pollutants will have migrated to other property or into water tables or bodies of water. Cleanup costs can be great. In addition, remodeling or demolition of existing facilities can release contaminants such as asbestos, lead, or PCBs. Even if all contaminants are contained, disposal can be expensive and may not always be factored into construction cost estimates.

Outside of contaminant concerns, other environmental sensitivities may arise on project sites. The existence of protected wildlife and/or plant life in construction areas may impact the progression of the construction schedule or halt activity altogether. For example, because salmon are protected by environmental regulations throughout specific windows during the year, “in the water” construction can only take place during specific times of the year. The County and the CMGC will have to observe certain mitigation measures during construction to avoid any adverse affects on the salmon including any other protected species.

Other environmental risks on this project involve lead and asbestos abatement activities. The current bridge will be relocated 40 feet north to accommodate construction of the new span. This bridge relocation will also serve as a pathway to cross the Willamette River until the new span is completed. Once the new span is completed, the old bridge will be demolished. Moving the old bridge and eventually demolishing it will involve some asbestos abatement and lead removal. Although it would appear these activities will result in minimal risk to the general public, it might produce contamination in or around the Willamette River. Clean up costs could be substantial if proper safeguards are not taken during these abatement activities.

Time Element (Delay) and other Economic Loss

Construction delays have economic consequence. Additional financing expense, additional interest charges, and loss of operational revenues are the most obvious. Inexcusable delays also present risk to the contractor as liquidated damage penalties. Loss of use delays and loss of revenues can occur after project completion if a design defect or workmanship problem causes interruption of an expected revenue stream.

Inefficacy, or failure of the project to produce the desired results, is another serious exposure to an owner. Possibly arising out of design error or construction defect or just poor conceptualization, this can cause significant economic disruption due to unanticipated expense or to loss of business. One example is the baggage handling system at the Denver airport. Inefficacy of the system resulted in a delay of more than a year in opening the airport. Millions of dollars of revenue were lost and financing costs were great. When such losses occur, the completed project may need to be demolished and rebuilt.

This construction project does not present a significant exposure to inefficacy losses. If the project is not started or not completed in the intended time, the County will not lose revenue. However, sources of funding may change which may challenge the County to secure alternative sources of financing. More important, however, is County officials and residents alike are anxious to see the bridge completed. The project does not involve revenue-generating activities for the County and thus there is minimal exposure to inefficacy loss.
Political consequences can include loss of public confidence in and support for a project delay resulting from regulatory or legislative scrutiny, litigation including suits based on environmental impact, and many other causes. For a variety of reasons, these types of risk may be among the most threatening. Political risks of significant magnitude can halt a project indefinitely or render it unfeasible.

The County has developed a community-friendly website detailing all aspects of the project which allows citizens to view the program’s progress. Interested citizens were recently given an opportunity to attend a virtual “open house” and allowed the opportunity to ask questions and make comments about their concerns. Therefore, there is some risk of political fallout to the County and the County Council overseeing the project if it is not completed according to schedule.

The risks identified in this chapter do not constitute a comprehensive list of everything that could produce loss on this project. Sometimes losses come from unexpected sources and no risk inventory can be complete and all-encompassing. Some of the perils identified here are typical of any commercial construction project, while others are unique to the area and to Sellwood Project in particular. The attempt here is to provide a broad overview of the types of risks that might be encountered to assist the County in developing a basic strategy for addressing the broad risk areas.
Risk Treatment

In this section we will identify methods of treatment for the risks identified in the previous chapter. Risk treatment consists of two major categories of method: risk control and risk financing. Although we will discuss some risk control methods in various parts of this report, our focus is on risk financing in general and on possibilities for consolidation of certain insurance coverage contained in an OCIP in particular.

**General Liability Insurance**

General liability (GL) insurance covers losses arising from claims by third parties. For the most part, GL policies cover claims against the insured for negligence resulting in:

- Bodily injury to others (not including the insured’s employees who are covered by workers’ compensation insurance),
- Damage to property of others including loss of use of the property even if not physically damaged,
- Personal injury, meaning injury to the “persona” such as libel, slander, false imprisonment, etc., and
- Advertising injury including copyright infringement and misappropriation of advertising ideas.

Business interruption of another’s business resulting from property damage caused by the insured may also be covered, although purely economic damages such as loss of income or loss of clientele with no bodily injury or property damage, may not be covered depending on cause and circumstances of the claim.

Primary general liability policies usually are written for amounts of $1 million, and occasionally for $2 million per occurrence. The total policy limit may be a multiple of the per-occurrence limit or the same as the per-occurrence limit. If the insured requires higher levels of protection, it usually must arrange for “excess” or “umbrella” liability insurance to set above the primary insurance and add limits. General liability insurance plays a major role in construction risk management. Construction can result in a wide variety of damage or injury claims as described in the previous chapter.

Consolidating general liability insurance in a large project makes sense as every construction participant in a project shares a similar exposure and their interests are usually intertwined (i.e., successful completion of the work). General liability insurance (and excess liability insurance) is the most frequently consolidated form of insurance in construction projects.

Consolidation may be arranged by the project owner or developer, in which case it is referred to as Owner Controlled insurance or “wrap-up.” A general contractor or construction manager could also consolidate the
coverage. This is often called a “Contractor Controlled Insurance Program” or CCIP, which also may be referred to as a “wrap-up.”

The motives for wrapping-up general liability insurance on a project are different from those for consolidating other coverage. In the “traditional” approach, where each party arranges its own insurance, a general contractor depends upon its subcontractors to provide liability insurance for both the subcontractor and the general contractor when the loss arises out of work done by the subcontractor. This protection is provided by making the general contractor an additional insured on the subcontractor’s general liability policy and by the subcontractor’s contractual assumption of responsibility for the loss.

Under a wrapped-up liability program, a single policy covers all construction entities and replaces the individual insurance policies for each firm. There are several advantages to this approach:

* A single general liability policy covering all participants provides greater certainty of protection. Insurers have made collecting under a general liability policy somewhat difficult for additional insureds. Changes in forms (additional insured endorsements and policies) and changes in statutes limit the scope of protection to the additional insured.

* Many smaller subcontractors cannot obtain or cannot afford adequate coverage. Therefore even if the correct forms could be obtained, the lack of adequate limits, or sometimes the lack of any coverage at all, leaves the general contractor and owner exposed.

* A single program reduces cross suits and litigation expense. Where there is one insurer, a single claim adjuster, and in some instances a single defense attorney, the likelihood of discord between the parties and the costs to each of them may be significantly reduced. This approach can also help preserve good working relationships by eliminating the adversarial interests which often divide parties with divergent goals and dueling insurers.

* Consolidated general liability insurance aids project delivery. The streamlining of the coverage and claim process reduces “friction” and paperwork. The single point of control for claims minimizes the disruption that occurs after a loss: investigations, statements, depositions, etc., because only one insurer needs to be involved.

* A consolidated liability program usually provides a higher level of protection against catastrophic loss. When structured properly a consolidated general liability program includes higher limits than are otherwise available through the separate “practice” policies of the contractors.

* A project-specific general liability policy provides protection against completed operations claims. Project policies for general and excess liability are usually written with completed operations reporting which extends to the applicable statute of limitation within the state. Without this type of protection, a general contractor, developer, or owner would have to rely on its contractors maintaining coverage for this entire period. In Oregon, the statute of repose is now six years.

A concern of some contractors and subcontractors is a potential gap in coverage if the “wrap-up” is not structured properly. A special issue is the “completed operations” exposure, which arises when losses result after completion of the work but due to some error or construction defect by the contractor. The fear held by contractors is that the wrap-up coverage will not be available when the claim arises. This is especially problematic, as the contractor’s own insurance program will exclude any claims arising out of work done under a wrap-up. This issue must be addressed properly in an OCIP, as discussed later in this report.
**Workers’ Compensation Insurance**

This coverage provides automatic (“no-fault”) insurance for medical expenses and loss of wages (indemnity) for injured employees of a contractor. In Oregon coverage is mandated and benefits are statutory.

Workers’ compensation insurance can be wrapped-up through the purchase of a master program that includes the issuance of policies to each contractor and subcontractor working on the project. Coverage applies only to injuries occurring at the site when structured as a “wrap-up.” The contractor’s regular insurance program covers offsite injuries.

The motivators for consolidating workers’ compensation insurance are different from those for consolidating general liability insurance. The principle reason for consolidating workers’ compensation is monetary. Traditionally most of the insurance premium for a project is spent on workers’ compensation coverage. In recent years, however, the ratio has changed in some locales, with a larger percentage of premium going to pay for general liability coverage than in the past. Even so, workers’ compensation is often the biggest cost.

Because worker injuries are susceptible to control measures through safety programs, use of protective equipment, etc., there is an opportunity to curtail losses. Insurers are willing to share the loss component of premiums when the insured strives to reduce losses. Thus, if a program “sponsor” consolidates workers’ compensation coverage on a project and keeps losses to a minimum, savings can result. There is also some economy of scale benefits derived from consolidating this coverage. Workers’ compensation savings can offset some of the other costs of a wrap-up, such as administration and higher limits of excess liability. It can also contribute to net savings of the program overall.

There is another major reason for including workers’ compensation in a consolidated insurance program. So-called “third-party-over” claims are a frequent occurrence on construction sites with multiple contractors and subcontractors. In these actions, an employee of one entity, often a subcontractor, who is injured on the site, sues the general contractor or another subcontractor for negligence contributing to his or her injury. Workers are motivated to pursue such suits since they are prohibited from suing their own employers as a result of the “exclusive remedy” provision of workers’ compensation laws.

Because, under the traditional approach, subcontractors are required to indemnify and defend the general contractor for whom they work and are also required to add the general contractor as an additional insured on their liability policies, the general contractor will tender the employee’s claim back to the employee’s employer or to the general liability insurer for the subcontractor. If the claim or suit is against another subcontractor with whom no such indemnification arrangement exists, the other subcontractor will need to defend the claim. Even if the employee does not press a claim against another contractor or subcontractor, the workers’ compensation insurer for the injured employee may subrogate (bring suit for recovery) against the other contractor or subcontractor.

Significant litigation and cross-action can result from this third-party-over situation. Consolidating the workers’ compensation program and insuring the risk with the same insurer or insurance group selected for the general liability coverage eliminates these cross-actions and claims. The insurer will not subrogate against itself and all contractors have the same general liability coverage. The effect on the project, often under-appreciated or misunderstood, is enhanced project delivery. There is less distraction, friction, and delay when the peripheral activity that is part of claim investigation and a lawsuit is kept to a minimum. There is also less net cost as there are far fewer investigators, adjusters and lawyers to support.

Consolidation of workers’ compensation coverage in a wrap-up is often less acceptable to subcontractors than consolidation of general liability. One main reason is the paperwork and reporting required. Each participating contractor must receive a separate policy and must monthly report payroll to a different workers’
compensation insurance company than its own. In addition, the contractor must coordinate and communicate with its own workers’ compensation insurer to make sure it is not charged for the portion of its payroll attributable to the “wrap-up.”

We see some benefit of consolidating workers’ compensation coverage under an OCIP for the Sellwood Bridge project. A single coordinated program could yield medical cost savings if fees are negotiated up front with local medical providers and facilities. Worker’s compensation rates are expected to increase over the next several years, therefore, locking in rates for a four-year period may benefit the County.

Despite these benefits, we also recognize the cost of administering this piece could be significant. The enrolled contractor and subcontractors of all tiers must report their payroll to the OCIP administrator on a monthly basis. This can be a costly task for an administrator to coordinate and monitor. Furthermore, the administrator will have to issue potentially dozens of individual workers’ compensation policies throughout the course of the OCIP. Above these costs, the cost of conducting claims management and oversight activities could reduce potential savings.

**Property Insurance**

Insurance for property under construction is often called “builder’s risk” or “course of construction” insurance. The owner, developer or general contractor can obtain this coverage. It is not truly “consolidated” insurance, however, in that each party in the program does not need to buy separate coverage for its portion. A single party with an insurable interest is the only buyer of this insurance.

Generally we recommend that a project owner arrange this coverage. There are four reasons for this approach:

- Contractors add a “markup” to any part of the project they arrange. There is no reason for an owner to pay this markup unless they do not have the resources to arrange the coverage directly.

- Contractors and their insurance brokers may have less incentive or experience in obtaining the most competitive pricing than would the owner or the owner’s specialty insurance broker.

- Coverage, terms, and conditions vary significantly under builder’s risk policies. By controlling the buying decision, the owner can ensure they have negotiated the broadest policy form with the desired coverage, limits, and conditions.

- If the owner controls the builder’s risk insurance, there should be less chance of a gap in coverage as the property transitions from course of construction insurance to permanent insurance.

Conversely, many large general contractors carry rolling builders risk programs that have high limits per project and competitive rates. An advantage to an owner passing this coverage requirement onto the large general contractor is the owner also may be able to recoup costs that are not covered under insurance policies, such as deductibles, excluded risks, or other conditions. However, if the general contractor’s builder’s risk program is chosen to insure the project, the owner or its professional insurance representative should thoroughly review the actual policy form to ensure it meets with owner’s approval.

The County could arrange builder’s risk coverage for this project. Otherwise, the County is reliant on its contractor to buy the required coverage or finance the loss directly. Builder’s risk coverage and forms vary considerably in the insurance industry leaving the owner with varying degrees of coverage. Moreover, if coverage is arranged by the contractor rather than the owner, the owner does not have control when the contractor elects to drop the coverage or endorses the project off its corporate builder’s risk policy. On the
other hand, the selected CMGC may be more experienced purchasing builder’s risk than the County and may secure a more competitive rate than what the owner could secure.

**Environmental Liability Insurance**

There are three primary types of environmental liability insurance useful for construction projects. First, “Contractor’s Pollution Liability” (CPL) insurance covers incidents that result from construction activity, such as spills of contaminants, dewatering that draws pollutants into the site, or rupture of underground pipelines. CPL is not intended to address the risks of cleanup costs resulting from the discovery of existing contamination.

“Pollution Legal Liability” (PLL) insurance, the second type of environmental liability insurance used in conjunction with construction projects, covers existing contamination and is normally in place prior to construction.

A third type of pollution liability insurance, sometimes referred to as “cost cap,” is normally arranged as part of a sale agreement when a site is known to contain contaminants but the cleanup expense is uncertain. Such coverage “caps” the cleanup cost at an agreed limit and then covers the remaining expense up to the amount of limits bought.

There are two ways to cover the risk of construction-caused pollution. Either the prime or environmental remediation contractor should be required to provide evidence of this coverage or the County could consider buying “excess” CPL insurance to cover large losses that might not be insured by the contractor performing the work.

