



Transfer of Risk Guide : Contracts

It is in the best interests of the City of Knoxville to promulgate insurance requirements that balance the protection of the City, and its human and physical assets, with the encouragement of legitimate government and business pursuits, and responsible personal and recreational activities within the City of Knoxville. Insurance requirements exist to protect the City's human and physical assets and to enforce satisfactory financial transfer of risk to third parties.

Requiring insurance offers special advantages. It provides a unified front to plaintiffs in the event of a liability claim. It limits conflicts among potential defendants and minimizes confusion following a claim.

This guide contains standard language for most situations. It also provides guidance for some of the more complicated situations that will be encountered. It will not provide the answers for every situation. There may be special situations, which require more or less restrictive wording, higher or lower liability limits, or the elimination of some requirements. If these samples do not meet your specific situation, contact the City's Risk Manager.

Basic Insurance Requirements for Contracts

Introduction

The following insurance requirements are appropriate for most routine request for proposals (RFPs) and contracts such as the types listed below:

- construction
- fireworks
- janitorial service
- movers
- on-site equipment
- plumbing
- paving
- professional service
- special event promoters
- tree maintenance
- tow service
- road maintenance
- security services

The following insurance requirements include minimum limits for most situations. Higher limits should be required for any hazardous activity, such as blasting, or where the activity has a severe loss potential, such as construction close to highways, utility lines, or high-valued property. The appropriate limits have very little to do with the amount of the contract. Instead, they are determined by the potential losses that could result from the activities covered by the contract.

Basic Insurance Requirements

These basic requirements may be changed by other sections of this guide dealing with specific risks. Departments should contact the Risk Manager whenever a requested service or contract may pose a unique risk that may not be contemplated by this guide.

Contractor shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A

VIII, or better.

- 1) *Commercial General and Umbrella Liability Insurance*; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- a) Contain, or be endorsed to contain, a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by, or on behalf of, the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.
 - b) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c) At the sole discretion of the City, dedicated limits of liability for this specific project may be required.
- 2) *Automobile Liability Insurance*; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain, or be endorsed to contain, a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
 - 3) *Workers' Compensation Insurance*. Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee, or other applicable laws and employers' liability insurance, with limits of not less than \$500,000. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage. Such insurance shall include a waiver of subrogation in favor of the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
 - 4) *Other Insurance Requirements*.

Contractor shall:

- a) Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section, and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.
- b) Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to

specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.

- c) Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- d) Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
- e) Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- f) Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the City, without expense, immediately upon request.
- g) Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.
- h) The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Contractor for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
- i) All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.
- j) The City requires that a hold harmless and indemnification provision be included in each agreement or contract in order to protect the City against any and all costs, losses, and damages arising out of the performance of work or rendering of services by an individual or an organization, contractor, or vendor, its agents, servants, or employees. The specific language of the indemnification provision will be included in materials provided to prospective bidders/proposers.

Contract Exceptions

All contracts for goods or services without unusual risks require a minimum of \$2,000,000 per incident/\$3,000,000 aggregate in general liability coverage, with the following exceptions:

- Carpet installation under \$25,000
- Concessionaire or catering service (without alcohol)
- Construction rehab under \$25,000
- Consulting services under \$25,000 (other than architectural or engineering)
- Door or window installation or repairs
- Façade work or awning work under \$25,000
- Fencing installation or repairs

- Gym floor refinishing
- Pest control services
- Special event workers (other than security or animal handlers)
- Uniform service/delivery

The above listed contracts require only \$1,000,000 per incident/\$2,000,000 aggregate in general liability coverage.

Any waiver or modification of the insurance requirements can only be made by the City's Risk Manager or designee. Any such request must be submitted in writing to the Risk Manager explaining the reasons for the modification or waiver. All requests will be reviewed and a final determination rendered by the Risk Manager.

Additional Considerations

Construction Contracts

Construction contracts may require additional insurance that will result in additional costs for contractors and ultimately to the City (insurance may represent 1-4% of the construction cost). Construction contracts also represent significant exposures for the City. On large projects copies of endorsements are preferable to certificates of insurance to ensure the required coverage is in place. The information below should be reviewed prior to preparing a contract or request for proposals for construction projects.

The City's property insurance does not cover a building until construction is complete and the City has taken possession of it. During construction the partial structure should be protected as well as supplies, equipment, and tools that may be on the site. Builders' Risk Insurance will provide this protection. The following language can be used to require this insurance.

