



# Memorandum

**TO:** VOLUNTARY EMPLOYEES’  
BENEFICIARY ASSOCIATION  
ADVISORY COMMITTEE

**FROM:** Miguel Bernal

**SUBJECT:** FIDUCIARY LIABILITY  
INSURANCE RENEWAL

**DATE:** June 3, 2024

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Approved *Rick Brunsau*

Date 6/3/2024

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## **RECOMMENDATION**

Approve renewal of the City of San José Voluntary Employees’ Beneficiary Association (“VEBA”) fiduciary liability insurance including fiduciary dishonesty coverage offered by Hudson Insurance Company (“Hudson”), the incumbent carrier, for the period from June 30, 2024 to June 30, 2025, with a \$5 million aggregate limit and a \$25,000 retention, for a net premium of \$17,918.96<sup>1</sup> plus a broker fee allocation of \$340.00 for a total program cost of \$18,258.96.

## **BACKGROUND**

The City of San José (“City”) purchases fiduciary liability insurance coverage for the City’s VEBA Plans (“Plans”). The purpose of the insurance is to protect the City and the Plans’ Board from legal liability. The coverage is designed to respond to claims from plan participants or regulating agencies alleging a breach of fiduciary duty in either the management or administration of the Plans. The current policy provided by Hudson expires on June 30, 2024.

The City’s insurance broker, Alliant Insurance Services, Inc., (“Alliant”), worked with the Finance and Human Resources Departments to gather and prepare the necessary information needed by the incumbent insurer and other interested markets. No application was required for this year’s renewal. The City reported sponsored plan assets of \$71,193,435 as of March 31, 2024, a 34.6% increase over the \$52,858,010 in sponsored plans assets reported as of March 31, 2023.

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<sup>1</sup>Net premium represents the gross premium quoted by Hudson less credit for the retail commission to Alliant as the City has a fee arrangement with Alliant.

## **ANALYSIS**

The marketplace for fiduciary liability insurance has continued to improve over the past year. Despite conflicting positive and negative judicial decisions and a mostly unacknowledged drop in excessive fee class actions in 2023 (48 compared to 89 in 2022), a recent increase in the number of markets interested in writing primary fiduciary liability policies has been the main driver of a flattening of premium increases. Policyholders with stable risk profiles and little year-over-year changes are seeing flat renewals<sup>2</sup>.

Alliant did a full marketing of the policy in 2022 and 2023 and received no quotes from alternative insurance markets, who indicated that they could not be competitive with the Hudson program on pricing or with respect to the coverage terms and conditions. As such, Alliant and the Finance Department elected against conducting a full marketing effort and negotiated renewal terms with Hudson. Despite initial indications of an 8% to 10% premium increase, Hudson ultimately quoted a \$5 million aggregate limit subject to a \$25,000 retention for an annual net premium of \$16,198.96 and a coverage option for Fiduciary Dishonesty for an incremental premium of \$1,720.00. Hudson's renewal quote reflects the second straight year that they have offered a flat premium relative to the expiring policy.

Following the review of the proposal from Hudson, Finance recommends continuation of the expiring program with the incumbent carrier. Hudson continues to hold a financial strength rating with A.M. Best & Company ("Best") of A+, Size Category XV, indicating that they hold over \$2 billion in policyholder surplus. Best affirmed a "Stable" outlook for Hudson on July 6, 2023.

The total program cost includes a broker fee allocation in the amount of \$340.00. The City compensates Alliant through a fixed fee agreement and the charge represents the cost allocation for Alliant to place the policy.

## **COORDINATION**

This report was prepared by the Finance Department in coordination with the Human Resources Department and the City Attorney's Office.

/s/  
Miguel Bernal  
Risk Manager, Finance

For questions, please contact Miguel Bernal, Risk Manager, at miguel.bernal@sanjoseca.gov or (408) 975-1438

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<sup>2</sup> [Willis Towers Watson Insurance Marketplace Realities 2024 Spring Update - Fiduciary Liability](#)