Information we received through interviews with project management staff and review of the final environmental impact report indicates there are some pollution-related hazards during various phases of this project. In particular, asbestos abatement and lead removal activities may cause pollution-related losses. Still, contractors may bring toxic substances on to the site during construction causing pollution-related losses, especially near or within the Willamette River. Given this information we believe the potential for pollution-related loss is enough for the County to require the CMGC to carry the coverage, or for the County to purchase a master policy on behalf of the construction project. Such a master policy might be designed to be “excess” over any insurance available from a contractor or subcontractor. Excess liability insurance usually has a lower rate than primary liability insurance.

**Professional Liability Insurance**

A professional liability exposure exists for those professional services that require a special license and are held to a higher professional standard than those without such designation. Under the law, architect and engineering (A&E) firms operate under a standard of care such that the services they render require an ordinary degree of skill and care that would be used by a competent professional in the same or similar discipline under similar circumstances. Engineers with a Professional Engineer (PE) designation and architects with an American Institute of Architects (AIA) designation are examples of professionals held to such higher standard.

Professional liability exposures can arise from design and engineering services rendered. Professional liability risks apply to each A&E firm hired by the County. Any hired construction management firm may also face professional liability exposures in the rendering of their professional services (depending on their contracted scope of work). Finally, any design-build contract will usually have an element of “at risk” design services including “stamping off” responsibilities.
The risks belong principally to the professional service providers involved in the project, at least from the liability perspective. Owners may face vicarious liability exposures from the rendering of A&E services. These risks are mostly economic (e.g., the design does not do what was intended) but third party risks can also affect these parties. In other words, a design could fail resulting in bodily injury or damage to property of others. Fortunately such occurrences are relatively rare. Most A&E professional liability claims are made by the project owner or the prime contractor.

The traditional model is for each professional service provider to furnish their own insurance. Another method is to arrange “project-specific” coverage, a strategy that has been in use for several decades. A more recent approach is the purchase of “excess professional liability” coverage. This strategy combines elements of both of the other approaches. It uses the practice policies of the individual consultants in conjunction with additional protection arranged to provide higher limits for the owner. The three types of coverage are discussed below.

**Practice Coverage**

Practice coverage is professional liability insurance arranged by professional service provider to cover the risks of loss arising from that firm's professional errors and omissions. The principal use of this coverage is to provide insurance for the cost of defense against the allegations of negligence. The most probable claimants are clients, especially project owners. Third-party claims, from a member of the public injured as a result of faulty design for example, are rare.

There are two very common problems with practice coverage. With relatively few exceptions, either the firm:

- Doesn’t buy the coverage, or
- Doesn’t buy enough coverage.

A survey from the American Council of Engineering Companies reflects this situation. Even among the largest firms in the survey, only about a fourth of the respondents purchased professional liability insurance limits above $5 million. Among all firms, 89% purchased limits of $3 million or less. Among the smallest firms only 6% carried more than $1 million limits and 18% carried no insurance at all. Our experience tells us this latter number is probably low. The firms responding to this survey presumably are among the more sophisticated and professional of the design community and therefore more likely to arrange appropriate insurance protection.

The matter of whom the coverage benefits should be considered along with the problem of adequacy of limits. In many cases professional liability insurance is of little use to a project owner. The low policy limits are often depleted by claims on other projects and may be exhausted by defense expenses for the professional, defending against the owner's claim. In addition, professional liability policies do not provide additional insured protection for other parties including project owners, with some exceptions for sub-consultants. Therefore, an owner is forced to spend its own resources to defend a vicarious liability claim. There may be little or no possibility for use of the policy funds for defense of the owner or payment of a judgment or settlement.

**Project-Specific Coverage**

Because of the limitations of practice coverage, many owners sought a way to ensure that adequate protection would be available for their projects. The industry’s initial response was to offer project-specific

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1 2005 Professional Liability Survey, American Council of Engineering Companies Risk Management Committee For Fiscal Year 2004
coverage. Usually this coverage applies only to the specific project insured and is paid for by the owner. Limits may be considerably higher than the professional practice policies of the project participants.

While the project-specific approach may help solve the limits problem, it creates several other issues. The project specific policy:

- Usually is very expensive, and
- May be exhausted defending the professional against the owner.

Another problem with the project-specific strategy is that the individual practice policies will exclude any claims arising out of the project that is insured under the specific policy. This can create problems in several ways including situations involving claims by one professional against another (excluded under the project-specific policy) and in so-called "long tail" claims arising years after the project is completed and the project-specific insurance expired. A discussion of this issue and some of the other issues presented by the various approaches to insuring the professional liability risk is found at this location (linked here because of copyright): [http://www.irmi.com/Expert/Articles/2005/Collings10.aspx](http://www.irmi.com/Expert/Articles/2005/Collings10.aspx).

**Excess Professional Liability Coverage**

A third approach to professional liability coverage for projects combines some of the features of the first two strategies and addresses some of the specific problems with each. A generic name for this coverage is “excess professional liability coverage” but it is probably more commonly known by a trade name, “owner protective professional indemnity” (OPPI).

The primary concept of this coverage is that it is written solely for the owner's protection. It does not cover consulting professionals and cannot be exhausted defending them against the owner or any other party. It provides both “first party” (claims made by the insured, in this case the owner) and “third party” (claims by others against the insured) protection to the owner. It sits over the individual practice policies of the consultants and design professionals and applies only after their insurance has been used. Limits up to $50 million can be arranged and in some instances, it is possible to arrange even higher limits through excess policies with other insurers. The premium cost for OPPI is a fraction of what professional liability policies cost.

Professional liability exposures are rarely insured under a typical OCIP program for several reasons. First, commercial general liability policies exclude losses arising from professional services. Professional liability exposures need to be specially underwritten, have a completely different policy form including different coverage triggers (claims-made policy form), and have a different exposure basis than CGL policies. Second, the professional fees attributed to the project rarely make enough economic sense (through credits to the owner) to “wrap-up” all the design professionals into a single professional liability OCIP. For instance, a project-specific professional liability policy was procured to insure the 100+ architects and engineers for the East Span of the new San Francisco/Oakland Bay Bridge, but this project was an exception to the rule. On the Bay Bridge, professional fees were several hundred million dollars, thus making economic sense to consolidate all professional liability exposures into one policy. Owners, however, usually rely on the professional's practice policy to insure claims arising out of professional services.

County contracts with any design professionals, architects, and engineers should include requirements for reasonable levels of professional liability insurance and certificates of insurance evidencing professional liability coverage should be obtained from each A&E firm under contract. However, if the County desires a separate level of protection for County claims that cannot be accessed by design professionals, it should consider OPPI.
OCIP Feasibility

There are many items to consider when evaluating the feasibility of a OCIP for a construction program. Each construction program must be evaluated on its own merits and specific circumstances. This section of the feasibility study will first review project-specific considerations such as the size of the program, the project location, the project time period and type of construction. The section will then review owner-specific considerations such as the owner objectives, staffing requirements, and adequacy of protection.

**Project-Specific Considerations**

**Program Size**

Oregon Revised Statutes (ORS) Section 737.602 authorizes the use of a consolidated insurance program as long as the aggregate construction value is in excess of $90 million, is completed within a defined time period, and its average construction value is $18 million per year. The statute also stipulates the consolidated construction program cannot consist of a series of unrelated construction projects “artificially aggregated to satisfy the $90 million requirement.” The statute outlines specific items requiring State approval and other criteria required to demonstrate consolidation is feasible. Please refer to Appendix Section C for a complete summary of this statute.

The estimated construction value for both Scenario One and Scenario Two fall within the acceptable range of the State’s enabling legislation. Still, many construction insurance authorities set the threshold for OCIP viability at $100 - $125 million, although the expected payroll component is a major factor in feasibility of an OCIP as payroll is the determinant for workers’ compensation premiums. With construction costs estimated at $156 and $121 million respectively, the Sellwood Bridge construction program meets legislative standards under ORS 737.602. The project may not, however, develop economies of scale ideal for consolidation when factoring in costs for OCIP administration and outsourced program management and oversight.

If an OCIP program is pursued by the County, the estimated hard cost construction value to be presented to insurance companies may not be adequate to produce rates which will result in savings over what contractors would have paid for their own insurance program either under a traditional insurance program and especially a CCIP. To further complicate matters, if the final negotiated GMP figures fall below current estimates, the actual hard cost construction value and resulting payroll may make implementation of an OCIP infeasible. Fortunately, the County will finalize the GMP prior to negotiating an insurance program. After final GMP negotiation, the County will be in a better position to determine if hard cost construction value will generate the economies of scale to realize savings over what contractors would have paid under a CCIP or traditional program.
Project Type & Location

Apart from program size, there are other project-type variables that need to be considered under any potential OCIP. The type of work involved in this program is quite varied, from erecting temporary piers, moving the existing structure north, constructing a new span, constructing the east and west approaches, and constructing the new Route 43 interchange. A substantial part of the work will be done at heights and over navigable water ways. Fortunately most of the work will be performed without exposure to live traffic as the existing bridge will be realigned to support traffic while new construction of the bridge takes place.

Exhibit 3 - Project Location

It is important to also consider the project location when determining OCIP feasibility. The west side of the bridge consists of park and recreational facilities. It is less populated although a cemetery and funeral home occupy a portion of the proposed new alignment. The east side of the bridge, however, is densely populated with condo units, single family dwellings, and multi-dwelling residences. In addition, commercial businesses and busy streets surround the east side of the project. The project site cannot be completely isolated from the public although project management did indicate they would attempt to fence off construction in areas where it was feasible to do so. In addition, project management indicated a site alarm will be installed and the CMGC will staff a full time nightwatchman.

According to the “Wrap-Up Guide,” OCIPs are generally more feasible when a limited number of project sites are involved. The greater the number of project sites, the more coordination and administration required. With a limited number of locations, the owner has a greater ability to control the work place to administer a
strong risk control program and manage claims. Given that the project site involves basically two locations (west and east side) the owner, broker, and insurer are likely to find administration of a consolidated insurance program much less demanding and considerably more manageable than, for example, a rolling OCIP with several project locations. Therefore the project type and location of the Sellwood Bridge bode well for implementation of an OCIP.

**Period**

Under Scenario One, the first early work package will begin November 1, 2011. The second early work package would begin February 2012 while construction on the new span and supporting structures would begin June/July 2012. The estimated completion date for the entire project is December 2015. Under Scenario One, the total length of construction would be roughly 4 years (November 1, 2011 - December 31, 2015) while under Scenario Two, the total length of construction would be roughly 3 1/2 years (June 2012 - December 2015). Therefore, the actual program presented to OCIP insurance companies will range between 3 1/2 - 4 years. This construction schedule is within the maximum five-year policy period preferred by insurers. Insurance companies usually do not commit to an insurance program greater than five years, a requirement which is more often driven by their reinsurance treaties. Thus, an OCIP for the Sellwood Bridge Project would comfortably fit into a standard underwriting policy period profile.

**Construction Type**

Construction on the Sellwood Bridge will occur in several phases and entail several different project scopes. The first early work package involves construction of the “Shoofly” detour bridge. This package involves constructing temporary piers 40 feet north in preparation to move the existing span on hydraulics connecting it with the temporary piers. The second early work package involves stabilizing the land on the west side of the river. These packages will be complete in time for the new span construction which includes two new approaches and Route 43 interchange. Finally, once the new bridge is open to live traffic, demolition of the temporary structure will take place. It is our understanding a portion of the CMGC’s scope of work during the construction phase is to remove several sections of a condo complex on the east side of the project to accommodate alignment of the new bridge.

Consolidating all aspects of the Sellwood Bridge Project into a single insurance program may be difficult for an OCIP underwriter for two reasons. First, the work involves demolition of sections of a condo complex including repairing and rebuilding the exposed walls. OCIP underwriters usually do not favor underwriting demolition of structures, especially if demolition involves a residential exposure. Second, the project involves demolition of the temporary bridge. OCIP underwriters usually exclude demolition activities unless the exposure is minimal. It might be difficult to convince an OCIP underwriter these demolition activities are without substantial risk. It is usually more advantageous for an OCIP sponsor to arrange coverage for the entire construction project rather than carve out sections to insure and carve out sections to exclude. Covering parts of the project under the “traditional” approach and other parts under a consolidated approach is cumbersome at best.

**Owner-Specific Considerations**

**Owner Objectives**

An OCIP program should clearly compliment the project sponsor’s stated objectives. County personnel outlined several objectives for a potential OCIP during interviews conducted for this feasibility study. The following section will discuss stated County objectives while assessing whether an OCIP is likely to meet those objectives. In addition, other possible owner objectives are outlined in the section. Finally, this section will discuss necessary staffing requirements if an OCIP is recommended, the adequacy of protection for the owner, and the County’s OCIP commitment and experience.
County and project management staff cited the following objectives for a potential OCIP program:

- **To Facilitate the Use of Disadvantaged Businesses:** Interviews with project management staff revealed fairly ambitious participation goals for this project. MWESB (minority, women, emerging, and small business) participation goals have been set for 20% while separate DBE goals are currently being established to comply with federal funding standards. In addition, County project management is establishing separate on the job training/apprenticeship goals for the project. To facilitate meeting these goals, contracts will be broken into “economically feasible” work packages to encourage greater participation. This approach, along with a properly structured OCIP and carefully crafted insurance contract language, could assist the County in reaching these participation goals.

Most often under a traditional approach, the owner’s insurance requirements to its prime contractor are passed down to the prime’s subcontractors. This practice can eliminate many qualified subcontractors from obtaining work because onerous insurance requirements embedded in the prime contract are passed down to subcontract agreements. In particular, small business contractors and disadvantaged business contractors have the greatest difficulty obtaining insurance, especially specialized endorsements and high excess liability limits. Under an OCIP program, the insurance barrier is eliminated as insurance is bought for the prime and its subcontractors of all tiers. Under a OCIP program, basic so-called “off-site” insurance requirements are outlined in the contract specifications. These requirements are usually not difficult for small and disadvantaged businesses to comply. Therefore, we believe the objective of facilitating the use of small businesses and disadvantaged businesses may be helped by implementing an OCIP.

