

City of Mesquite
Insurance Requirements
For Contracts / Vendors

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CITY OF MESQUITE MINIMUM INSURANCE REQUIREMENTS FOR CONTRACTS

Contractor / Vendor Services	A Financial Rating	B Auto Liability	C General Liability	D Workers' Compensation	E Employers' Liability	F Professional Liability
Construction Contractor	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	Statutory	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A
Engineering / Architect Design	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Claims Made/ Maintained for 2yrs past project completion
Building Related Services	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	Statutory	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A
Information Technology	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Claims Made/ Maintained for 2yrs past project completion
Financial Services Consulting	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Claims Made/ Maintained for 2yrs past project completion
Business Advisory	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease Aggregate	\$1,000,000 Claims Maintained 2yrs past project completion
Communications	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	\$1,000,000 Claims Maintained 2yrs past project completion
Entertainment / Recreation Event Services	A- (VII)	\$500,000 CSL	\$1,000,000 Occ/Agg	N/A	\$100,000 Limit Ea. Acc/Disease/ Aggregate	N/A

A: Coverage shall be provided by a carrier approved to do business in the state of Texas and rated at least "A- (VII)" in A.M. Best's Key Rating Guide.

B: Limits shall be no less than indicated amount, Combined Single Limit Each Occurrence.

C: Limits shall be no less than indicated amount per Occurrence and Aggregate limits. All insurance policies shall be written on a primary basis and be non-contributory with any other coverages carried by the City. City is to be an Additional Insured on GL and AL policies.

D: Statutory Workers' Compensation coverage is required on all new Construction Projects including buildings, Waterworks, Road & Bridge infrastructure.

E: Employers' Liability coverage limits are not to be less than \$100,000 per each occupational accident /\$100,000 per each occupational disease and \$100,000 policy aggregate.

F: Professional Liability coverage shall be maintained from project inception and for no less than two years past completion date.

The City of Mesquite reserves the right to alter minimum insurance requirements at any time based on project/service value and perceived risk of adverse loss.

Crime coverage shall be required if a contractor / vendor directly handles or has access to computer systems that administer City money, securities or other negotiable instruments.

Insurance Requirements for Contracts

II. SCOPE

The following insurance requirements have been designed to facilitate the execution of contracts by duly authorized City of Mesquite staff (hereafter referred to as City). They are to be applied to most contracts entered into by the City with entities that include but are not limited to: for profit businesses supplying goods or services, not for profit businesses and organizations, independent consultants, and any organization seeking a relationship with the City when appropriate (For the purposes of this document, all of these entities will be referred to as “contractor / vendor”). Where the following topics only apply in certain situations, it is noted in that section of the document.

III. INSURANCE COVERAGE

Insurance coverage serves as part of the financial backing for the liability assumed by a contracting party through the indemnification language in a contract. Instead of intentionally utilizing its own assets to support the liability, the contracting party is transferring the risk to the insurance company in return for payment of the insurance premium. Without insurance, most contractors / vendors would not be able to meet their indemnification obligations when a significant loss occurs.

The City requires all contractor / vendor insurance policies be written on a primary basis and be non-contributory with any other insurance coverages and/or self-insurance carried by the City, meaning, the City is not to pay for a covered loss. Coverage should be provided by a carrier approved to do business in the state of Texas and rated at least “A- (VII)” in A.M. Best's Key Rating Guide.

The coverages and minimum limits the City requires are a reflection of the perceived risk potential that the activities of the contractor / vendor could impose onto the City but in no way limits the liability of the contractor/vendor.

For most contractors / vendors, the City will generally require the contract reflect a minimum level of insurance limits on five types of insurance coverage: Commercial General Liability, Workers' Compensation, Employers Liability, Business Automobile Liability and Professional Liability when appropriate.

Organizations that are totally self-insured are not required to carry insurance, but, must attest they possess the necessary amount of unencumbered financial assets to support their retained risk financing exposure(s).

COMMERCIAL GENERAL LIABILITY

Commercial General Liability is a broad based insurance that covers the liability assumed in the performance of the general, non-professional activities of many businesses. In most cases the general liability insurance will be the primary policy responding to negligent acts or conditions (e.g. a person injured from a tool dropped or mishandled by a contractor / vendor).

Contractors, vendors and other outside businesses and organizations that want to do business with the City or otherwise conduct business on City property will be required to provide evidence of commercial general liability insurance naming the City as an additional insured to the organization's insurance policy. (Please see the Certificates of Insurance section below for required wording). Examples of outside-----
-businesses and organizations that will be required to meet these requirements include but are not limited-to: consultants; construction contractors and other building services contractors (electricians, plumbers----and HVAC); vendors providing City event activities and services; and non-affiliated

organizations using City facilities for meetings, seminars, athletic events, etc.

The minimum amount of insurance limits required by the City is based on the level of risk involved with the type of service or activity taking place and the scope and nature of the project to be completed. (e.g. where negligent work by the contractor / vendor could result in significant damage to City property, business operations or injury to citizens, employees or visitors).