VOLUNTARY EMPLOYEE' BENEFICIARY ASSOCIATION ADVISORY COMMITTEE

June 3, 2024

**Subject: Fiduciary Liability Insurance Renewal**

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**ATTACHMENTS**

Appendix A: Year-Over-Year Cost Comparison

Appendix B: Quotes and Coverage Outline

## Appendix A: Year-Over-Year Cost Comparison

<b>Carrier</b>	Hudson Insurance Company	Hudson Insurance Company
<b>Coverage</b>	Fiduciary Liability	Fiduciary Dishonesty
<b>Plan</b>	VEBA Plans	VEBA Plans
<b>Aggregate Limits</b>	\$5,000,000	\$500,000
<b>Retention</b>	\$25,000	\$5,000
<b>23-24 Net Premium</b>	\$16,198.96	\$1,720.00
<b>24-25 Net Premium</b>	\$16,198.96	\$1,720.00
<b>\$ Change YOY</b>	\$0.00	\$0.00
<b>% Change YOY</b>	0.00%	0.00%
<b>Broker Fee Allocation</b>	\$340.00	Included
<b>Total Program Cost</b>	<b>\$16,538.96</b>	<b>\$1,720.00</b>

## Appendix B: Quotes and Coverage Outline



City of San Jose – for City of San  
Jose Sworn VEBA Health Savings  
Trust; City of San Jose Federated  
VEBA Health Savings Trust

### Fiduciary Liability Insurance Proposal

Presented by: Shawn Kraatz  
Date Presented May 17, 2024

Alliant Insurance Services, Inc.  
18100 Von Karman Avenue 10th Floor  
Irvine, CA 92612  
O 949 756 0271

CA License No. 0C36861

[www.alliant.com](http://www.alliant.com)

## Named Insured

City of San Jose

### NAMED INSURED DISCLOSURE

- Name Insured(s) should match State of Incorporation filing. Inform Alliant if there is a difference or change
- The First Named Insured policy status granted includes certain rights and responsibilities. These responsibilities do not apply to other Named Insureds on the policy. Some examples for First Named Insured status include; (1) being designated to act on behalf of all insureds for making policy changes, (2) receiving of correspondence, (3) distributing claim proceeds, and (4) making premium payments
- **Are ALL entities listed as named insureds?** Coverage is **not** automatically afforded to all entities unless specifically named. Confirm with your producer and service team that all entities to be protected are on the correct policy. Not all entities may be listed on all policies based on coverage line.
- Additional named insured is (1) A person or organization, other than the first named insured, identified as an insured in the policy declarations or an addendum to the policy declarations. (2) A person or organization added to a policy after the policy is written with the status of named insured. This entity would have the same rights and responsibilities as an entity named as an insured in the policy declarations (other than those rights and responsibilities reserved to the first named insured).
- Applies to Professional Liability, Pollution Liability, Directors & Officers Liability, Employment Practices Liability, Fiduciary Liability policies (this list not all inclusive). Check your Policy language for applicability. These policies provide protection to the Named Insured for claims made against it alleging a covered wrongful act.

## Premium Summary

Coverage	Expiring Premium*		Renewal Premium*	
Fiduciary Liability	\$	16,198.96	\$	16,198.96
Fiduciary Dishonesty	\$	1,720.00	\$	1,720.00
<b>TOTAL</b>	<b>\$</b>	<b>17,918.96</b>	<b>\$</b>	<b>17,918.96</b>

\*Premium is net of commission. TRIA premium is included.

### Payment Terms

- Premium is due within 25 days of policy inception
- Agency Bill
- Payment Plan: Annual

### Options

- None

## Fiduciary Liability Coverage

	Present Coverage	Proposed Coverage
<b>Insurance Company</b>	Hudson Insurance Company	Hudson Insurance Company
A.M. Best Rating	A (Excellent), Financial Size Category: XV (\$2 Billion or greater) as of June 23, 2022	A+ (Superior), Financial Size Category: XV (Greater than or Equal to \$2 Billion) as of July 6, 2023
Standard & Poor's Rating	Not Rated	Not Rated
California Status	Admitted	Admitted
<b>Policy/Coverage Term</b>	June 30, 2023 to June 30, 2024	June 30, 2024 to June 30, 2025
<b>Policy #</b>	SFD31211824-02	TBD