- **Provide Savings to the County:** The majority of owners’ motivation to establish an OCIP program is to save money. Unfortunately not all OCIPs save the owner money for a variety of reasons. In the case of Multnomah County’s Sellwood Bridge Project, projected savings are minimal due to the relatively low construction value, the costs to administer and manage the program, and generally lower workers’ compensation rates in the State of Oregon. The objective of saving money may be realized, but only at very low loss levels which would require a combination of favorable outcomes. The County will require the contractor to have a pre-employment, post accident and “for cause” drug testing program along with a requirement the CMGC staff a full time safety professional. Although these elements are likely to enhance the project’s safety performance, they do not guarantee savings. Please refer to the next section, “Cost/Benefit Analysis,” for specific information pertaining to potential savings under an OCIP.

More general OCIP sponsor objectives include:

- **To Reduce Insurance Costs:** As mentioned in the Background section of this report, under a traditional approach, each prime contractor and subcontractor allocates their cost of insurance for that project according to insurance requirements in the construction contract specification including a component for profit and contingency. When this cost is “added up” on a project, it can be higher than if the owner were to purchase insurance for the entire project. In the case of this proposed construction program, the projected administrative cost incurred by the insurance broker, the insurance company, and professional OCIP management may erase any potential savings for the County. Therefore, the objective of reducing insurance costs may be realized, but these savings may not yield a savings potential the County is expecting at the conclusion of the OCIP program.

- **To Promote Safety:** Under a traditional approach, the prime contractor is responsible for site safety. A project-specific site safety plan is filed for the project and although most subcontractors, especially first tier subcontractors, have their own safety program, they must comply with the standards imposed by the prime. Under an OCIP program, the owner still requires the prime contractor to be
responsible for site safety, however, they can impose higher standards than under a traditional approach through a master owner safety program. Of course the owner can require specific safety standards under a traditional approach, however the owner has less incentive to do so as they normally attempt to transfer risk of loss to the contractor through the contract’s indemnity agreement. Under a OCIP, the owner has more incentive to impose stricter safety standards to allow an opportunity to recover unspent monies from the loss fund under their loss sensitive OCIP program.

- **To Proactively Manage Claims:** Under a traditional approach, the prime contractor and all subcontractors bring their own individual insurance program to a project. This means they also are individually responsible for their own claims management process and procedures. Some contractors will be more proactive about claims than others, leaving a wide range of claims handling practices and outcomes. Under an OCIP, the owner can require claims handling practices and procedures to proactively manage claims to realize potential savings. One insurance company handling all claims for a construction program can result in savings and efficiency. These potential savings and efficiencies are not without owner input and resources. The chosen insurance broker will dedicate resources to oversee this function, however, owner staff time and resources will need to be committed as well. The owner needs to monitor and oversee the claims throughout the life of the OCIP and at least 5 years or more following substantial program completion. Interviews from staff and management indicated staff resources and time is scarce, therefore, it is questionable whether this objective will be met without adequate owner resources or without engaging outsourced professional support to ensure claims are proactively managed.

- **To Provide Broadened Uniform Coverage Among Contractors:** Under a traditional approach, each prime contractor and subcontractor brings their own corporate insurance program to the project resulting in wide variety of coverage, limits, terms and conditions, and policy periods. In an OCIP program, the owner controls these variables by buying a master insurance program with known limits, coverage, endorsements, and policy terms. Therefore, the objective of providing uniform coverage for all contractors within the proposed construction program clearly can be met. Under a CCIP, this objective can also be met as the contractor provides uniform coverage for the construction program.

- **Minimize Risk to the County:** OCIPs can serve as an excellent risk management technique to fund losses and manage risk.

**Staffing Requirements**

**Claims**

In a construction program with high community visibility, control or influence over the claims process is an important consideration. An OCIP project owner is in a strong position to influence the settlement of claims in a manner that takes into account local concerns, labor issues, and concepts of fairness. The absence of multiple quarreling insurers further enhances this effort. In other words, an owner-controlled program means a single insurer covers the common risks. If claim control is important to the owner, an OCIP becomes more desirable as it provides an opportunity to influence claim handling.

If an OCIP is selected for the program, the selected insurance broker or third party OCIP claims administrator will act as the central coordinator to manage the claims with the selected insurance company on behalf of the owner. Coordination must be carefully controlled with specific claims handling instructions provided by the owner to the broker at the inception of the program. The owner’s responsibility will be to ensure the broker conducts frequent claim reviews and always involves contractors in the claims before unit statistical
filings, including any general liability or workers’ compensation settlement negotiations. Depending on the number of active claims, we recommend quarterly conference call claim reviews with the primary insurance company, facilitated by the insurance broker or administrator. Annual reviews before unit statistical filings are recommended as well. The owner will need to be involved throughout the program in an oversight capacity which may or may not involve hiring additional staff or engaging the assistance of an outsourced professional OCIP consultant to oversee this claims administration process.

**Loss Control and Safety**

OCIPs can have minimum safety standards and a master program promulgated by the owner, although the contractor remains responsible for site safety. Contractor programs must meet the owner’s minimum standards. Project safety is ultimately subject to the will of the owner and the owner’s desire for a safe project coupled with financial interest in the outcome generally assures greater engagement of the owner in the matter.

Unless the owner is committed to supporting and enforcing safety standards and willing to provide necessary resources, an OCIP may not be the best choice. Owners that already take safety seriously and enforce minimum safety standards should have little problem addressing the issue within an OCIP. In addition, an OCIP provides valuable resources through the OCIP administrator or broker contract. The contract usually stipulates specific services to be provided to augment the owner’s or general contractor’s safety program. One test of owner commitment is willingness to issue a strong policy statement on project safety and to back it up with contract language that provides explicit measures for contract enforcement.

Most of the staffing required for owner oversight of loss control can be provided by the selected OCIP broker/administrator. Additional support will come from the insurer. Contractually and legally, the contractor is responsible for site safety, so a major part of the owner’s role in safety is to make sure the contractor lives up to its obligations. The contractor will generally assign specific staff to the project to meet site safety obligations. Unless the owner uses its own resources to ensure the contractors are abiding by the safety standards contained within their contract, the benefits from having such standards may not surpass their costs.

In the case of Multnomah County’s project, it is our understanding the County will require the CMGC to staff a full time safety professional to oversee the work on the project. This requirement will promote a consistent safety presence on the site and may even assist with the County’s objectives of achieving some savings from a safe job site. As good as this requirement is, however, the CMGC’s commitment to loss control will not completely supplant owner involvement, and the County will need to prioritize construction safety if an OCIP is to achieve its intended goals.

**OCIP Management, Commitment and Experience**

Part of our practice involves expert witness and litigation consulting. Most of that work is in the OCIP area. We see OCIPs that failed in one respect or another resulting in litigation often between owner and broker or owner and insurer. Much of the litigation could have been avoided and different results obtained if all parties had a proper understanding of an OCIP, better communication, and a higher level of commitment from the owner.

An OCIP is not a free ticket to savings. It is a useful tool, which if used with skill, can help support the project schedule, contribute to a safer project, and possibly produce savings. These lofty goals, however, cannot be achieved without some effort. Sponsoring a OCIP requires a strong and consistent commitment from all tiers of Multnomah County, County governing officials, the owner’s representative and the CMGC. In particular, all parties need to be committed to effective loss control. It is not sufficient to turn the responsibility over to a broker or administrator. Either someone involved in project management, the CMGC, and/or County’s risk
management or its hired professional management will need to be involved in the OCIP on a regular basis as construction progresses.

Although an OCIP insurance broker/administrator can provide a variety of support services, overall management of the OCIP still requires participation by the owner. The difference between a successful OCIP and one that is merely adequate often hinges on this management. Based on our discussions with the County Risk Manager, we understand risk management staff are already fully committed and thus may have limited time to devote to active OCIP management. Interviews conducted with County personnel also indicate that no one has prior OCIP experience.

Given this information, we recommend if the County proceeds with a OCIP, it should retain the services of an outside OCIP monitor and advisor to assist the County with effective implementation of the OCIP and to provide broker oversight activities to ensure the program’s success. This approach would relieve the burden on the County, would enable the County to obtain the appropriate level of expertise, and would provide an efficient vehicle for knowledge transfer to the County’s project management and risk management staff. We factored in this additional cost into our financial pro forma as it is our opinion this additional level of support will be a critical component to the OCIP's ultimate success.

**Adequacy of Protection**

As the OCIP concept has evolved in the public sector in the last twenty years or so, the principal motivation has shifted from pure cost savings to adequacy of protection, especially for liability claims. Construction projects involve significant risk of bodily injury and property damage. Owners expect to be protected by their contractors against such damage. Contractors should have a program of risk management and insurance designed to minimize and pay for losses.

Traditional insurance has several shortcomings when it comes to protection of the owner. First is the inefficacy of the risk transfer mechanism by which the contractor agrees to defend and indemnify the owner and then backs up that commitment by adding the owner as an additional insured on the contractor’s liability policies. There has been a relentless erosion of the level of protection offered to an additional insured during the past twenty years. This change has resulted from modifications to the policies and endorsement forms used by the insurance industry, by legislation designed to protect various interests (especially subcontractors), and by increased aggressiveness of insurers and contractors attempting to avoid financial consequences. This subject is discussed in detail in Appendix F – Contractual Risk Transfer Inherent Defects.

The second issue regarding contractor-purchased insurance is adequacy of limits. Construction projects involve the potential for catastrophic loss as witnessed by several recent crane collapses and the collapse of a portion of the tunnel in the Boston Central Artery (although the latter was a completed project, the loss still involved the contractor and construction manager). Still another example is the 1-35W bridge in Minnesota which suddenly collapsed in 2007 killing 13 people and injuring 145. The loss was attributed to a design flaw that revealed the bridge could not support the weight of current traffic. While not all contractors carry adequate insurance to protect against such losses, OCIPs are generally characterized by high limits of liability coverage.

Structurally, as this chapter indicates, an OCIP is feasible for the Sellwood Bridge project. However, as discussed in the next chapter, the economic case for an OCIP for the project is not as strong as the other arguments favoring a County-controlled consolidated approach.
There are valid reasons for public works projects to be covered by a public entity-sponsored OCIP. One is potential cost savings. Still, estimating costs and savings under an OCIP is problematic. There are many variables that can affect the financial results. Among these are:

- Ability to obtain competitive pricing. This item is a function of market conditions, negotiating ability, skill in preparing underwriting submissions, and to some extent, luck. Timing is also predominant factor. An OCIP can be planned for in a hard market (insurance is expensive and difficult to obtain) only to have the market soften (competitive pricing and high availability) before the program can be put in place. In a soft market, the financial advantage of an OCIP is reduced because the market for contractor insurance often drops in price faster than for OCIP, which is already priced lean.

- Ability to meet schedule. Not meeting schedule plays havoc with the financial model for an OCIP and can cause potential savings to evaporate. Delays can quickly turn savings into loss.

- Ability to obtain insurance credits. Savings in an OCIP presumes credit from the contractors for their cost of insurance. To the extent the owner is unable to obtain those credits, savings may disappear or at the least be difficult to determine with a high level of certainty.

- Good loss control. OCIPs are usually loss sensitive, meaning the ultimate cost is a function of losses. If losses run out of control there may be depleted savings or no savings at all.

- Good administration. Administrative effort is needed to assure enrollments and credits and to keep track of payroll.

It is our opinion that cost is not the most important factor in selecting an insurance approach for a large construction program. Nevertheless, the other factors alone may not justify a particular course of action to some. Therefore, cost/benefit analysis is crucial in an insurance alternative study.

**Basis of Cost**

The basis of cost in construction risk financing consists of:

- Insurance premium for transferring risk;
- Retained losses such as losses within deductibles, self-insured retentions, and uninsured loss; and
- Administration.
Consolidation occurs when certain coverage that each party would normally buy separately to protect its own interests is bought in a single transaction on behalf of all parties. This coverage includes workers' compensation, general liability, and excess liability.

Some forms of insurance such as contractor’s equipment, auto liability, and professional liability also protect the interests of specific parties. Of these, only professional liability is practical to consolidate because of loss-tracking difficulties and insurable interest matters in the other lines. We have discussed the issue of consolidated professional liability separately. Although there may be other benefits, we do not believe there are any identifiable likely savings in consolidation of this coverage for this particular project. Therefore, we will not attempt comparison here in the cost discussion.

Other coverage that may be necessary includes property (builder's risk), pollution liability, and possibly force majeure (against acts of nature etc.) insurance. For a project, such coverage normally would be bought by a single party with or without an OCIP. Therefore, this coverage will not be included in our cost comparison. We note, however, that direct purchase of any of coverage by the owner at least eliminates any contractor markup and may also result in more competitive quotations from insurers.

**Financing Mechanisms for Consolidated Coverage**

**Large Deductible**

Most OCIPs are structured as “large deductible” plans. A large deductible plan can be either on an incurred loss or paid loss basis. If the plan is paid loss, the sponsor holds the portion of the premium dedicated to pay losses (loss fund) and collateral will be required. If the plan is “incurred loss,” the sponsor pays the maximum portion of the loss fund at the beginning of the program, or in installments, and receives unspent portions of the loss fund sometime after the program is complete. The premium dollar is allocated as shown in the following exhibit.

**Exhibit 4 - Components of OCIP Premium**

The principal purpose of a large deductible plan is to reduce the amount of premium subject to taxes and fees. The “deductible” is actually charged against the loss fund and the amount of the charge is limited by “stop loss” insurance. Because the large deductible engenders a significant premium discount, total “premium” is reduced. Deductibles of $250,000, $500,000 or more per occurrence are common. Loss limiting insurance also caps losses at a policy total equal to the maximum premium described above. Final cost is a function of losses and can be expressed by the formula:
FINAL COST = PAID PREMIUM – FIXED COST – LOSSES – RETURN PREMIUM.

In a consolidated program, the per occurrence deductible may apply either to each or to both lines of coverage (workers’ compensation and general liability). In other words, the same occurrence involving both employee injury and damage to a third party’s property could cause either one deductible or two deductibles to apply, one for each line of coverage, depending on how the deductible is structured. If deductibles are combined, the maximum cost to the insured per loss is reduced, but the minimum fixed cost is higher. Multiline per occurrence deductibles are not always available. However, they have been more available in recent years and may be available during the course of this project.

Estimated Savings

Exhibit 5 displays one possible range of financial outcomes for Multnomah County’s potential OCIP program based on various loss ratios (losses expressed as a percentage of the maximum cost) for Scenario One as outlined in the “Background” section of this report. This scenario assumes hard construction cost value of $156,059,268 to include the entire construction project consisting of the two early work packages, new bridge span, interchange and approaches.

