Guidelines and Suggestions for Insurance Requirements

Insurance Types and Limits, Indemnification Language, and Best Practices



*I would like to emphasize that the discussion set forth herein is from an insurance/risk management perspective and is NOT legal advice. We do not provide legal advice and I highly recommend that you seek the advice of legal counsel in order to become fully apprised of the legal implications related to these issues.*

Revised 2/6/2019

Table of Contents

**Sample Insurance Requirements3**

Commercial General Liability3

Workers Compensation5

Excess or Umbrella Liability6

Business Auto7

Professional Liability / E&O8

Technology Errors and Omissions Liability9

Pollution Liability10

Cyber Liability11

Garage Keepers’ Liability & Garage Keepers’ Legal Liability 12

Drone Liability13

Aviation Liability14

Watercraft Liability15

Security Services16

**Provisions Applicable to All Required Insurance17**

**Sample Insurance Requirements in Contracts**

Prior to the beginning of and throughout the duration of the Services, and for any additional period of time as specified below, CONTRACTOR shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below. CONTRACTOR shall submit Certificates of Insurance for the District’s review and acceptance. The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence Services until such insurance has been accepted by the District.

No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR hereunder.

**A. Commercial General Liability**

**(Use this requirement in all contracts)**

* 1. CONTRACTOR shall provideCommercial General Liabilityinsurance covering claims for Bodily, Injury, Personal and Advertising Injury, and Property Damage on a policy form that provides coverage at least as broad as coverage provided under the Insurance Services Office (ISO) form CG 00 01, and that includes, but is not limited to, the coverage limits and coverage provisions outlined below.
  2. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following:

$1,000,000 per Occurrence Bodily Injury or Property Damage Liability;

$1,000,000 Personal and Advertising Injury Liability;

$2,000,000 General Aggregate;

$2,000,000 Products - Completed Operations Aggregate.

* 1. Coverage must be on an “occurrence” basis.
  2. Coverage must be included for “products-completed operations” without any “prior work” coverage limitation or exclusion applicable to any Services to be performed under this Agreement.
  3. Contractual Liability coverage at least as broad as coverage provided by the ISO CG 00 01 policy form must be included. .
  4. To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers, and employees must be covered as *Additional Insureds* on a primary and noncontributory basis The additional insureds must be covered for:
     1. Liability arising out of any premises or property utilized for any Services performed under this Agreement, and
     2. Liability arising out of or related to this Agreement, including any Services performed hereunder by or on behalf of CONTRACTOR, and
     3. Products and completed operations of CONTRACTOR.

A severability of interests provision must apply for all the Additional Insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability.

B. **Workers’ Compensation and Employer’s Liability**

**Use this requirement in all contracts)**

Workers’ Compensation coverage shall be on a state-approved policy form providing statutory benefits as required by law and Employer’s Liability coverage with limits no less than $1,000,000 per accident or disease for all covered losses. If CONTRACTOR is self-insured with respect to Workers’ Compensation coverage, CONTRACTOR shall provide a Certificate of Consent to Self-Insure from the California Department of Industrial Relations confirming CONTRACTOR’s self-insured status. Such self-insurance shall meet the minimum limit requirements and waive subrogation rights in favor of the District as stated below. If the CONTRACTOR is a sole proprietorship or partnership, with no employees, and is exempt from carrying Workers Compensation insurance, CONTRACTOR must submit a letter to the District stating that he/she is either the owner of the entity or a partner of the entity performing the Services, and is exempt from the State of California’s Workers Compensation requirements because he/she has no employees.

CONTRACTOR and its Workers’ Compensation insurance must waive any rights of subrogation against the District and its directors, officers, officials, agents, volunteers, and employees, and CONTRACTOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

**C. Excess or Umbrella Liability Insurance**

**(Use this requirement is all contracts)**

If excess or umbrella polices are used to meet the insurance requirements of this Agreement, they shall provide coverage at least as broad as specified for the underlying coverages, and the full limits of the umbrella or excess coverage shall be available to the District. To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers and employees must be covered as additional insureds and such policy or policies shall contain or be endorsed to contain a provision that coverage shall also apply on a primary and non-contributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured. A severability of interests provision must apply for all additional insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom the claim is made or suit is brought, except with respect to the insurer’s limits of liability.