<b>Coverage Form</b>	The Euclid Vanguard Package Policy – <b>Claims- Made Form</b> Form Number: ESM-VANGUARD-FID (04/2019)	Same as Present
<b>Insured Plans</b>	<ul style="list-style-type: none"> <li>City of San Jose Sworn VEBA Health Savings Trust</li> <li>City of San Jose Federated VEBA Health Savings Trust</li> </ul>	Same as Present
<b>Prior or Pending Date</b>	January 1, 2018	Same as Present
<b>Continuity Date</b>	None (Full Continuity)	Same as Present
<b>Limits</b>	<b>Fiduciary Liability</b> \$ 5,000,000 Aggregate Limit of Liability for all Loss under this Coverage Part	Same as Present



## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Limits - Continued</b>	<b>Fiduciary Dishonesty</b>	Same as Present
	\$ 500,000 Fiduciary Dishonesty (Employee Theft) Coverage	
	\$ 500,000 Forgery Coverage	
	\$ 500,000 Computer Fraud Coverage	
	\$ 500,000 Funds Transfer Fraud Coverage	
	\$ 50,000 Payment Instruction Fraud (Social Engineering) Coverage	
	\$ 10,000 Expense Coverage	
<b>Sub-Limits</b>	<b>Fiduciary Liability</b>	Same as Present
	\$ 5,000,000 Settlor Coverage	
	\$ 1,250,000 Trustee Claims Expenses Coverage / Defense of Non-Fiduciary Claims	
	\$ 200,000 Voluntary Compliance Program Expenditures	
	\$ 200,000 Reinstatement of Voluntary Compliance Program Expenditure	
	\$ 1,500,000 HIPAA and HITECH Fines and Penalties	
	\$ 200,000 PPACA Fines and Penalties	
	\$ 200,000 ERISA 502(c) Civil Penalties	
	\$ 200,000 IRC Section 4975 Penalties	

## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Sub-Limits - Continued</b>	Not Applicable	Coverage for Claims of Equitable Relief and Surcharges
	\$ 100,000	Death Master File Penalties (Section 203 of the Budget Act of 2013)
	Not Applicable	Miscellaneous/ Other Penalties
	Not Applicable	Benefit Overpayment Coverage
	\$ 100,000	Euclid Penalty Box
<b>Retention</b>	<b>Fiduciary Liability</b>	Same as Present
	\$ 25,000	Indemnifiable
	0	Non-Indemnifiable
	<b>Fiduciary Dishonesty</b>	Same as Present
	\$ 0	Fiduciary Dishonesty (Employee Theft) Coverage
	\$ 5,000	Forgery Coverage
	\$ 5,000	Computer Fraud Coverage
	\$ 5,000	Funds Transfer Fraud Coverage
	\$ 25,000	Payment Instruction Fraud (Social Engineering) Coverage
	\$ 5,000	Expense Coverage
<b>Defense Inside/Outside the Limit</b>	Inside the Limits	Same as Present
<b>Who has the Duty to Defend</b>	Insurer	Same as Present

## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Endorsement &amp; Exclusions</b> (including but not limited to)	<ul style="list-style-type: none"> <li>• Failure to collect Contributions Exclusion</li> <li>• Return of Contributions Exclusion</li> <li>• Bodily Injury, Mental Anguish, Emotional Distress, Sickness, Disease or Death and Property Damage Exclusion</li> <li>• Illegal Profit Exclusion</li> <li>• Discrimination Except for Employee Benefit Law Exclusion</li> <li>• Known Prior Acts Exclusion</li> <li>• Workers Compensation, Unemployment Insurance, Social Security or Disability Benefits Laws Exclusion</li> <li>• Deliberate Fraudulent or Dishonest Acts Exclusion</li> <li>• Definition of Administration to include determining and calculating benefits</li> <li>• California Amendatory Endorsement</li> <li>• U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders</li> <li>• Policyholder Disclosure Notice of Terrorism Insurance Coverage</li> <li>• Euclid Enhancement Endorsement for the Alliant Governmental Fiduciary Liability Insurance Program</li> </ul>	Same as Present
<b>Program Highlights</b>	<ul style="list-style-type: none"> <li>• Definition of Loss to include Punitive, Exemplary, and Multiplied Damages (where insurable)</li> </ul>	Same as Present

## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Program Highlights – Continued</b>	<ul style="list-style-type: none"> <li>• Definition of Insured Persons to include Employees of any Insured Plan</li> <li>• Non-Cancellable by Insurer other than for Non Payment of Premium</li> <li>• Notice/Claim Reporting Provision – notice required after General Council, Risk Manager or Trustee first learns of claim</li> <li>• Wrongful Act definition includes administrative duties; counseling employees, participants, and beneficiaries; handling of records; failure to comply with privacy provisions of HIPAA</li> <li>• Defense cost coverage for performance of managed care services with respect to selection of medical or health service providers</li> <li>• Final Adjudication wording for conduct exclusions</li> <li>• Employee Benefit Law defined to acknowledge Public Entity Risks not subject to ERISA</li> <li>• No Hammer Clause</li> <li>• Severability of Exclusions</li> <li>• Spousal Extension amended to include Domestic Partner</li> <li>• Priority of Payments provision</li> <li>• Broadened Definition of Administration</li> <li>• Extended Reporting Period (Discovery Period) available for one to six years</li> <li>• Automatic Coverage for COBRA Violations</li> <li>• Interview Coverage by Enforcement (Govt) Unit</li> </ul>	<p>See Above</p>

## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Program Highlights - Continued</b>	<ul style="list-style-type: none"> <li>• Retainer Fees &amp; Expenses of Independent Fiduciary</li> <li>• Expanded ability of the policyholder to provide a notice of potential claim</li> <li>• Expanded Definition of Damages – includes fees for an Independent Fiduciary to validate any proposed settlement</li> <li>• Policy exclusions limited to indemnity only and with policyholder friendly prefatory language</li> <li>• Defense provided for Personal Profit and Fraud Exclusions and limited to final, non-appealable adjudication in the underlying action or insurer-initiated coverage action</li> <li>• Libel and slander exclusion deleted</li> <li>• Defense provided for claims of bodily injury</li> <li>• Definition of Claim expanded to include a formal investigative order of an administrative or regulatory proceeding</li> <li>• Definition of Claim expanded to include written request to toll or waive a statute of limitations applicable to covered wrongful acts</li> </ul>	See Above
<b>Total Cost Including TRIA</b>	\$ 18,736.00 Fiduciary Liability \$ 100.00 Waiver of Recourse \$ 2,000.00 Fiduciary Dishonesty Included TRIA Premium <u>(\$ 2,917.04) Commission Rebate (14%)</u> <b>\$ 17,918.96 Total Cost</b>	\$ 18,736.00 Fiduciary Liability \$ 100.00 Waiver of Recourse \$ 2,000.00 Fiduciary Dishonesty Included TRIA Premium <u>(\$ 2,917.04) Commission Rebate (14%)</u> <b>\$ 17,918.96 Total Cost</b>

## Fiduciary Liability Coverage - Continued

	Present Coverage	Proposed Coverage
<b>Total Cost Excluding TRIA</b>	Not Applicable	Not Applicable
<b>Minimum Earned Premium</b>	Not Applicable	Same as Present
<b>Extended Reporting Period</b>	<ul style="list-style-type: none"> <li>• One (1) Year for 100% of original premium</li> <li>• Two (2) Years for 175% of original premium</li> <li>• Three (3) Years for 200% of original premium</li> <li>• 72 months upon request and carrier approval</li> </ul>	Same as Present
<b>Policy Auditable</b>	Not Auditable	Same as Present
<b>Quote Valid Until</b>	No Longer Applicable	June 28, 2024
<b>Binding Conditions</b>	No Longer Applicable	A written request to bind coverage

**See Disclaimer Page for Important Notices and Acknowledgment**

## Disclosures

This proposal of insurance is provided as a matter of convenience and information only. All information included in this proposal, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This proposal does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this proposal is also expressly conditioned on there being no material change in the risk between the date of this proposal and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this proposal, whether or not this offer has already been accepted.

This proposal is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this proposal of insurance.

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at [www.alliant.com](http://www.alliant.com). For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at [www.ambest.com](http://www.ambest.com). For additional information regarding insurer financial strength ratings visit Standard and Poor's website at [www.standardandpoors.com](http://www.standardandpoors.com).

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

## NY Regulation 194

Alliant Insurance Services, Inc. is an insurance producer licensed by the State of New York. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities.

Compensation will be paid to the producer, based on the insurance contract the producer sells. Depending on the insurer(s) and insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.

The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.

## Privacy

At Alliant, one of our top priorities is making sure that the information we have about you is protected and secure. We value our relationship with you and work hard to preserve your privacy and ensure that your preferences are honored. At the same time, the very nature of our relationship may result in Alliant's collecting or sharing certain types of information about you in order to provide the products and services you expect from us. Please take the time to read our full Privacy Policy posted at [www.alliant.com](http://www.alliant.com), and contact your Alliant service team should you have any questions.