Exhibit 5 - Cost Comparison Traditional vs. OCIP (Scenario 1: Full Project)

| Assumptions: | Contractor combined rate: 8.50% | Construction cost: 156,059,268 |
| - | OCIP combined max rate: 8.50% | Payroll: 47,000,000 |
| - | Loss conversion: 8.00% | Tax rate: Included in fixed |
| - | OCIP fixed Cost: 35.00% | |

| Cost Comparison: | Combined loss ratio | 30% | 40% | 50% | 60% | 65% |
| - | Traditional Contractor Cost | 3,995,000 | 3,995,000 | 3,995,000 | 3,995,000 | 3,995,000 |
| - | Contractor GL hold | 399,500 | 399,500 | 399,500 | 399,500 | 399,500 |
| - | Contractor net cost | 3,595,500 | 3,595,500 | 3,595,500 | 3,595,500 | 3,595,500 |
| - | OCIP WC/GL Maximum | 3,995,000 | 3,995,000 | 3,995,000 | 3,995,000 | 3,995,000 |
| - | OCIP Fixed costs | 1,398,250 | 1,398,250 | 1,398,250 | 1,398,250 | 1,398,250 |
| - | Converted Losses | 1,294,380 | 1,725,840 | 2,157,300 | 2,588,760 | 2,804,490 |
| - | Administration | 310,000 | 310,000 | 310,000 | 310,000 | 310,000 |
| - | Total OCIP | 3,002,630 | 3,434,090 | 3,865,550 | 4,297,010 | 4,305,000 |

| Savings | 592,870 | 161,410 | (270,050) | (701,510) | (709,500) |
| - | As % of CV | 0.38% | 0.10% | -0.17% | -0.45% | -0.45% |
At an estimated program maximum of $3,995,000, the County would be protected from a large loss as the financial obligation to pay losses in excess of program maximum levels cease. If losses do reach the program maximum, however, the County would not be entitled to any return of loss fund at the conclusion of the program. This is because if losses reach program maximum, dollars paid into a pre-funded loss fund are completely used to pay for claims within the sponsor's deductible. The Exhibit also indicates that when administrative costs are included, the County would be paying more for the OCIP at a loss ratio slightly above 43% than it would pay for a traditional program.

Note that to calculate “Administration” costs, we assumed broker OCIP administrative costs (including marketing costs) of $210,000 and OCIP consultant oversight costs of $100,000 to arrive at the estimated $310,000. These costs are based on our market knowledge of fees for broker and consultant services.

Exhibit 6 displays another possible range of financial outcomes for Multnomah County’s potential OCIP program based on various loss ratios for construction value outlined in Scenario Two within the “Background” section of this report. This scenario assumes hard construction cost value of $121,059,268 to include the new span, approaches, and interchange project.

<table>
<thead>
<tr>
<th>Exhibit 6 - Cost Comparison Traditional vs. OCIP (Scenario 2: Span and Approach/Interchange)</th>
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<tbody>
<tr>
<td>Assumptions:</td>
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<tr>
<td>Contractor combined rate: 8.50%</td>
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<tr>
<td>OCIP combined max rate: 8.50%</td>
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<tr>
<td>Loss conversion: 8.00%</td>
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<tr>
<td>OCIP fixed Cost: 35.00%</td>
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<tr>
<td>Construction cost: 121,059,268</td>
</tr>
<tr>
<td>Payroll: 36,463,052</td>
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<tr>
<td>Tax rate: Included in fixed</td>
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<tr>
<td>OCIP Fixed costs</td>
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<td>Converted Losses</td>
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<tr>
<td>Administration</td>
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<tr>
<td>Total OCIP</td>
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<td>Savings</td>
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<tr>
<td>As % of CV</td>
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<tr>
<td>Combined loss ratio: 30% 40% 50% 60% 65%</td>
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<tr>
<td>Traditional</td>
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<tr>
<td>Contractor Cost: 3,099,359 3,099,359 3,099,359 3,099,359 3,099,359</td>
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<td>Contractor GL hold: 309,936 309,936 309,936 309,936 309,936</td>
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<tr>
<td>Contractor net cost: 2,789,423 2,789,423 2,789,423 2,789,423 2,789,423</td>
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<tr>
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<td>OCIP Fixed costs: 1,084,776 1,084,776 1,084,776 1,084,776 1,084,776</td>
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<tr>
<td>Converted Losses: 1,004,192 1,338,923 1,673,654 2,008,385 2,175,750</td>
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<tr>
<td>Administration: 260,000 260,000 260,000 260,000 260,000</td>
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<tr>
<td>Total OCIP: 2,348,968 2,683,699 3,018,430 3,353,161 3,359,359</td>
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<tr>
<td>Savings: 440,455 105,724 (229,006) (563,737) (569,936)</td>
</tr>
<tr>
<td>As % of CV: 0.36% 0.09% -0.19% -0.47% -0.47%</td>
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</table>
Without actual data and firm quotations for insurance, the numbers presented in the Exhibits are only estimates. We believe these data provide order-of-magnitude and comparative information useful for decision-making. The data should not be used to forecast exact costs. Note that the actual numbers will vary with the amount of payroll reported. Also, the data does not account for the time value of money. We have not attempted to apply time value discounts because current interest rates are very low and less of a factor than in some other economic periods. Should inflationary pressures increase, rates may become much more of a factor.

Cash flow timing is negotiable. Until the County procures an insurance broker to obtain firm quotations, it is difficult to estimate how the timing of premium and loss dollars will occur. Terms and conditions may vary substantially due to insurance market conditions. Thus, factors used in our pro forma analysis such as basic rate, loss conversion factor (LCF) and others as actually quoted could vary substantially from the assumptions shown here. Nevertheless, we believe that these assumptions are realistic and achievable in the current market and in most market cycles we have experienced in the last 20 years.

For the purposes of this pro forma, we assumed the owner could purchase the insurance for the same rate as an established contractor's CCIP program. In deriving this rate, County project management provided us with the CMGC’s estimated insurance costs based on preliminary GMP calculations. We were also told this cost was inclusive of general liability (under an established CCIP program), workers’ compensation, marine liability, contractors pollution liability, builder's risk, professional liability and railroad protective liability. We then adjusted this cost to reflect only general liability and workers’ compensation based on our knowledge of market available rates. This ultimately produced a rate of $8.50 per $100 in payroll.

We do note, however, the owner may be able to acquire some insurance at a lower than the CMGC for the following reasons:

- The contractor's CCIP rate is pre-negotiated during their annual renewal and is not subject to price competition on this project;
- Public works projects are scarce in this economy and therefore subject to much price competition amongst OCIP insurers;
- An owner can acquire the insurance without contractor mark-ups built into the rate;
- A contractor’s master CCIP program is subject to annual rate changes.

Nonetheless, an owner cannot validate their ultimate cost of insurance against a contractor's cost until a full marketing effort is made and OCIP quotes are secured.

All recent OCIP coverage quotations with which we are familiar included a “maximum aggregate stop loss” feature or a device with a similar name. This is a form of insurance, the cost of which is included in the “fixed cost” portion of the premium. It is not an extra cost beyond what is shown in the pro forma. This feature assures the owner that unusually bad losses will not result in an OCIP costing the owner substantially more than if there were no OCIP. In this example, the maximum stop loss activates at slightly above the 60% loss ratio level meaning that costs are capped from that point forward. The maximum stop loss assures that the owner does not suffer a large financial loss as a result of selecting the OCIP while at the same time encouraging the owner to control losses. Loss-designated dollars not needed to pay claims are returned to the owner.

It is generally agreed the fixed cost of an OCIP is approximately 25% to 35% of the maximum premium. In feasibility studies it is not uncommon to use a 30% of premium level to indicate the lowest cost with no
losses. We used 35% as a conservative estimate in this case. Generally, the lower the construction value, the higher the fixed costs as a percentage of maximum cost. We used a payroll estimate of 30% based on information supplied to County project management from the CMGC. This payroll percentage is a bit higher than most construction projects we typically see, however, we relied on information received from County project management including the CMGC. Differences in payroll costs will affect the financial outcomes in the pro formas.

The additional assumptions used in this analysis are as follows:

- “Contractor cost” is the contractor’s combined rate multiplied by payroll. For purposes of this illustration, we assume all contractors pay a fixed cost and do not use loss sensitive programs. Some large contractors may self-insure portions of their risks.
- “Contractor GL Hold” assumes contractors will not credit back all of their general liability premium in an OCIP, but will withhold amounts they may deem necessary for the cost of insurance that dovetails with the OCIP insurance the event of problems obtaining coverage from the OCIP.
- WC/GL maximum is the worst-case scenario, wherein the losses hit the maximum stop loss point. This level is determined by applying the owner’s maximum rate to the derived payroll.
- Converted losses are actual losses incurred increased by an assumed claim handling charge (LCF or “loss conversion factor”) of 8%. Some insurers charge a per claim fee instead of an LCF.

These data show savings at various loss levels with a OCIP. While the data represents our best estimate of costs at this particular time, all the assumptions at the top of the exhibit can be changed to show a wider range of results. In addition, the cost of administration and consulting oversight could be greater than our estimate.

It would appear in this model the County’s prospective OCIP program offers some potential for savings. Although the table shows a savings potential of $592,870 in Scenario One and $440,455 in Scenario Two at a 30% loss ratio, without an aggressive owner master safety program, this loss level is unlikely to be achieved. Still, the Exhibits show the break even point is below the “stop loss” point due to administrative costs to establish and manage an OCIP. Historically, however, “loss sensitive” OCIPs have had better than average loss results.2

The model assumes contractors will credit premium charges they would normally pay less a hold back of about 10% of their total premium for “difference in conditions” liability coverage “wrapping around” the liability insurance provided by the OCIP. Obtaining such credits may be more difficult in practice. The only way to determine actual credits is to charge the contractor, either before or after the bid. If charged before, the contractor must identify the cost of insurance separately. Some entities require two bids, one with insurance and one without. If obtaining the credit after the bid, a deductive change order is required. Either procedure can play havoc with public agency bidding requirements. Either could invite protests.

Because of bidding laws, many public agencies allow contractors to “bid net” of insurance. Often an aggressive program of education occurs during the bid process. The purpose of the education program is to convince contractors it is in their best interest to remove their insurance costs to be competitive and to show them how to do it. This may work in a competitive construction services market, such as the one at the time

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2 See, for example Bird, Gary E. The Wrap-Up Guide Second Edition, International Risk Management Institute, Inc., Dallas, 1995, p.3. “Historically, pure loss ratios on major projects using a CIP have been in the range of 21 percent to 35 percent. Based on such experience, premium savings on the order of 50% as compared to standard premium are possible.”
of this report. Studies have shown insurance is a major part of a contractor’s cost of doing business. Some authorities claim insurance is the largest single overhead cost to a contractor next to payroll. To be competitive, an astute contractor or subcontractor would recognize the value of removing the insurance cost.

**Cost variability**

A number of factors could cause the range of costs to vary from the Exhibits above. Any new workers’ compensation reform and recent court decisions could result in further reduced workers’ compensation rates. As workers’ compensation premium is the largest component of a project’s insurance cost, reduced premium rates would diminish the savings under an OCIP. Most industry experts anticipate hardening of insurance markets, likely resulting in higher insurance costs.

We are unsure, however, how contractor insurance costs were derived including actual assumptions made about required limits, required coverage enhancements or required ancillary coverages. The actual cost could be higher or lower depending on these factors. Until specific insurance language is drafted for the CMGC contract and specific contractor costs are identified, determining the actual contractor insurance cost for the purposes of this pro forma cannot be accurately calculated.

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3 According to Annual Statement Studies 1990-2000 by Robert Morris Associates the average net profit margin for general contractors in the decade was 2%. Many sources put the cost of insurance for contractors at 3% to 7% of project cost. In our experience, contractor costs for primary general liability and workers’ compensation insurance alone probably equal or exceed their average profit margin.
Additional Decision Factors

**OCIP Market**

**Carrier Availability, Stability, and Appetite**
Insurer stability is especially important in an OCIP. OCIP underwriters are A-rated and fairly large companies. Historically, there has never been a great number of insurers writing this coverage. The current OCIP insurance market continues to be viable and enjoys some competition, depending on the project or projects in question.

Chartis, the former AIG, is still writing OCIPs nationwide and within their insurance subsidiaries including Lexington, Insurance Company of Pennsylvania, National Union, and others whose financial strength remains strong. In addition to Chartis, other viable OCIP insurers include Liberty Mutual, Zurich, ACE, CNA, ARCH, Seabright, Hartford, Old Republic (CPG), and Travelers.

At a recent construction risk management conference, two leading OCIP insurance companies indicated a strong appetite for public sector business. The housing downturn has prompted a shift in underwriting appetite from residential OCIPs to commercial construction programs. With public infrastructure financing slightly more certain than private commercial development, OCIP insurance companies are shifting their underwriting appetite from residential construction to commercial construction, with focus upon public entity-type business.

**“Soft” vs. “Hard” Insurance Markets**

In a “soft” market, insurance prices drop because of excess capacity (capital available to put at risk). The insurance industry went through one of the softest markets in its history in the late 1990s. To retain market share, underwriters were willing to price their product at record lows in some lines of coverage, sometimes below the expected losses. Investment income, partly the result of a long-term financial bull market, allowed the insurers to recover at least some of their underwriting losses. This soft market created a buying opportunity for insureds.

A “hard” market is characterized by limited availability of certain types of coverage, by high prices, by lower coverage limits and by coverage restrictions imposed by underwriters. Even in a hard market, insureds with good loss histories may receive non renewal notices, coverage restrictions, higher deductibles, reduced limits or other undesirable limitations.

Most authorities see the current insurance market as soft. Prices are relatively low in many lines of coverage. The recent economic downturn has prompted deteriorating financial results amongst insurance companies,
especially within their investment portfolio. With low interest rates and declining financial market results, insurance companies cannot recoup losses from higher gains in investment income or recoup losses within their investment portfolio. Eventually they must raise rates within their underwriting portfolio to make a profit for their shareholders.

It is our understanding workers’ compensation rates are low in Oregon relative to many other states. State Accident Insurance Fund Corporation (SAIF) and Liberty Northwest write most of the workers’ compensation in the state. These two carriers have pushed workers’ compensation pure premium rates down to keep other insurers from gaining market share in the state. A significant part of potential savings in an OCIP comes from an OCIP sponsor purchasing workers’ compensation at rates cheaper than what contractors pay in premiums. Because workers’ compensation rates are low for the state, we question whether much savings can be generated in a project with limited construction value operating in a state where workers’ compensation rates are low.

**Rate Guarantees**

Most insurance industry experts agree that it is to an owner’s advantage to “lock in” rates today rather than later. Rates are historically low and OCIP underwriters are eager for cash flow in a market where competition is fierce for new business. As mentioned above, insurers are not earning high yields on their investment portfolios and, therefore, pressure to write new business is fierce amongst insurers.