Builders' Risk Insurance. Contractor shall procure and shall maintain or shall cause to be procured and maintained Builders' Risk Insurance on a replacement cost basis during the construction of the project. Insurance is to be on an "all risks" basis and shall insure against the perils of fire and extended coverage and physical loss or damage including, but not limited to, theft, vandalism, malicious mischief, collapse, temporary building and debris removal including demolition occasioned by enforcement of any applicable legal requirements and shall cover reasonable compensation for architect's services and expenses required as a result of such insured loss. Insurance is to cover all property of Contractor (and its subcontractors) and the City of Knoxville at the construction site. Coverage shall cover the completed value of the construction including without limitation, slab on grade, excavations, foundations, caissons, tenant finish work, and retaining walls around the perimeter of the project. Any exclusion of so-called underground damage to pipes, collapse of structure, or damage resulting from explosion or blasting shall be deleted. This coverage shall be issued on a completed value form basis for 100% of the insurable replacement value of the project. Such policy shall provide that any loss thereunder shall be payable to Contractor, the City of Knoxville, and others as their interests may appear and shall also have a replacement cost endorsement. The insurer shall waive all rights of subrogation against the City. Partial occupancy or use shall not commence until the insurance company or companies providing the insurance have consented to such partial occupancy or use by endorsement or otherwise. Contractor shall be responsible for the deductible in the event of a loss.

The following section should be added to the *Other Insurance Requirements* section in a contract for construction:

Maintain liability coverage that shall include completed operations coverage, and Contractor shall maintain such coverage for a period of 2 to 5 years from the date of final acceptance of the project.

Commercial general liability policies usually automatically insure liability for the risks of explosion, collapse, and damage to underground property. Certain contractors must pay additional premiums to obtain these coverages. If the policy does not cover these risks, it will have exclusions for the X, C, and U perils. When applicable, verification should be provided by Contractor that these exclusions do not apply.

In some situations *Contractors' Pollution Liability* will be necessary if there is the possibility of recovery pollutants from a construction project that could cause injury/loss to a third party.

A surety bond is usually required to insure the contract is followed and to protect the City in the event of Contractor insolvency. A performance bond is also required to protect the City in the event the contractor does not complete the project satisfactorily. Bonds provide the following functions: guarantee the bonded project will be completed; guarantee the laborers, suppliers, and subcontractors will be paid even if Contractor defaults; provide an intermediary, the surety, to whom the City can air complaints or grievances and seek relief.

If contracts are prepared for construction projects expected to exceed \$60 million in construction costs, the feasibility of the City arranging commercial general liability and workers' compensation for all contractors and subcontractors on-site should be considered. This method of dealing with the exposure problems of a construction project of this size is called a *wrap-up program or Owner Controlled Insurance Program (OCIP)*. Large scale construction projects that involve numerous contractors, subcontractors, consultants, and other parties, all with different risks and abilities to respond to claims, may require such a comprehensive program to assure adequate protection for the City, and allow for cost savings. Contact the City's Risk Manager if you think a project is a candidate for a wrap-up insurance program.

Higher Limits

In some cases **additional coverage**, above the primary level of liability insurance or higher limits, is needed because of the scope of the contract, or the significance of the exposure to loss in terms of either severity or frequency. Examples of the type contract which will require higher limits are large construction projects, blasting, construction close to a public road or utility lines, spraying of pesticides, backhoe operations near utilities, and work dealing with environmental exposures. The amount of additional or excess insurance required would depend upon the specific scope of services in the contract and the exposure it represents, not the dollar value of the contract. If excess liability is required, the following subsection should be added to the insurance requirements.

Excess Liability Insurance. Contractor shall maintain excess liability insurance, in addition to the insurance specified above, with a limit of not less than (*amount to be inserted will depend on the scope of the contract, typical amounts are \$2 million, \$5 million, and \$10 million*) each occurrence. This coverage shall be on a follow form basis.

Environmental Exposures

Insurance specifically written to cover environmental losses is needed in situations where there is an exposure for environmental impairment, such as waste disposal or landfill that will not be covered under the liability insurance in most cases. It may be advisable in agreements involving waste disposal sites to require nonowned disposal site coverage. If environmental impairment liability is required, the following subsection should be added:

Environmental Impairment Liability. Contractor shall maintain environmental impairment liability insurance with limits of not less than \$1,000,000 per occurrence.