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## Other Disclosures / Disclaimers

### FATCA:

The Foreign Account Tax Compliance Act (FATCA) requires the notification of certain financial accounts to the United States Internal Revenue Service. Alliant does not provide tax advice so please contact your tax consultant for your obligation regarding FATCA.

### Guarantee Funds

Established by law in every state, guaranty funds are maintained by a state's insurance commissioner to protect policyholders in the event that an insurer becomes insolvent or is unable to meet its financial obligations. If your insurance carrier is identified as 'Non-Admitted', your policy is not protected by your state's Guaranty Fund.



## Other Disclosures / Disclaimers - Continued

### Claims Reporting:

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

### Claims Made Policy:

This claims-made policy contains a requirement stating that this policy applies only to any claim first made against the Insured and reported to the insurer during the policy period or applicable extended reporting period. Claims must be submitted to the insurer during the policy period, or applicable extended reporting period, as required pursuant to the Claims/Loss Notification Clause within the policy in order for coverage to apply. Late reporting or failure to report pursuant to the policy's requirements could result in a disclaimer of coverage by the insurer.

Any Employment Practices Liability (EPL) or Directors & Officers (D&O) with EPL coverage must give notice to the insurer of any charges / complaints brought by any state / federal agency (i.e. EEOC and similar proceedings) involving an employee. To preserve your rights under the policy, it is important that timely notice be given to the insurer, whether or not a right to sue letter has been issued.

### Changes and Developments

It is important that we be advised of any changes in your operations, which may have a bearing on the validity and/or adequacy of your insurance. The types of changes that concern us include, but are not limited to, those listed below:

- Changes in any operations such as expansion to another state, new products, or new applications of existing products.
- Travel to any state not previously disclosed.
- Permanent operations outside the United States, Canada or Puerto Rico.
- Mergers and/or acquisition of new companies and any change in business ownership, including percentages.
- Any newly assumed contractual liability, granting of indemnities or hold harmless agreements.
- Any changes in existing premises including vacancy, whether temporary or permanent, alterations, demolition, etc. Also, any new premises either purchased, constructed or occupied
- Circumstances which may require an increased liability insurance limit.
- Any changes in fire or theft protection such as the installation of or disconnection of sprinkler systems, burglar alarms, etc. This includes any alterations to the system.
- Immediate notification of any changes to a scheduled of equipment, property, vehicles, electronic data processing, etc.
- Property of yours that is in transit, unless previously discussed and/or currently insured.

## Other Disclosures / Disclaimers - Continued

### Certificates / Evidence of Insurance

A Certificate or Evidence is issued as a matter of information only and confers no rights upon the certificate holder. The certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by a policy, nor does it constitute a contract between the issuing insurer(s), authorized representative, producer or recipient.

You may have signed contracts, leases or other agreements requiring you to provide this evidence. In those agreements, you may assume obligations and/or liability for others (Indemnification, Hold Harmless) and some of the obligations that are not covered by insurance. We recommend that you and your legal counsel review these documents.

In addition to providing a Certificate or Evident of Insurance, you may be required to name your landlord, client or customer on your policy as a loss payee on property insurance or as an additional insured on liability insurance. This is only possible with permission of the insurance company, added by endorsement and, in some cases, an additional premium.

By naming the certificate holder as additional insured, there are consequences to your risks and insurance policy including:

- Your policy limits are now shared with other entities; their claims involvement may reduce or exhaust your aggregate limit.
- Your policy may provide higher limits than required by contract; your full limits can be exposed to the additional insured.
- There may be conflicts in defense when your insurer has to defend both you and the additional insured.
- An additional insured endorsement will most likely not provide notification of cancellation. Some insurance companies use a “blanket” additional insured endorsement that provides coverage automatically when it is required in a written contract. Most insurance companies do not want to be notified of all additional insureds when there is a blanket endorsement on the policy. If a notice of cancellation is required for the additional insured party, you must notify us immediately and we will request an endorsement from your insurance company. There may be an additional premium for adding a notice of cancellation endorsement for an additional insured.

***See Request to Bind Coverage page for acknowledgement of all disclaimers and disclosures.***