On the other hand, insurers have experienced high losses this year from various catastrophes including earthquakes, hurricanes, tsunamis, and other perils. Some believe the market may begin to harden following 2012 reinsurance treaty negotiations. If an OCIP program is chosen for the Sellwood Bridge Project, the insurance carrier procurement will most likely occur Spring 2012. Should a hard market begin to emerge early next year following reinsurance treaty renewals, potential savings from an OCIP would be reduced.

**Risk of carrier failure, cancellation, or withdrawal**

Failure of a carrier can be a serious issue to an OCIP sponsor. One notable failure in the excess liability market was Reliance. This carrier was a provider of coverage to several OCIPs we know of including one that we managed. In our case, we were able to recover the premium and replace the coverage with a stable carrier at no additional cost.

Other insurers have withdrawn from the OCIP market. The most notable withdrawing companies include TIG and Argonaut. In both cases, withdrawals were orderly. TIG is in runoff but is still honoring its insuring commitments to a number of OCIPs. Argonaut withdrew from insuring new OCIPs without canceling any of its programs mid-term.

Some of the other insurers have withdrawn from the OCIP market by simply not writing any new business. In some cases, this is a regional decision as was the case with Hartford and Travelers. In at least one of these cases, this decision appears to be one made by a single high-level regional underwriting executive and is not true of the company as a whole.

In our opinion, placing an OCIP with one of the stable large insurers actively writing OCIPs is a reasonably safe proposition. With an OCIP program, an owner is clearly in a better position to ensure their OCIP carrier will be there when needed rather than relying on a contractor’s annual selection of insurers. In selecting a carrier, their record in writing the coverage is an important criterion. The decision should not be solely on price.
OCIP Coverage Enhancements

Forms and Endorsements

A large construction program requires broad coverage with sufficient limits. OCIPs bring advantages to the owner in the insurance buying process. This is so in larger projects not only because of the size of the program in premium dollars, but also because some insurers would rather write consolidated programs than insure contractors individually.

Because of this advantage, the owner in a consolidated program may obtain coverage enhancements not available to or unaffordable for most contractors. Perhaps the most important of these is adequate policy limits for liability coverage. Limits of several hundreds of millions of dollars are available. These limits are program-dedicated so that they are not diluted by losses occurring outside the project, as would be the case with most coverage under traditional construction insurance.

Along with providing adequate limits, OCIP coverage can be tailored to the specific needs of the project. The owner will dictate the exact coverage that will apply to all parties on the project and therefore should know exactly what coverage the policies contain.

Under a traditional insurance program, coverage is incepting and expiring constantly throughout the project and thus, is far more susceptible to market fluctuations. Even in a CCIP, the contractor or construction manager designs their program for their overall business needs and may move or change the program at any time during the project. Unless contract provisions are explicit, such change may be to the detriment of the owner. Since an OCIP is usually in place for a project’s duration, the coverage under an owner controlled program should be certain.

Exhibit 7 highlights examples of general liability coverage endorsements recently negotiated into OCIP programs:

**Exhibit 7 - General Liability Coverage Enhancements**

<table>
<thead>
<tr>
<th>GL Coverage Enhancements</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non cancelable</td>
<td>Guaranteed rate</td>
</tr>
<tr>
<td>Broadened bodily injury definition</td>
<td>Waiver of subrogation for all insureds</td>
</tr>
<tr>
<td>Broadened notice of occurrence</td>
<td>Exempt unintentional errors</td>
</tr>
<tr>
<td>Incidental medical malpractice</td>
<td>Broadened watercraft coverage</td>
</tr>
<tr>
<td>Employers liability stopgap</td>
<td>Hired and non-owned auto coverage</td>
</tr>
<tr>
<td>Contractor “rework” coverage</td>
<td>Limited professional liability coverage</td>
</tr>
<tr>
<td>Subsidence</td>
<td>Extended personal injury</td>
</tr>
<tr>
<td>Delete railroad contract exclusion</td>
<td>Extended completed operations</td>
</tr>
</tbody>
</table>

Limits

Hundreds of millions in limits are available in today’s insurance marketplace. Limits can be structured to reinstate annually resulting in high limits available for each year of construction. To the extent the County recognizes the need for high limits, one of the decision criteria for determining whether to enter into a OCIP is the availability of high coverage limits from contractors. Part of this consideration should include whether each contractor can offer a separate aggregate limit for its specific project within the construction program. If not, the contractors’ limits could be diluted by claims on other projects. Contractors can bring high limits to a construction program under a CCIP, however, the owner must stipulate the required limits in the contract.
language. Another option is to include language in the contract documents the owner is entitled to the full limits under the contractor’s CCIP, regardless of the limits stated in the contract documents.

**Term**

Most OCIP programs are written for construction periods ranging from three to five years, although we have occasionally seen OCIP programs written for longer construction periods. Due to reinsurance treaty restrictions, volatile underwriting cycles, and rate fluctuations over time, most leading OCIP insurers do not commit to more than a five-year program. Some insurers that will commit to a five-year program, however, reserve the right to re-price the OCIP program two to three years into the program. Since construction on the Sellwood Bridge Project is expected to last roughly four years, a 4 1/2 year OCIP policy term would be appropriate to allow for schedule delays. As premium is a function of actual payroll reported, the volume of construction affects pricing more than the term.

**Completed Operations**

To allay a legitimate objection to OCIP, a public works project owner should make every effort to assure completed operations coverage for the project extends to the limits of the statute of repose in the state of Oregon. This is the only way to provide adequate protection to contractors on the project who have given up coverage under their own programs.

Without this type of protection, a contractor would be forced to leave their general liability insurance intact and would not be able to deduct the cost from their bid. Many contractors, however, have blanket OCIP exclusions endorsed onto their policies. Under such circumstances, a contractor may feel compelled to purchase additional insurance (difference in conditions) to cover this exposure if not covered under the OCIP, making it more expensive to participate in an OCIP than not. We recommend a completed operations reporting period that would extend to as long as any statutory exposure period would apply. In 2009, the statute of repose in Oregon changed from 10 to 6 years.

**Regulatory and Compliance Considerations**

Enabling legislation exists for OCIPs within the State of Oregon. Appendix C highlights Oregon Regulatory Statute 737.602, Oregon’s enabling legislation for OCIPs. This statute specifies that public bodies, utilities, and corporations may use consolidated programs where construction costs exceed $90 million so long as certain conditions are met. As a result of ORS 737.602 and it’s various subsections, many Oregon public entities have used these programs to varying degrees over the years. In addition to this statute, ORS 30.140 is provided in Appendix C which outlines construction program indemnity provisions under Oregon State Law.

**County Procurement Guidelines**

One critical aspect to the feasibility of an OCIP is the amount of lead-time available to procure an insurance broker, negotiate insurance terms and conditions, and bind coverage before start of construction. Most public entities have procurement guidelines that must be followed to promote fair competition. If such guidelines mandate excessive lead times an OCIP may not be feasible.

We spoke with one of the County’s procurement specialists in during interviews for this feasibility study. Although the County does have an insurance broker of record handling the County’s master insurance program, an OCIP will require the County to competitively solicit and select an OCIP insurance broker as the contract value will most likely be in excess of $150,000. We anticipate the broker procurement and insurance company procurement process will take at least 3 - 6 months, perhaps even longer if protests are involved. Below is a timeline to accomplish implementing an OCIP:
Exhibit 8 - OCIP Broker and Insurance Procurement Schedule

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time to Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Development: Write the broker solicitation RFP/ Prepare list of brokers to distribute solicitation/Obtain necessary approvals for the RFP</td>
<td>4 weeks</td>
</tr>
<tr>
<td>Advertise Solicitation: Send RFP to selected brokers and comply with County advertising length requirement</td>
<td>6 weeks</td>
</tr>
<tr>
<td>Evaluate Proposals: Form committee to evaluate proposals, conduct oral interviews, and make final broker selection</td>
<td>3 weeks</td>
</tr>
<tr>
<td>Obtain Approval to Award to Winning Broker: Seek approvals to award the OCIP broker services contract through County approval processes</td>
<td>3 weeks</td>
</tr>
<tr>
<td>Insurance Company Procurement: Develop underwriting solicitation, market OCIP, select final primary carrier, and develop and place excess program</td>
<td>6 weeks</td>
</tr>
<tr>
<td>Total</td>
<td>6 Months</td>
</tr>
</tbody>
</table>

As Exhibit 8 indicates, the estimated time to procure an insurance broker and secure an OCIP program with insurance companies is approximately six months. Note this timeline does not include allowance for any required County approval of the chosen insurance program. Due to the lead times required to conduct a competitive broker and insurance company procurement, the County would quickly need to begin this process late 2011/early 2012 to implement the OCIP before the start of the new span construction summer 2012.

Other Considerations

Construction Services Market

In recent economic times, the construction services market has been affected by the housing market turmoil, rising cost of fuel, availability of credit, and the rapid rise in the cost of construction materials. With the sharp decline in residential construction in the past several years, many contractors have shifted over to the public works arena in search for work. This has fostered both a greater number of bids per contract as well as bid amounts far below engineer’s estimates. This circumstance is likely to continue as long as residential construction remains slow and financing remains limited for private sector commercial construction.

Looking forward, it is difficult to predict the market for construction services over the next five years. A competitive market tends to magnify savings for OCIPs in that contractors are more motivated to trim as much as possible from their bids in such a market. The cost of insurance is a major component in the contractor’s bid price and the opportunity to remove this cost (because the owner is paying for it) is too good to pass up when the market is competitive. In a tight construction market, however, contractors are choosier about whom they present their bids to and less motivated to cut costs. Given the current world economy, it is likely that service markets will remain highly competitive.

Local Construction Market

The size, type, and location of prospective contractors is an important consideration when evaluating the feasibility of an OCIP program. Chances are good the contractor pool has worked under an OCIP. When contractors have worked under an OCIP, the burden placed on both the owner and broker of administering the program is lessened due to contractor familiarity with processes and procedures. Unless OCIPs have been active within a region, the smaller contractor pool would not have had the exposure to the program, thus requiring more education and time assisting them with the required forms and processes. This additional time can also directly translate to added cost to administer the program.
Emerging Business Participation

Many start-up and smaller firms find it difficult or impossible to obtain coverage adequate to meet the owner's usual coverage standards in a conventional situation. In an OCIP, the owner provides the insurance. Obtaining adequate coverage under an OCIP program is not an issue for the smaller or disadvantaged firm.

A conventional construction risk-financing program depends on contractual risk transfer for protection of the owner. The risk transfer is backed by insurance. To obtain adequate risk financing and to meet due diligence standards, public entities set minimum insurance requirements that specify insurer quality and size in addition to setting adequate limits of liability. Many smaller and emerging contractors find it difficult to meet these requirements. As a result, some are in breach of their agreements, some seek and get waivers, and others are unable to bid.

It is our understanding one of the County's goals is to encourage participation of small and minority subcontractors throughout this construction program. Participation goals have been established and the CMGC will make a good faith effort to foster an inclusionary environment for this construction program. An OCIP can assist in this process so long as onerous “off site” insurance requirements are not passed down by the CMGCs and their first tier subcontractors in the subcontract agreements. County project management indicated some work packages will attract small businesses such as scope items involving the new bridge span. Others, on the other hand, will not attract small and minority contractors as some scope items, such as construction of the temporary piers, will involve highly specialized labor and equipment.

Contractor Positions on OCIPs

Contractor positions on OCIP vary. Some contractors have insisted on consolidated programs. One developer put together a series of projects that involved contractors building residential units. Unable to obtain coverage for this class of work from their regular liability insurers, the general contractors who planned to work on the projects asked the owner to arrange it.

The Utah Department of Transportation put together a series of Rolling Owner Controlled Insurance Programs (OCIPs) for its infrastructure projects before the 2002 Winter Olympic Games. The OCIP was first met with resistance until contractors realized the OCIP made doing business with the State easier and more efficient. In this case, contractors willingly participated in the OCIP and encouraged the State to continue the program long after initial infrastructure projects were completed.

On one large public works project in Southern California, pre-qualified general contractors were asked about OCIP in a questionnaire distributed before bid specifications release. Five of six general contractors stated they were in favor of OCIP. The sixth opposed the concept but argued that a consolidated program under the general contractor (Contractor Controlled Insurance Program or CCIP) was the best option. “Mid-market” contractors, generally those in the $10M to $100M in annual revenue range, also tend to oppose OCIPs in certain circumstances.

Overall, it appears many large general contractors are ambivalent about the issue but would prefer to consolidate the coverage themselves (CCIP) and obtain the benefits for their firms. Some oppose and some prefer OCIP. Middle size general contractors often dislike OCIP but will participate in OCIP-insured projects, dependent upon economic conditions. Smaller contractors are often somewhat confused or simply less knowledgeable about the concept but usually will participate if provided with some guidance. Most contractor attitudes regarding OCIP devolve from the quality of a prior experience with the concept or are shaped by a financial interest which is often the desire to promote one’s own consolidated program. Please refer to Appendix G - Common Contractor Objections to OCIPs for a more comprehensive discussion in this area.
Appendix A – Glossary

Some terms with special meanings are the only way or the best way to express a particular concept. Definitions of some of these terms are provided below.

**Aggregate.** The maximum amount payable by an insurer under an insurance policy during the policy term regardless of the number or dollar amount of claims.

**CCIP (contractor controlled insurance program).** Same as an owner controlled program except the general contractor purchases coverage.

**Errors and Omissions Liability Insurance.** Also called “professional liability insurance,” protects against claims alleging failure to perform to the customary level of care demanded of one’s profession.

**General Liability Insurance.** Insurance protecting against claims for negligence arising out of bodily injury, property damage, personal injury or advertising injury.

**Indemnity Agreement.** Also called “hold harmless agreement” although there is a technical difference. A contractual provision whereby one party (“indemnitor”) agrees to pay for losses caused to another party (“indemnitee”) because of some activity or happening arising out of the contract between the two.

**OCIP (Owner Controlled Insurance Program).** An arrangement whereby the owner of a construction project buys basic insurance coverage (general liability, workers’ compensation and course of construction) for all project participants.

**OPPI (Owner Protective Professional Indemnity).** Excess professional liability insurance that protects the program sponsor only.

**Project Professional Liability Insurance.** A type of insurance coverage usually purchased by a project owner that covers all design errors and omissions claims for all design professionals on a project.

**Sponsor.** The part responsible for arranging the consolidated insurance program, usually an owner, general contractor or developer. Sometimes this could be a construction manager.