If coverage is only available on a claims-made basis, additional language protecting the City's interests will be needed. Contact Risk Management for additional language requirements.

When a contract involves the removal of asbestos, a disposal site for asbestos, or any environmental service, the contract should request the coverage below in addition to the basic requirements. The type of insurance required will depend on the services provided. For example, an asbestos removal contract would require different coverage than an environmental consultant's professional services contract. Limits for many environmental contracts will require higher limits because of the scope of the work involved and the potential liability. Since this type of insurance may be in non-standard wording, or on a claims-made basis, it may be prudent to ask that the actual policy be submitted for review. If the policy is not available, copies of the endorsements and the ISO form numbers will

help the City determine if the coverage is adequate. Insurance provisions that should be added to contracts for environmental services follow:

Pollution Liability Insurance. Contractor should procure pollution liability coverage, ISO CG 0039, or equivalent. If the coverage is written on a claims-made form:

- 1) The “Retro Date” must be shown and must be before the date of the contract or the beginning of contract work.
- 2) Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract work and acceptance by the City.
- 3) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- 4) A copy of the claims reporting requirements must be submitted to the City for review.

Asbestos Abatement contracts will require the following language in the general liability section:

The general liability policy (or separate Asbestos Abatement policy) shall be endorsed to include the following provisions:

- 1) Coverage for asbestos abatement operations as described by the contract.
- 2) Pollution coverage as respects asbestos for all phases of the abatement process.
- 3) Coverage for the placement and movement of hazardous materials from the project site to the final disposal location.
- 4) Asbestos bodily injury coverage for employees of the City, general contractor, and subcontractors, so long as their designated job duties do not require them to be in the regulated asbestos abatement area; and
- 5) Waiver of subrogation in favor of the City.

If a consultant is retained to determine the scope of pollution on a piece of property, the following insurance should be required:

Professional Liability Insurance (or a “Consultant’s Environmental Liability Policy” combining coverage for professional liability and for Contractor’s pollution liability); with respect to all work performed by or on behalf of Consultant (or, with respect to insurance maintained by a subcontractor, by or on behalf of such subcontractor) under or in connection with this Agreement or any Task Release, covering claims from any act, error, or omission committed in connection with Consultant’s (or subcontractors, as the case may be) performance of any such work. Such policy shall not contain any exclusions or limitations regarding the release of asbestos or other pollutants. The limits of liability shall not be less than Two Million Dollars (\$2,000,000) per claim or in the aggregate. If coverage is written on a claims-made basis, coverage with respect to work performed in connection with a given Task Release shall be maintained for a period of three (3) years after the date of final payment with respect to such Task Release and shall provide for an extended reporting period of not less than twelve (12) months.

Administrative Services

The following provision is appropriate for contracts for **administrative services** in which the Contractor is handling City funds.

Fidelity Bonds. A fidelity bond shall be in favor of the City of Knoxville, continuous in form and in an amount equal to at least ten percent of the amount of the funds handled or managed annually by the administrator, or, if no funds were handled during the preceding year, ten percent of the amount of funds reasonably estimated to be handled during the current calendar year. In no event will the fidelity bond be less than \$100,000.

The bond shall insure to the benefit of any person damaged by any fraudulent act or conduct of the administrator and must be conditioned upon faithful accounting and application of all money coming into the administrator's possession in connection with his activities as an administrator.

Professional Services

Losses due to professional negligence may be excluded in commercial general liability policies and necessitate the use of additional insurance. Professional liability insurance can protect the City against losses that occur when a claim arises out of the negligence or omission of a professional (e.g., engineering, architectural services, investment management, claims administration, auditing services, consulting, attorneys, appraisers, social workers, medical professionals and professional managers). The indemnification (hold harmless) section of the contract should state that the consultant agrees to indemnify the City for bodily injury or property damage arising out of Contractor's negligent acts or omissions in performance of the work. The following is suggested language that can be used for the section requiring professional liability insurance; however, larger limits may be needed for some contracts.

Professional Liability (including Errors & Omissions). Contractor shall maintain professional liability insurance covering claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional services under this contract with limits of \$1,000,000.