WORKERS' COMPENSATION

Workers' Compensation covers an employer's statutory financial obligation to pay the costs associated with an employee's medical treatment and lost wages due to a work related injury or illness. With very limited exceptions, state laws require all businesses performing certain types of work (construction / contractor services) to either purchase workers' compensation coverage or become an authorized self-insurer by statute. (Exceptions include businesses whose legal status is a Sole Proprietorship and the business has no employees.)

In situations where the contractor / vendor will be engaged in operations / services on City-owned property, the contractor / vendor will be required to carry Workers' Compensation and/or Employer's Liability insurance. It is the responsibility of the contractor / vendor to provide proof/documentation they are exempt from statutory requirements of having Workers' Compensation insurance, if they qualify for such (an example is a "Sole Proprietor without employees). Employers Liability covers an employer's liability for bodily injury to employees occurring within the scope of their employment when that liability is not covered by workers' compensation (claims of emotional stress or psychological damage, for example). This coverage generally applies when an employee alleges that the employer's negligence or failure to provide a safe workplace was the cause of the employee's injury or illness. Employer's liability is normally provided in conjunction with the workers' compensation coverage in a single unified policy, but, Texas allows for rejection of the Workers' Compensation Act. Contractors / Vendors not providing construction work must secure Excess Employers' Indemnity coverage at the contractually indicated limits.

BUSINESS AUTOMOBILE LIABILITY

Business Automobile Liability insurance covers the liabilities assumed by a business when the type of motor vehicles required to be licensed for operation on public roads are used in the course of their business activities. In situations where the contracting party will be utilizing motor vehicles (owned, hired or borrowed) to perform operations/provide services on City owned property, the contracting party will be required to carry Business Automobile Liability insurance. If the contractor / vendor will be transporting hazardous substances or passengers for hire, they must meet all State-- and Federal licensing requirements. Depending on the type and amount of hazardous materials transported, the contractor / vendor may be subject to the Federal Motor Carrier Act and be required to provide proof of required financial responsibility. Proof of financial responsibility may be in the form of a Motor Carrier Act endorsement to their liability insurance policy, a Motor Carrier surety bond or written authorization from the Federal Motor Carrier Safety Administration to self-insure the requirement.

UMBRELLA / EXCESS LIABILITY

The minimum required limits may be increased if the project value, scope and/or risk associated with the contractor / vendor activities are greater than usual City activities/projects. For example, services with a value in excess of \$1,000,000, or services where governmental immunities do not apply.

Umbrella / Excess Liability insurance provides additional coverage limits over a primary (GL) insurance policy. Excess Liability only applies to a single policy. An Umbrella Liability policy can apply to multiple

policies. A standard umbrella liability policy generally provides additional limits to a business's Commercial General Liability, Business Automobile Liability and Employer's Liability policies.

A contractor / vendor's Primary and Excess Umbrella Liability limits can be added together to meet the City's contractually required limit(s) for an individual line of coverage. For example, if the contractor / vendor is required to carry \$2m in Commercial General Liability limits and the insurance certificate shows \$1m Commercial General Liability and \$1m or more in Umbrella Liability limits, this would comply with the required \$2m limit.

IV. OTHER LINES OF INSURANCE COVERAGE

Certain types of contracts and activities will result in additional required insurance coverages for the contractors / vendors performing them. The additional coverages include but are not limited to:

PROPERTY INSURANCE

Property insurance reimburses the policyholder for damage to or theft of their real and personal property (buildings, contents and other items of property not specifically excluded). It can also protect against extra expenses and lost business income resulting from the damage to or theft of insured property.

Requirements to carry property insurance will generally be limited to lease agreements with commercial tenants. Mesquite Metro Airport is an example with commercial tenants. The tenant will be required to carry "Broad Form" property insurance (including breakage of glass from any source whatsoever) to all property of the tenant, including all improvements and betterments made to the building by the tenant, in an amount equal to the replacement cost value of the property. Property insurance is also required of the contractor/vendor if they will have care, custody or control of City-owned personal property (Office Equipment, artwork, rare books, mobile equipment, animals, etc.)

City Property Insurance does not respond to losses for non-owned property (borrowed, leased, etc.) unless the City has assumed liability by way of a written contract or agreement.

POLLUTION LIABILITY INSURANCE

If the contracting party engages in a business that works with or uses a material, produces a product or waste considered to be a "hazardous material or waste" under local, state or federal law, (which includes but is not limited to: flammable explosives, known carcinogenic materials, volatile chemicals and biological contaminants) they will be required to carry Pollution Liability insurance coverage. The policy must cover the Contractor's completed operations. This insurance must include sudden and gradual coverage for third-party liability including defense costs and completed operations. The coverage must be maintained during the term of the contract/lease and at least two (2) years following its completion or termination.

PROFESSIONAL LIABILITY / ERRORS & OMISSIONS INSURANCE

The liability exposures created by an improper act, error or omission in the performance of professional services can be very significant. Without insurance, nearly all professional contractors / vendors would not be able to meet their indemnification obligations when a significant loss occurs. The coverage must be on a claims made basis and maintained during the term of the contract and at least two (2) years following its completion / termination.