**Stop-loss.** A form of reinsurance also known as "aggregate excess of loss reinsurance" under which a reinsurer is liable for all losses, regardless of size, that occur after a specified loss ratio or total dollar amount of losses has been reached.

**“Traditional” Insurance.** An unconsolidated approach to providing insurance coverage whereby each party arranges its own insurance protection and negotiates indemnification of other parties through means usually backed by the indemnitor’s existing insurance.

**Workers’ Compensation Insurance.** Insurance against losses arising out of an employer’s statutory responsibility to provide medical and lost wage benefits to injured workers.

**Wrap-up.** A generic term for consolidated construction insurance programs (OCIP or CCIP)
Appendix B – Resources


Feldhaus, William R.; Cox, Vincent M.; and McDonald, W. Dan; *The Hold Harmless Agreement*, Atlanta, GA: The National Underwriter Company., 1987


Wielinski, Patrick J.; Woodward, W. Jeffrey; and Gibson, Jack P.; *Contractual Risk Transfer*, Dallas, TX: International Risk Management Institute, Inc., 1984
Appendix C – Oregon Relevant Statutes

737.602 Authorization for insurance for certain projects; premiums; qualifications. (1) As used in this section:

(a) “Project” means a construction project, a plant expansion or improvements within Oregon with an aggregate construction value in excess of $90 million that is to be completed within a defined period. The average construction value during the defined period of the project must be at least $18 million per year. “Project” does not mean a series of unrelated construction projects artificially aggregated to satisfy the $90 million requirement.

(b) “Project sponsor” means public bodies, utilities, corporations and firms undertaking to construct a project in excess of $90 million and conducting business in the State of Oregon.

(c) “Public body” has the meaning given the term in ORS 30.260.

(2) Notwithstanding ORS 279C.530, 656.126, 737.600 or 746.160, an insurer approved to transact insurance in this state, including the State Accident Insurance Fund Corporation or an insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the Department of Consumer and Business Services a policy of insurance covering the project sponsor, the prime contractor under a contract for the construction of the project, any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations in construction of the project and any other contractors engaged by a project sponsor to provide architectural or other design services, engineering services, construction management services, other consulting services relating to the design and construction of the project or any combination thereof.

(3) The following provisions apply to premiums under a policy of insurance described in subsection (2) of this section:

(a) A project sponsor or a prime contractor may not charge a premium for coverage under a policy of insurance to a contractor or subcontractor with whom the project sponsor or prime contractor enters into a contract or engages for services described in subsection (2) of this section.

(b) A prime contractor may not charge a project sponsor a premium for coverage under a policy of insurance other than a premium approved by the director under ORS chapter 737 prior to or at the same time as the director approves the project to which the policy applies.

(c) Charging a premium prohibited by this subsection constitutes the unlawful transaction of insurance in violation of ORS 731.354.

(4) The director, upon application of any insurer, shall approve the issuance of a policy of insurance to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or a series of related
contracts for the design and construction of a project for the project sponsor;
(b) The project sponsor can reasonably demonstrate that the formation and operation of the
grouping will substantially improve accident prevention and claims handling to the benefit of the
project sponsor and the contractors and workers employed by the project sponsor on construction
related projects;
(c) The established rating and auditing standards required by authorized advisory organiza-
tions and rating organizations are adhered to;
(d) The insurer for the grouping guarantees adequate protection to any other insurance pro-
ducer that demonstrates that without such protection the producer will suffer losses that will con-
stitute a threat to the continuation of the business of the producer;
(e) The insurer for the grouping guarantees insurance coverage of the classes of insurance
issued to the grouping to any contractor who, because of participation in the group, has been un-
able to maintain the contractor’s normal coverage. The insurer’s obligation under this paragraph
shall continue until 12 months after substantial completion of the contractor’s work;
(f) By permitting this grouping for a project sponsor, greater opportunities will be made
available for historically underutilized businesses to bid on the project;
(g) The project insurers agree to provide not less than 90 days’ notice to all insured parties of
the cancellation or any material reduction in coverage for the project;
(h) The insurance coverage for the grouping contains a severability of interest clause with
respect to liability claims between individuals insured under the group policy and includes con-
tractual liability coverage that applies to the various contracts and subcontracts entered into in
connection with the project; and
(i) The insurer places with the Department of Consumer and Business Services a special de-
posit of $25,000 per $100 million of construction project value, or an amount prescribed by rule
of the director, whichever is greater. [1995 c.169 §2; 1999 c.196 §12; 1999 c.482 §1; 2003 c.364
§98; 2003 c.794 §326; 2007 c.241 §28]

Note: 737.602 was added to and made a part of the Insurance Code by legislative action but
was not added to ORS chapter 737 or any series therein. See Preface to Oregon Revised Statutes
for further explanation.

737.604 Rules. In addition to other rulemaking authority of the Director of the Department of
Consumer and Business Services, the director may make rules:
(1) Stating the necessary attributes that a construction project of a project sponsor and the
participants in the project must have in order to qualify for the grouping permitted under ORS
737.602. The rules may include but are not limited to matters regarding an appropriate trust
agreement for special deposit and adjustment of the construction project value according to an
appropriate cost index; and
(2) Establishing a process for a state agency or local contract review board created under
ORS 279A.060 to evaluate the purchase by a public body of insurance authorized by ORS
737.602, or any agreements related thereto. [1995 c.169 §3; 2003 c.794 §327]
Note: 737.604 was added to and made a part of the Insurance Code by legislative action but was not added to ORS chapter 737 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

ACTIONS ON CERTAIN CONSTRUCTION AGREEMENTS

30.140 Certain indemnification provisions in construction agreement void. (1) Except to the extent provided under subsection (2) of this section, any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.

(2) This section does not affect any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitee, or the fault of the indemnitor’s agents, representatives or subcontractors.

(3) As used in this section, “construction agreement” means any written agreement for the planning, design, construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith.

(4) This section does not apply to:

(a) Any real property lease or rental agreement between a landlord and tenant whether or not any provision of the lease or rental agreement relates to or involves planning, design, construction, alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or rental agreement is not planning, design, construction, alteration, repair, improvement or maintenance of real property; or

(b) Any personal property lease or rental agreement.

(5) No provision of this section shall be construed to apply to a “railroad” as defined in ORS 824.200. [1973 c.570 §§1,2; 1987 c.774 §25; 1995 c.704 §1; 1997 c.858 §1; 2007 c.413 §1]
Appendix D – OCIP Best Practices

Assembling and managing the components of a major project is a complicated process. Similarly, the risk management aspects of a large project are complex and require careful planning and execution – whether or not an OCIP is used.

Based on numerous discussions with other OCIP managers over the years and on practical experience managing or evaluating a variety of OCIPs, we believe the following stand out as essential components of a successful consolidated construction insurance program (OCIP).

Feasibility Study and Implementation Plan

Successful OCIPs usually begin with a feasibility study and a carefully constructed implementation plan. In some cases, the feasibility study is the decision point for the project owner in determining whether to use the OCIP concept or not. A good feasibility study should project economic results (cost savings or expenses) for multiple scenarios both for OCIP and traditional insurance on the project. In addition, the study should identify and evaluate other factors critical to decision making, including protection levels, political and social issues and effects of the various alternatives on the organization.

Often, the owner is predisposed to using OCIP and the feasibility study is a means to establish whether there are reasons not to use OCIP, such as inadequate exposure base (such as payroll) to enable economies of scale, insufficient commitment by the owner’s staff or problems with the contractor community in the project locale. Feasibility studies are also often used to address concerns of OCIP opponents and to evaluate the legitimacy of objections in each specific case.

In all situations, a good feasibility study provides insight into the requirements, potential pitfalls and necessary planning for an OCIP. Its greatest value may be in the reflection it requires on the part of the owner’s staff concerning the undertaking that is about to commence.

An implementation plan coalesces and focuses the owner’s staff on the elements necessary for success in an OCIP. Much of the success of the OCIP (and for the project as well) depends on timing and sequencing of events. For example, arranging insurance first requires a broker selection, preparation of insurance specifications, marketing to insurers and other steps. Each requires a certain amount of time to be done well. Just like project planning, the insurance aspect requires scheduling and resource allocation for successful execution.

Early Risk Management Planning

All projects have timing and scheduling problems. Sophisticated planning software helps manage the complexities of planning and administration of large construction projects, but the overall task remains daunting. One of the elements often considered almost as an afterthought in the planning process is risk management, including insurance.
The best OCIPs are those in which the risk management planning occurs early in the overall process. Early engagement of the risk management process can help avoid serious problems in contracting, bidding, training and dissemination of information. Far more often than not, however, insurance and risk management receive attention only after the initial planning and engagement of some of the principals involved in the project has already occurred. Usually, all of the design and planning professionals hired for the project are already on board when the risk issues first surface.

When these types of situations occur and the owner then chooses OCIP, it is common that the owner must subsequently renegotiate contracts to amend insurance and indemnity provisions and/or attempt to recover insurance premiums built into bids. The alternative is, essentially, to pay twice for some elements of the contract (e.g., insurance) and/or to live with some ambiguity. Commitments to processes or methods may already have been made, regardless of the risk implications. Needless to say, such situations are not the most efficient.

**Effective Organization for the OCIP**

Once the decision has been made to use OCIP, it is critical that the owner provide the resources and internal structure to set up the program. If the choice is to rely primarily on the services of an insurance broker for administration as well as for insurance marketing, then the broker should be engaged early in the process. The OCIP administrative staff will need time to learn the project, to develop relationships with key contacts on the owner’s or contractor’s staff and to set up for enrollments, pre-bid activities, manuals, training and many other functions, including possibly staffing up. The brokerage side of the operation will need time to develop and market an insurance program for the project.

If any of the administration is to be accomplished internally or through a third-party service, then organization may be even more critical. The new staff will need time to adjust to the organization and learn the program. As is the case with the insurance broker, the owner will need to develop plans and goals for administration and develop a contract in the case of a third-party administrator.

The owner’s staff person assigned to interact with the OCIP broker and oversee the results will need to begin his or her planning and organizing for the project. If staff is being added for the project, this activity is even more critical and the timeline longer.

Part of organizing, especially for a highly specialized service such as this, is to engage the best people available. Recruitment and selection of personnel is time-consuming but important. Broker or administrator assigned personnel may not be the best choices for the specific project in question. Individuals who are poor fits should be quickly weeded out and replaced. Any contracts with the broker or administrator should provide for the owner’s option to have a non-performing individual replaced with someone satisfactory.

**A Team Approach to Risk Management**

The term “risk manager” is something of a misnomer, as the persons who occupy positions with that title usually do not really manage risk any more than do other persons in positions of responsibility on the project. The “risk management specialist” on a major project provides their most important services as technical advisor and process facilitator for those responsible for actual results.

A good risk management specialist with proper skills can provide invaluable service, principally because they are trained in identifying and developing strategies to deal with potential loss causes that others with less specialized training might overlook. An example is exposure to liability for economic loss attributable to business interruption caused by project activities. Another is contingent risk arising out of exposures to a supplier or contractor. The risk management specialist usually employs a methodical approach and a broad range of experience to the risk identification aspects of the project and should be knowledgeable concerning...
methods for treating the risks. However, his or her knowledge of technique must be coordinated with other specialists’ and managers’ technical knowledge and familiarity with project specifics.

The best approach on a project is to recognize that every key member of the team “owns” some of the risk involved in the project. Each is responsible to help identify and quantify those risks and to contribute to the overall plan for risk management. For example, designers and engineers “own” the risk of structural failure due to design inadequacy or error. Contractors and construction managers to some extent share ownership of the risks arising out of lack of quality assurance or use of poor technique. Legal counsel and contract administrators deal with the risk of non-performance by selected contractors.

A recent concept for project risk management captures the essence of this approach. The process is called “Risk Analysis and Management for Projects” or “RAMP.” It was developed by a joint working party of the Institution of Civil Engineers and the Faculty and Institute of Actuaries (United Kingdom). The team consisted of actuaries, engineers and economists – no “risk managers” per se.

The RAMP approach looks at the entire life cycle of the “investment” as it refers to a project – from conceptual planning to retirement of the asset. Current and residual risks are considered. From a control perspective, the RAMP process refers to a “risk process manager” a “risk review team” and various “risk custodians.” The “risk process manager” is one who might be more commonly termed the “risk manager.” “Risk custodians” are those responsible for risk in various elements of the project and would include designers, construction managers, contractors and many others.

We have not yet seen a project that uses the RAMP process – overtly. However, elements of the concept are apparent in some of the control mechanisms instituted in major public works. In one such project, a “steering committee” executed many of the major steps involved in the RAMP process, without necessarily being aware of that fact. Many of the best-managed projects use similar methods.

More information is available about the RAMP process at www.ramprisk.com.

**Careful Risk Assessment**

It should go without saying that unless a risk to a project is identified that risk cannot be dealt with until a loss occurs, and then only to mitigate the damage. The OCIPs reviewed in this survey each included risk analysis in their feasibility studies (or implementation plans). This risk analysis was further supplemented by more detailed analyses conducted internally (by risk managers) and by the insurance brokers as part of the development of insurance specifications.

Effective risk assessment requires interaction with project management, design and planning specialists who are knowledgeable of processes and procedures. Construction risk specialists, often on staff at insurance brokers or functioning as independent consultants, can supplement the risk assessment with their knowledge of construction risks.

**Coordination with Existing Insurance Programs**

For a project owner constructing on an existing facility, it is important to coordinate an OCIP with existing coverage programs to avoid overlap or possible claims conflicts. Loss potential exists from construction operations or ongoing facility operations. Sometimes, it may be difficult to completely separate the causes and costs and allocate them to one program or the other. If different insurers are involved, the problem could be further complicated. The worst situation is one in which two different insurers argue over which one is responsible for a loss.
To preclude such potential problems, the San Francisco International Airport placed its OCIP liability coverage with the same insurer that writes the airport liability coverage. The Airport also arranged OCIP limits and deductibles to complement the existing program to avoid potential conflicts.

While such total integration is not always possible or desirable, some thought needs to be given in the planning process as to how the OCIP insurance program will interact with the operational insurance program. The appropriate point for this planning is when developing OCIP insurance specifications.

