



## **Sample Insurance Requirements for Contracts**

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## Purpose and Layout of this Guidance Document

Intact Public Entities (IPE) has reviewed thousands of contracts on behalf of our clients. The major purpose of our contract review is to ensure that the assumed risks are identified and managed. The contract cannot necessarily make the operational risks disappear, but it should establish who is responsible for their management and financing.

Insurance is the most widely accepted means of financing contractual risks. But, for insurance to be an effective financing vehicle, the risks must be identified and then supported by the correct insurance coverages to minimize your financial exposure. The purpose of this document is to provide guidance for the types of insurance coverages that may be required for specific types of contracts that you are drafting and provide you with suggested wording.

The Table of Contents provides the types of contracts that are addressed in this document. To navigate to the desired section, click on the type of contract in the Table of Contents and it will take you directly to the appropriate section.

**This is a guidance document only. All contracts should be reviewed by legal counsel and an insurance professional. This document provides general guidance and information only. It does not constitute legal advice and no liability can attach to IPE arising from the use or non-use of the information contained in this document. Your contract may require specialized coverages that are not addressed within these pages. Therefore, we encourage you to continue to submit your contracts to IPE or a thorough review.**

**Please Note:** This document only applies to contracts that you are drafting. When you are entering into a contract that is drafted by another party you should have the contract reviewed by a lawyer and insurance broker or IPE.

## What You Need to Know

### Why do you need to include insurance requirements in contracts?

1. Insurance is a reliable method of arranging funds to pay for losses that are greater than an organization's resources.
2. The insurer has the funds to meet the limits of liability and insurance is a universally accepted method of financing indemnification in the event of a loss.
3. The types and limits of insurance requested are matched with the risk exposures identified in the contract to ensure the contracting party has appropriate coverage.
4. If the entities you contract with do not carry sufficient types and limits of insurance, the risk of your insurance policy or policies being called upon increases.

## Types of Liability Policies

### Occurrence Policy Form

The policy provides coverage for claims arising out of incidents that occurred during the policy period. Coverage is triggered on the date the incident occurred that gives rise to the claim. The policy does not have to be in effect when the claim is made. The policy that was in effect when the claim occurred is the responding policy. Occurrence policies never end.

For example, if a third party suffered bodily injury in 2014 and notice is served upon the entity in 2016, the liability policy that is in force during 2014 would be triggered rather than the policy that is in force in 2016 when the Statement of Claim, or notice, is filed.

The onus is on you to be able to identify the policy that was in place when the event occurred that gave rise to the claim. This is one of the reasons why you require a **Certificate of Insurance**. When a claim occurs, the Certificate will be your point of reference for identifying the insurer and the policy that was in place when the claim occurred.

Commercial General Liability, Automobile Liability and Homeowner's Liability are written on an occurrence basis.

### Claims-Made Policy Form

A claims-made policy is triggered when the claim is first reported. Therefore, there must be a policy in place when the claim is **made**. If there is no current policy in force, there is no coverage for the claim.

Coverage can be extended by purchasing an extended reporting endorsement.

For example, if a third party suffered an injury in 2014 and notice is served upon the entity in 2016, the 2016 policy would be triggered and would be the responding policy. If the policy was not renewed in 2016, there is no coverage for the claim. Therefore, we recommend that either an extended reporting period is purchased, or the policy continues to be renewed for a certain number of years after contract termination.

Professional Liability, Errors and Omissions, Directors and Officers, Environmental and Hazardous Products coverage are written on a claims-made basis.

### **Important Considerations**

**Retroactive Date:** A date that is stipulated in all claims-made policies. It is the first date of incidents covered by the policy. The retroactive date provides coverage for incidents that have occurred prior to the current policy term. The retroactive date is usually the first date that a claims-made policy is purchased.

**Extended Reporting Period:** Claims-made policies usually allow a period for the reporting of incidents that could give rise to a claim. Some claims-made policies allow for a short reporting period. This reporting period can be extended. The extended reporting period is purchased upon policy termination and extends the policy period for a specified amount of time. The period of time varies and usually an additional premium applies.

## **CGL Endorsements and Why We Recommend Them**

### **Products and Completed Operations**

This coverage protects the insured from customer lawsuits alleging property damage or injury due to the insured's product or completed services and it applies when products or services are being provided. If the contracting party doesn't have this coverage and they are sued for causing damages to a third party, the chances of the organization being drawn into a lawsuit as Owner of the facility are increased.