**1. Business Auto Liability**

**(Use this requirement in all contracts)**

* 1. CONTRACTOR shall provide Business Auto Liability coverage on a policy form that provides coverage at least as broad as coverage provided under ISO Business Auto Coverage form CA 00 01, and that includes, but is not limited to, the coverage limits and coverage provisions outlined below.
  2. Coverage must be provided for “Bodily Injury” and “Property Damage” Liability caused by an accident and resulting from the ownership, maintenance or use of covered autos.
  3. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the minimum limits specified below:

$1,000,000 per Occurrence/Accident for Bodily Injury and Property Damage Liability.

* 1. Covered “autos” must include all owned, non-owned and hired vehicles.
  2. To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers, and employees must be covered as *Additional Insureds* with respect to “any auto” owned, leased, hired or borrowed by CONTRACTOR.The policy(ies) shall contain or be endorsed to contain a provision that coverage shall apply on a primary and noncontributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.
  3. A severability of interests provision must apply for all the Additional Insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability.
  4. [**Where applicable**] The policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by CONTRACTOR in any Services to be performed under this Agreement. Alternatively, this coverage may be provided on the CONTRACTOR’s Pollution Liability Policy.

**2. Professional Liability (aka Errors and Omissions)**

**(*Use this requirement in contracts including, but not limited to, Services provided by the following: Architects, Engineers, Surveyors, Third Party Construction Management Entities, Appraisers, Auditors, Investigators, Instructors/Trainers, Legal Professionals, Medical Professionals, Accountants/Financial Management Professionals)***

The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following: $1,000,000 per occurrence or claim and $2,000,000 aggregate. Coverage may be written on a **claims-made** form. If coverage is on a **claims-made** basis, the coverage must be maintained for at least 3 years after all Services under this Agreement are complete and additional **claims-made** coverage requirements apply as described below.

**3. Technology Errors and Omissions Liability**

***(Use this requirement in contracts including but not limited to, Services provided by the***

***Following: IT Specialists: Systems Analysts, Computer Designers & Programmers,***

***Computer & Software CONTRACTORs, Data Processors and System Installation or***

***Training Personnel)***

CONTRACTOR shall obtain and maintain throughout the duration of Services to be performed under this Agreement Technology Errors and Omissions liability coverage. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following: $1,000,000 per occurrence or claim and $2,000,000 aggregate. Coverage shall include the following risks:

(1) liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information, protected health information, security codes, access codes, passwords or personal identification numbers (PINS);

(2) Privacy notification costs, credit monitoring and regulatory fines arising from such theft, dissemination and/or use of confidential information;

(3) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks;

(4) Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District’s or third person’s computer, computer system, network, or similarly related property and the data, software and programs thereon; and

(5) Liability arising from the failure of the technology product(s) required under this Agreement to properly perform the functions intended.

The policy shall also provide coverage for liability assumed under a contract. Coverage may be written on a **claims-made** form. If coverage is on a **claims-made** basis, the coverage must be maintained for at least 3 years after all Services under this Agreement are completed, and additional claims-made coverage requirements apply as described below.

**Pollution Liability**

**(Use this requirement in contracts including, but not limited to, Services provided by the following: Environmental Contractors/CONTRACTORs, Contractors who transport hazardous materials or waste, Construction Contractors using hazardous materials or pollutants on the District’s** **property)**

1. CONTRACTOR shall provide pollution liability coverage that includes, but is not limited to, the coverage limits and coverage provisions outlined below.
2. Coverage must be included for bodily injury and property damage, including coverage for loss of use and diminution in property value, and for resultant clean-up costs, arising out of the or resulting from:
   * 1. any Services performed under this Agreement, including
     2. any storage or transportation, including the loading or unloading of, hazardous wastes, hazardous materials, or contaminants.

The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following:

$5,000,000 per Occurrence Each Pollution Condition;

$5,000,000 Aggregate Liability.