**Effective Administration**

OCIP administration is the key to the effectiveness of the program. The administration unit is the focal point that brings together the disparate entities and activities of the project for purposes of risk control. The administration unit is charged with the following at a minimum:

- Explaining the program to potential bidders
- Enrolling contractors in the OCIP and determining eligibility
- Developing insurance manuals, reporting forms, etc.
- Preparing management reports
- Issuing workers’ compensation policies to each contractor
- Issuing certificates of insurance for other coverage to each contractor
- Explaining coverage issues to any insured
- Monitoring contractor compliance with non-OCIP insurance requirements
- Collecting payroll information for premium calculation and statistical measurement
- Receiving and reporting claim information to the insurers
- Closing out coverage for contractors who have completed their work

The best OCIPs have dedicated administrative units responsible to the owner for the life of the project. For major projects, the unit may be exclusive, i.e., responsible for no other projects. Some brokers develop administrative units that are assigned to numerous accounts. In some cases, the unit will have more accounts than it can reasonably handle while providing top-level service. Another problem occurs when the unit is located some distance from the project. Although it is not necessary for the administrator to be at the project site daily, familiarity with the operations that can only come from frequent site visits is a distinct advantage.

**Strong Emphasis on Safety and Loss Control**

Safety and loss control may be the most important element in determining the success of OCIPs. Although exact savings can vary widely because of premium structures, deductibles, degree of loss sensitivity of rating programs and other factors, OCIPs save money principally because they usually have lower loss levels than traditional programs. The key to keeping loss levels low is good loss control, especially in the area of prevention. OCIPs that do not do as well as expected usually can attribute the failure to poor loss control.

The owner must influence safety and loss control, but cannot assume total or even primary responsibility for it. The mere fact that the insurance program is consolidated does not mean that the individual contractor is
any less responsible for safety. On the contrary, OCIP and contract documents should always emphasize that each contractor is responsible for safety at that contractor’s specific job site.

Nevertheless, consolidation of the risk management program and owner involvement in safety through establishment of policies and minimum standards can have substantial effect on loss results. Good programs require close attention to safety by the owner or its representatives, effective management information systems, incentives and disincentives to help mold safety behavior, and accountability for safety from each contractor to the owner through the contractual mechanism.

Safety can be coordinated and supported by owner staff safety professionals, by OCIP administrator or insurance broker staff, by a specialist contractor or by any combination of these elements. Insurers often supplement the safety effort by assigning a full-time safety professional to large projects.

Regardless of the source of the safety talent, direct accountability to the owner is crucial. We have seen OCIPs where the safety function has been assigned to project managers, construction managers or other parties without direct reporting relationships back to the owners project management team. The results are mixed, but generally less successful than those in which the owner has a direct reporting relationship and is closely involved.

For safety to be effective it needs to be somewhat of an independent audit function and not assigned to those responsible for production. The best safety programs are part of the overall risk management program and are focused at the project site, not spread about in a department or safety program with other responsibilities.

**Effective Emergency Management Plan**

Construction has specific hazards associated with it. In an OCIP, the owner has the opportunity to manage hazards through the contractors with a coordinated approach. When accidents or incidents happen, however, the best OCIPs have plans for responding quickly and effectively.

Incident response planning involves visualizing and preparing responses to a wide range of possible occurrences, from natural disasters such as earthquake and flood, to manmade disasters such as sabotage, to accidentally caused catastrophes such as gas explosions, building collapse, serious pollution incidents or major disruption of utilities. Each potential event needs a response.

Response planning includes consideration of physical damage control, restoration of operations, cleanup, recovery of critical path scheduling, loss cost minimization, legal management, reassurance of financing entities and public officials, and media and community relations. Coordination of emergency medical response is another possible area for an emergency management plan, although in an OCIP medical management often is arranged as part of the consolidated workers’ compensation program.

A well-run OCIP should have a master emergency management plan as well as a requirement for individual contractor emergency response plans. Unfortunately, we have not seen a great deal of emphasis on this element of risk management in OCIPs. It is an area that also is often overlooked in other types of risk management programs.

**Aggressive Communication Program**

Most general contractors are familiar with OCIPs and know the procedures. Smaller contractors and subcontractors may not be familiar with OCIP nuances. Employees generally know little of the concept.
It is important to develop a program to communicate OCIP requirements and procedures to all levels of the project. This communication should begin before the bidding process with information about the OCIP distributed in Requests For Proposals (RFP) and in pre-bid conferences. The contractors need to be aware that the owner has chosen or is considering OCIP and that the bidding contractor needs to isolate and be prepared to remove his or her insurance costs related to the project.

Once the OCIP has begun and bids are awarded, the contractor and the contractor’s employees must become familiar with enrollment, payroll reporting and claims reporting procedures. The contractor must also be familiar with OCIP program particulars such as deductibles for which the contractor will be responsible, limits of coverage, and policy specifics especially as related to coverage. The contractor also needs to know what the OCIP does not cover such as contractor equipment, automobile liability, and product liability for materials used in the project.

Failure to communicate this knowledge to the contractor can result in unnecessary disputes, late claim reporting (which could result in denial of claims), and unnecessary costs.

**Good Contracting Procedures**

Under an OCIP, the contract with each project participant must clearly establish responsibilities and liabilities. Even though the owner provides most of the coverage, the contract should specify that the contractor will indemnify the owner for losses outside the OCIP (such as automobile claims off-site) and that the contractor will provide evidence of insurance to cover that indemnity obligation.

The contract should also echo and reinforce any requirements set by the owner under the OCIP including responsibility for site safety, deductibles, coverage excluded, Force Majeure issues and other matters.

**Owner Support for Insurance Marketing**

OCIPs are a “preferred class of business” for companies underwriting construction insurance today. The insurers like the premium volume and the general awareness of the need for good loss control and the resulting favorable loss results that characterize most OCIPs.

Nevertheless, the pricing, coverage enhancements and service support that an insurer is willing to provide are influenced significantly by the underwriter's perception of the owner and the project team. Therefore, it makes good sense to provide the underwriter with as favorable an impression as possible.

Good marketing begins with a good “underwriting submission” – a package of information about a project that includes coverage applications, engineering information, descriptions, schedules, financial information and evidence that the project has been effectively planned for success. Identification of and a program for treatment of loss exposures are also important. The insurance broker usually prepares this underwriting submission with help from the owner, project management personnel, risk managers, consultants and others.

To prepare a good submission, the broker needs good, complete material. The owner's staff should be diligent about obtaining everything the broker needs and making sure that the information is correct and current. It may help to suggest information or material that may be useful since the owner will know more about what is available than will the broker. For example, on one project, the owner's engineering consultant had developed an animated video showing changes to the location through the phases of the project and the anticipated final results.

The owner (through the designated appropriate representative) should review the underwriting submission to get a flavor for the type of information the broker feels that the underwriter would like to see. With this
knowledge, the owner will have a better sense of potentially helpful additional materials. Also, the owner can
determine if any inaccurate or obsolete information has crept into the package. Some owners may have the
submission reviewed by an independent consultant. Part of this review (or review by the owner's staff) is to
assure that important coverage elements and enhancements are included in the insurance specifications.

Because underwriters usually prefer seeing a situation first-hand, a presentation about the project at the
owner's offices can be very helpful. A tour of the project site can also work to the owner's marketing
advantage, provided that it is handled well. Finally, meeting the individuals responsible for the project's
success (risk manager, safety manager, construction manager) can provide a favorable impression that will
be reflected in the ultimate coverage quote.

Owner representatives should also participate in final insurer interviews and coverage negotiations. Their
specific knowledge of the project and their weight as direct parties to the insurance contract (as opposed to
the position of the broker who is an intermediary) can be helpful in obtaining last-minute coverage
enhancements or pricing improvements.

**Good Quality Assurance Procedures**

Like the construction process itself, the insurance device and its related services need quality control. A
project owner needs mechanisms to assure that the OCIP administration team, the safety support team and
the claims adjustment process meet specifications and provide everything bargained for. Equally important is
a review of policies and endorsements to assure that all of the agreed coverage and enhancements are
provided, that pricing is correct, and that important information (such as addresses, property schedules,
identification of insureds) is correct.

The mechanism for monitoring results from the administration and safety teams is periodic review of the
reports they generate. Claims review meetings, accident review meetings and periodic standard reports are
the useful devices for this type of quality control.

Claim handling should be audited, especially in loss-sensitive programs in which the owner's ultimate cost is
determined after the coverage period and is a function of losses. Sometimes the OCIP broker can assist in
review of the insurer claim handling, but at other times an independent audit may be more appropriate. If a
third party administers claims, the same principles apply.

Insurance policies and endorsements should be carefully reviewed by the owner's risk management
representative to assure that coverage is as negotiated. Equally important is assuring that the owner receives
all policies and forms. It is not uncommon on large projects for some of the policies to be issued well after
coverage has commenced. By that time, coverage provisions negotiated during final insurer selection may
have been forgotten, key insurer or broker personnel may have moved on to other employ, or simply time-
related errors may creep in to the final product. A review of policy documents on one large project resulted in
an error list covering fifteen single-spaced pages.

**Sound Close Out Procedures**

Good close out procedures are important for an OCIP. These procedures are required for removing from the
policy each contractor who has finished their portion of the work, for assuring that all OCIP elements have
been complied with (including payment of deductibles) before the contractor departs, and for closing out
claim and premium information so that dividends or retrospective calculations can be completed. The OCIP
administration team usually handles close out.
## Appendix E – OCIP Scope and Design Decision Criteria

<table>
<thead>
<tr>
<th>Issue</th>
<th>Decisions</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects to include in OCIP</td>
<td>Whether to include a specific contract in the OCIP or require the contractor to provide traditional insurance.</td>
<td>* Will the underwriter accept the risk (e.g., remediation contracts)? * Does the nature of the project lend itself to OCIP? * Are there use of funds restrictions that would preclude OCIP? * Must a project start before the OCIP starts?</td>
</tr>
<tr>
<td>Include basic OCIP coverage or limit scope of basic OCIP</td>
<td>Whether to include workers’ compensation, general liability and builder’s risk in OCIP.</td>
<td>* Are there statutory restrictions? * Does one party enjoy a special negotiating ability (i.e., contractor or owner may have better result on one specific coverage)</td>
</tr>
<tr>
<td>Purchase project professional liability insurance</td>
<td>Whether to buy professional liability for project designers or require each to provide coverage.</td>
<td>* What is the cost and availability? * How many and what different types of professional services? * How closely do the owner’s and designers’ interests coincide? * What are the risks and impact of design failure?</td>
</tr>
<tr>
<td>Purchase project pollution liability insurance</td>
<td>Whether to purchase a separate pollution liability policy or rely on contractor’s coverage.</td>
<td>* Who will sign manifests for contaminant disposal? * Are there known contaminants? * Any known major risks (nearby bodies of water, stored contaminants?) * How much confidence can the owner place in contractor’s coverage?</td>
</tr>
<tr>
<td>Eligibility rules for contractors in OCIP</td>
<td>Whether or not to exclude contractors because of size or nature of activity.</td>
<td>* Should smaller contractors be excluded for economic reasons? * Should smaller contractors be included for political reasons? * Should non-construction contractors be excluded? Will underwriter exclude certain classes? * Should construction managers be specifically included when other professionals are not?</td>
</tr>
<tr>
<td>Additional insureds to include</td>
<td>Whether coverage should extend to certain additional insureds.</td>
<td>* Should affiliated entities be added to policies as named insureds? * Are their any contractual requirements for adding additional insureds? * Can additional insured status substitute for other insurance requirements (such as for railroads)?</td>
</tr>
<tr>
<td>OCIP Administration</td>
<td>Whether to administer claims, enrollments etc. internally, independently or by broker.</td>
<td>* What are broker’s resources for administration? * Who are the personnel assigned to this account? * What are the capabilities of the assigned staff? * Is an independent source available in this area? * Are there control advantages to independent administration that appeal? * What internal resources are available? * What internal policies affect addition of staff and in what way? * Is there a cost difference between the options? * Is there a perceived quality difference?</td>
</tr>
<tr>
<td>Selecting policy limits</td>
<td>Determining how much coverage is enough for each type of insurance.</td>
<td>* What is probable maximum loss for each exposure? (requires analysis) * What is market capacity? (limits available) * What is pricing differential at different levels? * What are collateral sources of recovery? (e.g., supplier policies, indemnity)</td>
</tr>
<tr>
<td>Fixed cost vs. loss-sensitive plans</td>
<td>Whether to select guaranteed cost or take risk on project final outcome.</td>
<td>* Is guaranteed cost available? * If available, do restrictions apply? * What is potential savings of loss-sensitive vs. guaranteed cost?</td>
</tr>
<tr>
<td>Purchase railroad protective liability insurance.</td>
<td>Whether to purchase a master policy or require individual contractors to provide.</td>
<td>* Will project require access to railroad property? * How frequent will such access be? * Can a master policy save money?</td>
</tr>
<tr>
<td>Issue</td>
<td>Decisions</td>
<td>Criteria</td>
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<tr>
<td>Selecting deductibles or self-insured retentions</td>
<td>Whether self-insured retentions or deductibles are appropriate, economical or required. Whether to apply separate deductibles to contractors.</td>
<td>* Will deductible or SIR save money? * What is pricing differential at optional levels? * Will deductible applied to contractor discourage carelessness (regardless of owner deductible)? * What level of deductible passed through to contractor is appropriate?</td>
</tr>
<tr>
<td>Broker compensation</td>
<td>Whether to compensate on fixed fee or by commission for marketing efforts.</td>
<td>* Will one fee agreement cover all needed marketing activity? * Are there coverage outside the basic OCIP for which commission compensation makes sense? * Is a bonus arrangement appropriate?</td>
</tr>
<tr>
<td>Risk management organization</td>
<td>Whether to use the existing organization or set up a new one for the project. Whether to outsource the function.</td>
<td>* What need has been identified for internal risk management (beyond an additional duty)? * What are the owner’s current risk management resources available for this project? * Will funding sources provide for a separate program for this project? * Will current policies allow for additional project staff for this function? * Who will manage the owner’s interests if no risk management staff is available? * What level of support will the broker or OCIP administrator provide? * Are outsourced services available?</td>
</tr>
<tr>
<td>Safety Incentive programs</td>
<td>Whether to provide contractor performance incentives related to losses. Whether to provide worker safe behavior incentive programs.</td>
<td>* What is the organization’s commitment level to safety? * What is management’s philosophy on contractor safety incentives? I.e., are they perceived as windfall compensation for just doing one’s job? * How would safety incentives be funded? * Will performance yardsticks apply? Who would apply them? * How would incentives adjust for relative level of hazard? (some jobs are significantly more hazardous than others). * How would recognition be promoted to make the incentives behaviorally effective?</td>
</tr>
<tr>
<td>Safety organization</td>
<td>Where to place the safety function. How much to handle internally vs. externally.</td>
<td>* Does the current safety staff have construction experience of this type? * Is a special construction safety function warranted? * What level of support is needed? * What level of support will the broker or OCIP administrator provide? * Are there specific functional reasons to place safety under engineering or section other than risk management?</td>
</tr>
<tr>
<td>Management information system</td>
<td>Whether to set up own or rely on insurer or broker.</td>
<td>* What reports are the insurer or broker capable of producing? * What are their ad hoc reporting capabilities? * Can the broker or insurer provide direct client access to the information system and reports? * What identified reports will the owner’s management require? * What reports will the contractors want to see?</td>
</tr>
<tr>
<td>Bid credit accounting</td>
<td>Whether to require contractors to show amounts removed from bids and in what way.</td>
<td>* Will contractors remove insurance costs from bids without controls? * Will controls, such as bidding with and without, violate bidding rules? * Is the administrative effort and cost to obtain contractor insurance calculations worthwhile?</td>
</tr>
<tr>
<td>Pre-construction surveys</td>
<td>Whether to attempt to establish baseline damage to adjacent property prior to construction.</td>
<td>* Are nearby properties susceptible to damage? * Is there a way to keep survey information legally privileged? * What is the cost? * What is the opinion of legal counsel regarding this process? * Is there a claim defense strategy specifically to incorporate such information? * How confident is the owner that all pre-existing damage can be identified?</td>
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</table>
Appendix F – Contractual Risk Transfer

Inherent Defects

In a traditional program, the owner must very carefully attempt to transfer risk in the contract. This is done using indemnity agreements, exculpatory language, hold harmless clauses and many other devices. This transfer usually is backed by insurance. The agreements flow in favor of the owner and impose obligations on the contractor. The contractor pursues the same type of protection from the subcontractors.