Some professionals (computer software development professionals, third party administrators, and management consultants) cannot obtain a professional liability policy because their industry does not license them. These professionals can be specifically endorsed on a general liability policy. Verification that professional services are not excluded from the general liability coverage form may be required. Additionally, some professionals may purchase a combined general liability and professional liability policy. Such coverage is allowable provided that the limits are separate for each coverage line and/or sufficient aggregate limits for the contract are provided. As noted in the following paragraphs, combined general and professional liability policies may prevent obtaining additional insured endorsements and/or dictate that the coverage be on a claims made basis.

Additional insured endorsements are not available on professional liability policies. This is because the City is neither the named professional nor an employee under the control of the named insured professional.

Professional liability coverage is often written on a *claims-made* basis. If the policy is on a claims-made form, consideration should be given to requiring Contractor to comply with the following additional conditions:

- 1) Agree to provide certificates of insurance evidencing the required coverage for a period of two years after the final payment under this contract is made. Such certificates shall evidence a retroactive date no later than the beginning of Contractor's or subcontractors' work under this contract, or
- 2) Purchase an extended (minimum two years) reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement.

Security Services Contracts

Security Services firms may request an insurance provision that stipulates that they are not an insurer and that insurance shall be obtained by the client. Some security service firms have tried to limit the City's recovery to \$250. Such provisions shall not be allowed. The security service firm should be required to maintain adequate liability insurance with the City of Knoxville as an additional insured.

Special Situations

The City has a number of contracts for which the above insurance requirements are not appropriate. Examples are contracts with an entity that has its liability limited by the Tennessee Governmental Tort Liability Act, or contracts with small nonprofit groups that involve a small risk. The insurance provisions for these contracts should be determined on a case-by-case basis. If you have questions about the appropriate requirements, contact the City's Risk Manager for assistance in these situations.

Insurance Requirements for Leases

Introduction

The basic insurance provisions can be used for tenants of buildings the City owns if no autos are used or commercially parked on the premises. The requirements for property insurance may not be necessary because coverage may be provided by the City's property insurance coverage. Please consult the Risk Management if you have questions about specific locations.

Insurance Requirements

Lessee shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement.

- 1) *Commercial General Liability Insurance*; occurrence version commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement, or be no less than two times the occurrence limit. Such insurance shall include the City, its officials, officers, and employees as insureds with respect to performance of services. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Insurance shall be primary with respect to any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers.
- 2) *Property Insurance* (if lessee is required to insure the entire building); "All-Risk" form building and personal property insurance policy to insure this property. If coinsurance is used, the property limits must be sufficient so as to avoid any coinsurance penalty or coverage reduction. The insurance policy will contain the following clauses:
 - a) All rights of subrogation are hereby waived against the City, its officers, employees, and agents.
 - b) A standard loss payee clause naming the City as loss payee.
 - c) *Property Insurance* (if lessee is only required to insure tenant improvements or betterments). Lessee shall purchase property insurance against all risks of loss to any tenant improvements or betterments. Insurance shall be for full replacement cost with no coinsurance penalty provision.

Lessee shall:

- 1) Prior to commencement of Lease, furnish the City with properly executed certificates of insurance which shall clearly evidence all insurance required in this section, and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage, except on 30 days prior written notice to the City. The proof of coverage is to be received and approved by the City before the Lease commences.
- 2) Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.

- 3) Replace certificates, policies, and endorsements for any such insurance expiring prior to expiration of Lease.
- 4) Maintain such insurance from the time Lease commences until Lease is terminated.
- 5) Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A.

Additional Requirements/Considerations

Auto liability may be required if autos are used or commercially parked on the premises. If the tenant's activities include valet parking, either with or without a fee, garage keepers' legal liability may be required. The required limit for this coverage should be equal to the value of the maximum number of automobiles that may be in the tenant's custody.

If Contractor (such as social or charitable organization) does not have full-time employees, the workers' compensation may not be necessary.

If the other party's property might be construed as being in the custody of the City, such as storage of equipment on City-owned or controlled premises, the exposure may be reduced by appropriate language in the hold harmless section of the contract.

References

- Alliant Insurance Services. (2013). *Insurance Requirements In Contracts: A Procedure Manual*. Retrieved January 1, 2014, from http://alliantinsurance.com/_layouts/download.aspx?SourceUrl=/Industry-Solutions/Public-Entity/Documents/IRIC.docx
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