1. Coverage may be written on a **claims-made** form. If coverage is on a **claims-made** basis, the coverage must be maintained for at least 3 years after all Services performed under this Agreement are complete and additional **claims-made** coverage requirements apply as described below.
2. To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers, and employees must be covered as *Additional Insureds by way of an endorsement to the policy.*  The policy(ies) shall also contain or be endorsed to contain a provision that coverage shall apply on a primary and noncontributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.
3. A severability of interests provision must apply for all the additional insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability.

**5. Cyber Liability**

**(Use in contracts for services provided by: Payroll Personnel/Companies and Medical Service vendors/contractors with access to Personally Identifiable Information/Confidential Information)**

CONTRACTOR shall procure and maintain Cyber Liability insurance. The required coverage limits shall be a minimum of $1,000,000 per occurrence or claim and $2,000,000 aggregate. Coverage shall include the following risks:

1. Liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, security codes or personal identification numbers (PINS);
2. Notification costs, credit monitoring and other expert services, regulatory fines and defense costs;
3. Network security liability arising from unauthorized access to, use of, or tampering with computer systems, including hacker attacks;
4. Liability arising from the introduction of a computer virus into, or otherwise causing damage to vendor (first party) or customer’s (third party) computer, computer system, network or similarly related property and the data, software and programs thereon;
5. Liability arising from professional misconduct or lack of the requisite skill required for the performances of services defined in the contract or agreement.

If coverage is maintained on a **claims-made basis,** the following shall apply:

(a). The retroactive date must be shown, and must be before the date of the contract or the beginning of the contract services.

(b). Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract services.

(c). If coverage is canceled or non-renewed, and not replaced with another **claims-made** policy form with a retroactive date prior to the effective date of the contract, the CONTRACTOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the contract services.

**6. Garage Keepers’ Liability**

Contractor shall maintain Garage Keepers’ Legal Liability insurance with limits not less than the full value of the maximum number of vehicle(s) in Contractor’s care, custody and control; however, in no event shall such limits be less than $1,000,000 per occurrence. Coverage is not limited to work done at the Contractors’ premise or will cover work performed remotely at the District’s premise.

**Garage Liability**

Contractor shall maintain Garage Liability insurance covering claims for bodily injury, personal injury and property damage arising from Contractor’s premises, operations, including products-completed operations, with limits not less than $1,000,000 per occurrence.

**7. Drone Liability (Unmanned Aerial Vehicles)**

**(Use in contracts with Owners/Operators of Drones)**

Owner/Operator shall maintain Commercial General Liability or Aviation Liability insurance covering bodily injury, personal injury and property damage with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate. Owner/Operator is solely responsible for maintaining property insurance to cover any damage to the drone/unmanned aerial vehicle. Insurance coverage maintained by the Owner/Operator shall be primary and any insurance or self-insurance maintained by the District shall not be required to contribute with it.

Note 1: depending on the circumstances surrounding drone use, the District may also consider requiring the Owner/Operator to name the District as an additional insured.

**8. Aviation Liability**

***(Use this requirement in contracts including but not limited to, the following: the chartering of aircraft by* the District** ***or when an aircraft is used in the performance of a contract)***

CONTRACTOR shall obtain and maintain throughout the duration of Services to be performed under this Agreement Aviation Liability coverage, including but not limited to, coverage for bodily injury, including death, passenger liability and property damage arising from ownership, operations, maintenance, or use of any aircraft. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following: $5,000,000 per occurrence or accident.

To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers and employees must be covered as Additional Insureds with respect to liability arising out of, or in connection with, the Services to be performed under this Agreement. Such policy or policies shall contain or be endorsed to contain a provision that coverage shall also apply on a primary and non-contributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.

A severability of interests provision must apply for all Additional Insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability

**9. Watercraft Liability**

***(Use this requirement in contracts involving the following: Use of watercraft on any body of water)***

CONTRACTOR shall obtain and maintain throughout the duration of Services to be performed under this Agreement Watercraft Liability coverage, including but not limited to, coverage for bodily injury, including death, and property damage arising from ownership, maintenance, or use of any watercraft. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following: $1,000,000 per occurrence or accident.