Naturally, the contractor resists the owner's attempts to hold the contractor responsible for every type of loss the owner may face. This is especially true for losses that the contractor cannot adequately insure. Indemnity and insurance requirements pose an obstacle to negotiations and considerably increase the amount of time and effort involved in the process.

Furthermore, legal inroads against the owner's ability to transfer risks have made risk transfer through contract language highly uncertain. Many owners' standard hold harmless and indemnity clauses are in violation of statutes or are ineffective because the entities have not kept up with statutory, legal, and form (policy and endorsement) changes.

Contractual risk transfer is at best a haphazard exercise. A “bulletproof” contract that adequately transfers all risks to another party is unachievable. It would be impossible to keep up with all the potential limitations, exclusions, unknown endorsements and other coverage gaps in another party's insurance program without almost daily contact with that party and their insurance broker.

Even if the other party provided very broad insurance coverage, its insurer likely will resist paying a major claim on the additional insured's (owner's) behalf. Insurers introduce legislation, revise policies, change standard endorsements and litigate claims to reduce or avoid liability to additional insureds. Additional insured coverage is a topic of great interest in the insurance industry, and there is a powerful trend away from providing broad indemnification to additional insureds. For example, the 2004 amendments to the most common Insurance Services Office additional insured endorsements effectively eliminate any coverage for sole negligence of the additional insured (usually the owner or general contractor in the case of a subcontractor's insurance) and can also eliminate coverage for comparative negligence unless the named insured (i.e., the contractor) is directly involved in causing the loss.

This risk transfer mechanism is less than perfect. An indemnity agreement is subject to challenges on public policy grounds. Some recent statutes severely restrict the owner's ability to obtain protection in a construction contract.

Consequently, there may be little relevant case law on recent code changes, further increasing uncertainty. The owner may have to litigate to enforce its intended protection. Even if the other party provided very broad
insurance coverage, their insurer may work diligently to assure that it will not have to pay a major claim on
the additional insured's (owner's) behalf.

The following list shows some of the reasons why hold harmless and indemnity agreements backed by
insurance can fail.

**Defects in Contractual Risk Transfer**

- Held against public policy (e.g. unequal bargaining power)
- Ambiguity interpreted against drafter (owner)
- Violates statute (e.g., attempts to transfer risk for owner's active negligence in construction)
- Contractor's insurance inadequate due to exclusions, etc.
- Insurance expires and is not renewed
- Aggregate policy limits exhausted by claims on other projects
- Contractor's insurance broker fails to add owner as additional insured (forcing reliance on indemnity
  agreement only)
- Contractor cannot get the coverage as negotiated between owner and general (insurer unwilling)
- Contractor's insurer fails (often due to contractor's inability to get coverage through a first-tier
  insurance company)
- Contractor or contractor's insurance broker fails to follow through with changes to program as required
- Insurer cancels contractor's insurance
- Market tightens and contractor unable to renew with comparable coverage

Although some of these problems could happen under an OCIP, adverse outcomes are far less likely to
occur when the owner is placing a multimillion-dollar negotiated consolidated insurance program with top-
rated insurers through top-level insurance professionals.

In an owner-controlled program, unlike the other options, the owner need not rely on the contractual risk-
transfer mechanism (although it is still used for “off-site” exposures). In traditional insurance programs, and
even in contractor-controlled programs, the risk-transfer mechanism is the indemnity agreement. The
financial guarantee for the indemnity agreement is the contractor's insurance policy.

Another threat to the security of the risk transfer mechanism is special interest legislation. Some of this
legislation singles out the construction industry for favorable treatment and targets the public sector for
special restrictions.
Appendix G – Common Contractor Objections to OCIP

Although OCIPs have become common in certain sectors of the construction business, there are still some who object to the concept. Presented below are some of the typical objections and responses.

1. OCIPs do not produce savings to the owner.

A 1999 study of 30 OCIPs by Marsh USA, Inc. indicated that the average OCIP program saved .91% of project hard costs. The most successful saved 3.6% of hard costs. Twenty-seven out of the 30 programs showed clear savings. The other three programs could not clearly demonstrate whether or not savings occurred, presumably from data problems. Similar studies by Aon Risk Services yielded approximately the same results.

The difference in maximum rates charged to contractors compared to rates quoted for OCIPs indicate a clear savings on these rates alone without considering potential savings from reduced losses. Savings due to reduced losses would be in addition to premium savings. In a traditionally insured project, those savings (if any) accrue to the insurer or to the contractor if the contractor is large and sophisticated enough to have a loss-sensitive program. Those savings are less likely to occur in a traditionally insured project, however, according to insurer statistics on OCIP.

A related argument is that smaller firms cannot deduct any costs from their bids because of minimum premiums or flat premiums. Only the smallest contractors would be subject to minimums or flat premiums. Even in those few instances insurers usually can be persuaded to provide credits when their insured is entering an OCIP situation.

Contractors, if any, that would fall in the range of firms unable to obtain credits for business insured under OCIP because of small premiums would also likely be those firms unable to provide evidence of coverage from satisfactory insurers sufficient to meet reasonable minimum requirements. Thus, without the coverage extended by an OCIP, these same firms could be ineligible for work.

2. OCIP creates additional hardship for emerging businesses.

The arguments presented on this subject do not actually relate to whether or not a business is “emerging” or established. The position expressed by some is that OCIPs require more paperwork for the contractor that normally would be handled by the contractor’s insurer. The argument goes on to state that failure to comply with paperwork requirements could lead to liquidated damages for delays.

OCIPs require some paperwork from the contractor. For the most part, this is the same information that the contractors must provide to their own insurance companies. Examples include reporting payroll and
identifying information about the firm and its activities. Participation in an OCIP requires some duplication of what the contractor is already doing.

One of the keys to a well-managed OCIP is to make these forms as uncomplicated and clear as possible. Forms used in OCIPs should be simple and easy to prepare requiring a minimum of time and effort.

Liquidated damages are not appropriate for failure to comply with reporting requirements. Contractors that refused to comply with reporting requirements might have payments held up but liquidated damages for failure to report payroll or other information seems highly improbable.

3. OCIP reduces incentive for contractor attention to safety and may make the owner responsible for jobsite safety.

These arguments cannot be supported by facts. The loss experience of contractors enrolled in OCIP is reported to the Workers’ Compensation Insurance Rating Bureau and included in contractor experience modifier calculations, just as is the case for loss experience under traditionally insured projects. This loss history remains with the contractor for future experience modifier calculations. Carelessness will have a lingering, costly effect on the contractor's insurance program. Legally, the contractor is always responsible for site safety and is subject to CalOSHA fines and penalties for violations or unsafe practices.

OCIPs generally apply deductibles to contractor-caused general liability losses as an additional disincentive to carelessness. Inattention to safety also can result in costly delays for the contractor that could conceivably lead to liquidated damages situations, which contractors seek to avoid.

OCIP does not make the owner more responsible for safety. The contractor is responsible for site safety with or without an OCIP, a fact that should be clarified in the contract. Owner responsibility for jobsite safety is limited and no owner should attempt to interject itself into the situation. An OCIP merely sets minimum standards that a contractor's individual program must meet and provides additional resources to meet the safety challenge. The effects are positive.

Several recent cases are relevant to this issue. In Smart v Chrysler Corporation, an injured worker attempted to recover from the owner alleging that it maintained substantial control over the job site, including safety, because of its weekly safety meetings and published safety guidelines. The trial court granted the owner's motion for summary judgment and the Missouri Court of Appeals affirmed. Two important issues recognized by the Court were that the owner has a right to be involved in the project without incurring tort liability for injuries and that responsibility for site safety is at least partially determined by the contract between owner and contractor.

In Zamudio, v. City and County of San Francisco, 82 Cal. Rptr. 2d 664 (Cal. App. 1 Dist 1999), the court held that the owner's contractual right to inspect the contractor's work progress did not give the owner control of the site for the purpose of assuring safety.

4. OCIP creates gaps in insurance coverage for contractor.

The arguments we have heard on this matter do not discuss created “gaps” (an unfilled void where neither of several policies apply) but rather situations in which an OCIP might not provide coverage, thereby requiring the contractor's own insurance program to respond to a claim made against the contractor. These may involve several situations including off-site activity, products liability, and auto liability claims. None of these are intended to be covered under OCIP.

This concern may stem from a misunderstanding about what OCIP is intended to do. OCIP does not replace the contractor's insurance program. It is merely a financing instrument designed to cover bodily injury and
property damage losses on a project basis rather than on an insured basis. Naturally it will not cover losses occurring away from the project unless the loss is connected with the project exclusively.

Auto liability is excluded in an OCIP because of the previously stated principle that insurance must “follow the vehicle.” This principle applies in any situation, including employee use of personal vehicles on employer business.

Products liability claims against products furnished by suppliers or fabricators are not construction risks but rather manufacturing risks and belong in the manufacturing environment, not as part of a construction project. Furthermore, such claims are exceedingly rare and generally involve the manufacturer, not the contractor.

One argument of some merit in this section involves the risk of “completed operations” which is, in effect, a construction company's counterpart to the products liability risk. Completed operations losses are those that arise out of incidents occurring after a project has been completed and turned over to the owner. This risk endures after the project for up to three years for patent defects and ten years for latent defects in California, by statute.

An OCIP owner should structure general liability coverage to protect against completed operations claims for as long as possible, up to the statute for latent defects. In recent years, owners on OCIPs have been able to obtain extended completed operations coverage up to that length (10 years). In a hardening market, the extended coverage periods may shorten, but will still be longer than a contractor usually can obtain. Further, there is an argument to be made that unlimited protection against completed operations could create what insurers would call a morale hazard and encourage, or at least remove one compunction against carelessness by the contractor.

5. **OCIP creates potentially lower limits.**

The argument is that a traditionally insured project with many contractors with different and separate liability insurance limits provides better protection than a program that covers all with one limit. A corollary argument is that the higher limits usually purchased by the owner lead to larger lawsuits. Both arguments are ingenuous and ignore several facts.

Smaller to medium sized contractors usually carry inadequate insurance limits, at least as perceived by risk and insurance experts. Most contractors have a one million limit, which is also the policy total limit. Many smaller contractors may have less than a one million limit, especially in a hard market, and contractor limits at all levels are subject to claims from other projects. In many cases, those limits already have been depleted by losses on other projects and in some cases some policies will have no remaining limits because of prior claims.

More important on a large project is the per occurrence limit. That limit should be high enough to cover catastrophic losses, which are what the owner really should be concerned about. No combination of contractor policies with $1 million dollar limits will cover a truly catastrophic loss. As the deep pocket, the owner usually winds up with the expense, especially in highly visible community projects by a local institution.

6. **OCIP causes more difficult resolution of claims.**

One paper against OCIPs by a contractor organization that we reviewed states:

*The proponents of OCIP argue that with one insurance provider claim resolution will be simpler and more efficient. That is probably true, however, may not be in the best interest of the owner or the contractors. When one insurance company is responsible and denies coverage, it is over except for the litigation process.*
The insurance company has made the decision that the risk of losing the court battle is a better business decision than paying the claim. Many claims are settled simply because of the existence of many insurance companies representing individual contractors, all willing to take a small part of the claim in lieu of risking a large judgement by themselves.

This argument appears to contradict itself. Claim resolution is more efficient when a single insurer is involved. Even before the lawsuit, the melee begins at the loss site when different investigators, claim adjusters, attorneys and others jostle to protect their own interests. The advantages of streamlined claim resolution far outweigh any benefits deriving from the chance that a particular contractor may wish to have their insurer settle out of a claim for their relatively low liability insurance limit. There is also an incentive for the low-limit insurer of the contractor to settle out for its inadequate policy limit, leaving the deep-pocket owner as the remaining defendant, whose position now is seriously weakened by the fact that the party actually liable has acknowledged that fact.

7. OCIP creates more risk to owner of insurer default

The risk of insurer default mathematically is the same in an OCIP or traditionally insured project. The difference is that in an OCIP, the owner likely has stronger insurers, can do something about default if it should occur, and probably has a greater spread of risk (among different insurers for different lines and in the excess liability layers).

If the general contractor’s insurer defaults, the owner can only hope the contractor will replace the coverage or may be forced to bring a breach of contract action against the contractor if the coverage is not replaced. In an OCIP, the insurer is far more likely to be a first-rate company than in traditionally insured projects, except possibly as respects the insurers of the very largest general contractors. Top quality insurers dominate the OCIP coverage market. As previously discussed, all but the largest contractors have trouble finding quality insurers to write coverage when market conditions are the slightest bit firm.

OCIPs also are characterized by “layered” programs in which multiple insurers cover a part of the risk. If one insurer has problems, the others are still there to provide coverage. If one insurer does become unsuitable, they can be replaced. Reliance, the example mentioned in the AGC paper, provide part of a layer of liability coverage on one large public works OCIP in Southern California. The insurer was replaced promptly at no additional premium by an A++:XV (highest possible rating) insurer for the duration of the project.