### **Non-owned Automobile Liability**

This coverage provides insurance protection when an employee is occasionally required to drive his or her personally owned vehicle for business purposes. It assumes that the vehicle is not owned, registered, or contracted in the Municipality's name or on its behalf. While the employee's automobile liability insurance would respond primarily, depending on the limits the employee carries, limits can quickly be exceeded. Non-owned automobile liability coverage would respond if your employees use their own vehicle to take deposits to the bank, take mail to the post office, pick up lunch for the team or pickup clients.

The employer must be aware of times when staff are doing these small tasks in their own vehicles so they can set rules around the use and monitor how often it is occurring. Employers should also be advising their staff members who use their own vehicles that they should be advising their personal auto insurer. Claims may be denied altogether if they have declared that their vehicles are not used for work. If they are using their own vehicles, but are still in the course of employment, the employer is vicariously responsible so the employer should have some control concerning safe use of the vehicle including use of seatbelts, no speeding etc.

### **Contractual Liability**

This endorsement covers property damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. For example, your electrical contractor was installing overhead lines and had a subcontractor sinking the new utility poles when the subcontractor hit an underground sewer line with an auger spilling sewage into a neighboring stream. Through contractual liability, the electrical contractor will be responsible for the actions of the subcontractor. Typically, contractual liability is excluded under a liability policy, however this endorsement brings this type of liability back under coverage, usually with a sub-limit. Because this type of liability is ordinarily excluded, it is important that you require it when contracting with vendors. Otherwise, the municipality's policy may be called upon to respond to losses.

### **Cross-liability and Severability of Interest**

Insurance coverage applies as if each named insured were the only named insured and separately to each insured against whom a claim is made or "action" is brought. Cross-liability means that one insured party can sue another insured party when both parties are under the same policy. You want your contractors, suppliers, service providers, etc. who have included you as Additional Insured to have cross-liability and severability-of-interest clauses on their liability policy because if they do not and a supplier causes you damages, the Municipality would be unable to sue the supplier because both parties are insureds under the supplier's policy.

### **Contingent Employers Liability**

Provides coverage for bodily injury to an employee of the insured arising out of and in the course of employment by the insured, performing duties related to the conduct of the insured's business, or the spouse, child, parent, brother or sister of that employee as a consequence of the above. Most workers compensation legislation effectively removes the right of injured workers to sue their employer (the insured) for injuries sustained while on the job. Despite this, an employer may face a lawsuit in cases involving workers that are not covered by workers compensation legislation, such as occasional workers or when a worker may be doing a task outside of their regular duties. You will want to ensure your contractors/consultants carry contingent employers' liability coverage if they use employees with other duties, occasional workers or their employees are working in another province, to complete work under the contract. We recommend having an agreement in place where the contractor promises to ensure appropriate WSIB coverage is in place as well as an indemnification by the contractor in favour of the municipality.

For example, a delivery driver slips and falls at your facility due to your negligence in mopping up a spill. The driver has the option of either making a claim with WSIB or commencing a lawsuit against you directly.

### **Work performed on Behalf of the Named Insured by Sub-Contractors**

CGL policies generally include a "your work" exclusion. This means that the policy does not apply to "property damage" to "your work" arising out of it or any part of it and included in the products-completed operations hazard. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

### **Firefighting Expense**

Coverage for cost and expenses for controlling and extinguishing forest fires which you are obligated to pay by reason of liability imposed upon you by any law, ordinance, or regulation.

### **Elevator and Hoist Liability**

Insurance against loss due to legal liability for bodily injury or property damage resulting from ownership, maintenance, or use of elevators, escalators, lifts, or hoists.

### **Attached Machinery – While Loading & Unloading**

CGL policies exclude automobile liability, but automobile liability policies include an exclusion endorsement for attached machinery. An endorsement for attached machinery must be added to the CGL policy to bring this coverage back. This coverage should be required to be maintained by snow removal contractors as well as any individuals who use equipment that is powered by motor fuel or alternative fuel from the common fuel supply tank. Attached equipment includes, but is not limited to, certain pumping, spraying, seeding, spreading, shredding, lifting, winching, dumping, cleaning, mixing, processing, and refrigeration equipment. Attached equipment does not include a heater, air conditioner, radio, or any other equipment that is used in the cab of the motor vehicle.