To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers and employees must be covered as Additional Insureds with respect to liability arising out of, or in connection with, the Services to be performed under this Agreement. Such policy or policies shall contain or be endorsed to contain a provision that coverage shall also apply on a primary and non-contributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured.

A severability of interests provision must apply for all Additional Insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability.

**10. Security Services**

**(Use this Requirement in contracts involving the use of: security personnel)**

CONTRACTOR shall obtain and maintain throughout the duration of Services to be performed under this Agreement, Commercial General Liability insurance with limits of not less than $5,000,000 per occurrence, including but not limited to premises/operations, contractual liability, damage to property in the care, custody and control of CONTRACTOR and/or CONTRACTOR’s personnel, lost key coverage, assault and battery, false arrest and invasion of privacy. Professional Liability (errors and omissions) insurance with limits of not less than $5,000,000 per occurrence/claim. Coverage for Professional Liability may be written on a **claims-made** form. If coverage is on a **claims made** basis, the coverage must be maintained for at least 3 years after all Services under this Agreement are complete, and additional **claims-made** coverage requirements apply as described below. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the minimum limits stated above.

To the fullest extent permitted by law, the District and its directors, officers, officials, agents, volunteers and employees must be covered as Additional Insureds on the Commercial General Liability policy with respect to liability arising out of, or in connection with, the Services to be performed under this Agreement. All policies shall contain or be endorsed to contain a provision that coverage shall also apply on a primary and non-contributory basis to the District *before* the District’s own primary insurance or self-insurance shall be called upon to protect it as a Named Insured. A severability of interests provision must apply for all additional insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer’s limits of liability.

**Provisions Applicable to All Required Insurance**

1. **Deductibles, Self-Insurance, Self-Insured Retentions**

Any deductibles, self-insurance, or self‑insured retentions (SIRs) applicable to required insurance coverage must be declared to and accepted by the District. At the option and request of the District, CONTRACTOR shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.

1. **Acceptability of Insurers**

Unless otherwise reviewed and accepted by the District, all required insurance must be placed with insurers with a current A. M. Best's rating of no less than A – VII. The insurers shall be admitted, or approved by the Surplus Lines Association, to do business in California.

***(NOTE: For Workers’ Compensation and Employer’s Liability, coverage provided by the California State Compensation Insurance Fund is acceptable, regardless of A.M. Best rating)***

1. **Claims-made Coverage**

For any coverage that is provided on a **claims-made** coverage form (which type of form is permitted only where specified in the insurance requirements outlined above):

1. The retroactive date must be shown, and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.
2. Insurance must be maintained and Certificates of Insurance must be provided to the District for at least three (3) years after expiration of this Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another **claims-made** policy form with a retroactive date prior to the effective date of this Agreement or the start of any Services related to this Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration of the Agreement.
4. If requested by the District, a copy of the policy’s claims reporting requirement must be submitted to the District for review.

1. **Notice of Claims**

CONTRACTOR agrees to provide immediate notice to the District of any loss or claim against CONTRACTOR arising out of or in connection with this Agreement, or Services performed under this Agreement. The District assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the District.

**E. Proof of Compliance**

CONTRACTOR agrees to provide evidence of insurance required herein, satisfactory to the District, consisting of Certificates of Insurance, evidencing all of the coverages required. CONTRACTOR agrees, upon request by the District, to provide complete, certified copies of any policies within 10 days of such request. (Copies of policies may be redacted to eliminate premium details.) All Certificates of Insurance must be received and accepted by the District before any Services are performed under this Agreement commences. Acceptance of CONTRACTOR’s Certificates of Insurance or any other evidence of insurance coverage does not constitute any guarantee that CONTRACTOR’s insurance meets the requirements herein. It is CONTRACTOR’s responsibility to ensure its compliance with these insurance requirements. Any actual or alleged failure on the part of the District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.

**F. Notice of Cancellation/Non-Renewal/Material Reduction**

CONTRACTOR agrees to provide written notice to the District thirty (30) days prior to cancellation of coverage required under this Agreement, or of any material reduction or non-renewal of such coverage, other than for non-payment of premium which shall require a 10-day prior written notification. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction below these requirements does not require notice beyond submission to the District of an updated Certificate of Insurance.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_