Certain types of contractors / vendors perform activities that are highly specialized professional services and are not fully covered under a Commercial General Liability policy. In addition to the basic coverages previously described, these contractors / vendors will be required to carry Professional / Errors &

Omissions Liability insurance. Contractors / vendors that are required to carry Professional / Errors & Omissions Liability insurance include but not limited to: Law Firms, Architects, Engineers, Environmental Consultants, IT Service Providers, Security Companies, Accountants, Business Consultants, Medical Professionals, and Insurance Brokers.

CRIME INSURANCE

When a contractor / vendor's services include handling or having access to City money, securities and other negotiable instruments, the contractor / vendor will be required to have a Commercial Crime (Fidelity) policy or if they are a financial institution, a Financial Institution Bond.

CONTRACT BONDS

Contract Bonds provide a financial guarantee that a contractor / vendor will provide the service or product promised in a contract. The most common type is a Performance Bond. A Performance Bond provides a financial guarantee that the contractor / vendor will provide the service / product per the terms agreed to in the contract. The City will generally require Performance Bonds for construction projects valued at greater than \$1,000,000.

V. CERTIFICATES OF INSURANCE AND POLICY ENDORSEMENTS:

A Certificate of Insurance (COI) is a simple, standardized way of documenting proof of insurance coverages. Although a certificate of insurance is not legally binding and does not impose any obligation onto the insurance company(s) listed, it does serve to identify the key information about the contractor's / vendor's insurance.

Prior to finalizing the contract, the contractor / vendor will be required to deliver an acceptable COI and endorsement evidencing the required coverages and limits to the appropriate City Department(s), and any agent working on the City's behalf. The COI shall provide for:

- a. Coverages represented on the certificate must show policy numbers, policy dates and limits.
- b. With the exception of Workers' Compensation and Professional Liability coverage, the COI must state that "The City of Mesquite-Texas, its trustees, officers, agents and employees are Additional Insureds as their interests appear relating to the contractually stipulated service, project or product."
- c. A minimum of thirty (30) days written notice of cancellation, non-renewal or material restriction of coverage terms or limits from the insurance company by signed receipt delivery.

VI. OTHER KEY CONSIDERATIONS

GOVERNMENTAL TORT IMMUNITY

The City of Mesquite enters into many contracts with other governmental entities (States, Cities, Towns, Housing Authorities, Transit Authorities, School Districts, etc.). Governmental entities are generally **immune** from liability for lawsuits in accordance with the principle of sovereign immunity. However, many states, including Texas, have enacted statutes that provide for waiver of such immunity for certain types of tort actions by government employees (operating a motor vehicle within course and scope is an --example). Additionally, Texas state statutes may prohibit the City from enforcing the indemnification clause in the contract. If this situation arises, the City Attorney and Risk Management should be consulted to determine the most appropriate course of action for the City, including but not limited to:

- Standard practice is to make the insurance requirements established by the City an attachment/ addendum to the agreement.

- Second option is to request that the entity waive in writing their assertion of full or partial sovereign immunity.
- If the entity asserts full sovereign immunity and refuses to waive such, the City Attorney and Risk Management, in conjunction with the applicable contracting area will perform the appropriate level of analysis to assess the risks associated with the work that the contractor/vendor will be performing, the likelihood of an act, error or omission committed by the entity occurring, the potential impact of such an act, error or omission and the potential direct or indirect financial loss to the City. The analysis will consider the legal, regulatory/compliance, operational, financial and reputational risks associated with the work required by the applicable contract.
- If the entity asserts a limitation of liability through a state or federal tort claims act, the City Attorney shall evaluate whether the applicable tort claims act of Texas “waives” immunity for the liability that would be created by the improper performance of the applicable activities by the contractor/vendor and whether there is any liability “caps” included in the statute.
 - If the entity can be held liable and there is no liability “caps”, the insurance requirements are satisfied.
 - If the entity can be held liable but there are liability “caps” that are less than the prescribed insurance requirements, the City Attorney and Risk Management, in conjunction with the applicable contracting area, needs to determine whether to recommend acceptance the financial risk that the contractor/vendor will commit an act, error or omission that will compromise or eliminate the ability of the City to complete the applicable project/service and leave the City with limited financial recourse.

SELF INSURED CONTRACTORS/VENDORS

Contractors/vendors that have implemented a formal, structured self-insurance program (e.g. captive insurance company, risk retention group) or carry a deductible/ retention greater than \$250K per claim on any required coverage shall attest, in writing, they have excess insurance or reinsurance, as well as possess the necessary amount of unencumbered financial assets to support their retained risk financing exposure(s).

LOSS DOCUMENTATION AND INVESTIGATION

In the event of an insurance claim or lawsuit arising from the improper performance or failure to perform the requirements of a contract, the City department that initiated the contract must cooperate with Risk Management; the City Attorney, and contracted services working on behalf of the City, in securing all needed information and documentation concerning the contract. Also, to the extent possible, the City department that initiated the contract will help to secure the cooperation of the contractor / vendor in adjudicating an insurance claim.