## Policy Limits

In addition to the types of insurance that should be carried by contractors or other third parties with whom the Municipality contracts, policy limits must also be determined. The following should be considered:

1. legal advice from the municipal solicitor
2. the municipality's risk tolerance
3. the likelihood of claims
4. the type and severity of possible claims

For example, if a Municipal facility is being used for deep frying, cooking, etc., the risk would be higher than a conference room rental. The risk exposure would also be higher for an event where alcohol will be served compared to a children's playgroup event where parents are supervising.

For general liability insurance, we are seeing limits of at least \$2M but \$3M-\$5M would be preferred. Ultimately, it is the Municipality's decision to make.

Recent damage awards/claim amounts that should be considered when deciding on limits:

1. **Cyber** - \$667,000 to \$3.86 million (average cost of worldwide data breaches in 2020)
2. **Roads - Deering v. Scugog** - The facts of this case stem from a motor vehicle accident that occurred in Ontario in August 2004. The accident occurred on an unlit, hilly rural road marking the boundary between the Township of Scugog and the City of Oshawa. The road, which had recently been resurfaced, had no centre line, no signage and no posted speed limit. The stretch of road on which the accident occurred was situated just before the crest of a hill. At the crest of the hill, there was a slight curve in the road.

Shannon Deering, 19 and an inexperienced driver, was driving a vehicle in which her younger sister and three friends were passengers. As she neared the crest of the hill, Shannon was momentarily blinded by the headlights of an oncoming vehicle which, due to the curve in the road, she believed to be on a collision course with her own vehicle. Shannon made certain manoeuvres in an attempt to avoid an apprehended head-on collision. Those manoeuvres led her to lose control of her vehicle. Her vehicle rolled and smashed into a rock culvert. As a result of the accident, Shannon and her sister were rendered quadriplegic. The three other passengers were also injured in the crash.

Four of the five injured parties sued several defendants, including the Corporation of the City of Oshawa and the Corporation of the Township of Scugog. Because the road on which the accident occurred was a boundary road, both municipalities shared responsibility for its maintenance. Damages awarded were in excess of \$20 million.

3. **Construction** - An owner and general contractor planned to begin the construction of three hydroelectric projects. Torrential rains caused flooding and damage to cofferdams and power stations, which also caused a delay in the start-up of the project. A claim for over \$12 million was made for the physical damage to the project, as well as the lost revenue from the inability to sell electricity for a period of time.<sup>i</sup>
4. **Professional services** - A designer was hired to assist in the renovation of an estate. Problems arose with an antique floor that had been removed from a French chateau. The client demanded \$1.8 million to remove and replace the entire floor. The insurance company's investigation indicated that the designer had little to no liability and that the contractor who shipped and installed the floor was liable. Despite all of this, the client refused to reduce his demand, and it was estimated that the cost for taking the case through trial could exceed \$400,000. The designer agreed to a settlement of \$235,000 and a waiver of their \$70,000 in fees. In addition to the \$235,000 settlement, the insurance company also paid more than \$250,000 in legal and expert fees. The cost of the claim was over \$500,000.
5. **Landlord/Tenant** - Deslaurier was a fairly standard fact scenario. In November 2007, the parties entered into a lease for the rental of several units in the landlord's commercial building. On January 1, 2009, a welding contractor engaged by the landlord carried out repairs at the premises and a fire occurred, causing significant damage to the building and the premises (and the tenant's property therein); the building was a total loss and was eventually demolished. The tenant made a claim to its insurer and was paid approximately \$10.861 million.<sup>ii</sup>
6. **Future Care Costs** - The 2009 case of *MacNeil v Bryan*<sup>15</sup> saw the largest award for future cost of care in Ontario's history. The Superior Court of Justice in *MacNeil* made a total award of \$18,427,207.20 to the plaintiff, a 15 year old female passenger in a vehicle that was involved in an accident that resulted in catastrophic injuries which included an open full frontal skull fracture with severe brain injuries, amongst other injuries. The largest portion of the judgment was \$15,158,500.00 awarded for future care costs.<sup>iii</sup>
7. **Environmental** - A residential contractor used solvent to remove paint from a residential structure and improperly disposed of the materials on-site. A group of residents filed a \$10 million toxic vapor inhalation suit against the contractor, citing bodily injury, trespass of pollutants and adverse effects to their quality of life.<sup>iv</sup>

## Indemnification Clauses

An indemnification clause allows you to seek reimbursement for money a municipality is required to pay to a third party as a result of an injury; physical or monetary, caused by the party from whom you seek the reimbursement. For example, one of your Contractors carelessly leaves some equipment lying around and a visitor trips over the equipment and injures herself. She sues you because the injury occurred on your property, even though it was the Contractor's act, not yours, which led to the injury. If there is an indemnification clause in the contract between you and your Contractor, you could seek to have the Contractor reimburse you for damages that you are ordered to pay to the injured party.

### Sample Indemnification and Hold-Harmless Clause

The Supplier shall defend, indemnify and save harmless [INSERT NAMED MUNICIPALITY HERE] its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Supplier, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Supplier in accordance with this Contract and shall survive this Contract.

The Supplier agrees to defend, indemnify and save harmless [INSERT NAMED MUNICIPALITY HERE] from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Supplier's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Supplier in accordance with this Contract, and shall survive this Contract.

**\*\* This is a sample only, does not constitute legal advice, and is for information purposes. An Indemnification/Hold-Harmless should be drafted by your legal counsel \*\***

Many contracts include responsibilities for both parties that could cause liability for the other. In this case, reciprocal or mutual indemnification may be appropriate.

### Mutual/Reciprocal Indemnification

The Indemnifying Party agrees to defend, indemnify and save the "Indemnified Party harmless, along with their respective councillors, officers, employees and agents from any liability, action, claim, loss, damage, payment, cost, fine, fine surcharge, recovery or expense, including assessable legal fees arising out of the performance of the Indemnifying Party's obligations under this Agreement, save and except in respect of any liability, action, claim, loss, damage, payment, cost, fine, fine surcharge, recovery or

expense, including assessable legal fees, directly attributable to, arising from, or caused by the negligence or breach of contractual obligation hereunder by the Indemnified Party.

The Indemnifying Party agrees to defend, indemnify and save harmless the Indemnified Party from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Indemnifying Party's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the parties in accordance with this Contract, and shall survive this Contract.

**\*\* This is a sample only, does not constitute legal advice, and is for information purposes. An Indemnification/Hold Harmless should be drafted by your legal counsel \*\***

A hold harmless and indemnification clause is only as good as the guarantor of the indemnity. Therefore, the indemnity should be guaranteed by **INSURANCE**.

Read more on why you should use a lawyer when drafting contracts.

[Risk Management Considerations for Why You Should Use a Lawyer for Contracts](#)

## Construction - New Facility

*Insurance requirements for construction contracts depend on the scope of work. We strongly recommend you work with your insurance broker or insurance provider when drafting the insurance requirements. The CCDC includes insurance requirements within its contract as well as in the CCDC 41 Insurance Requirements. In this section we are providing examples of wordings which expand upon the wording in the CCDC. Before you use these examples contact our office or your broker to ensure that they meet your project specifications.*

### Definitions

**Builder's Risk** - A type of insurance meant to insure property in the course of construction. Coverage is usually written on a Broad Form Basis and will cover the property at the construction site, offsite storage locations and in transit.

**CCDC (Canadian Construction Documents Committee)** - The CCDC is the body which develops and reviews standard Canadian construction contracts, forms and guides. Its forms are referred to by the number describing the specific form (such as Stipulated Price Contract, Unit Price Contract, Design-Builder/Consultant Contract, etc.), and the year the form was released. These forms are updated regularly and the most recent version of any form should be used. For a listing of the most current forms please see the CCDC website at: [CCDC Documents](#). The forms are boiler-plate versions used by contractors, and those in the construction industry, however, despite their standardized language – such as regarding insurance – the specifics of the form may or may not meet your requirements. Clauses which need to be amended should be done so by your lawyer.

**Contractor's Equipment Floater** - This policy provides coverage for the equipment the contractor owns, leases or rents or any other equipment for which the contractor may be liable. Coverage can also be endorsed to include rental expense. This can be a very important coverage if equipment is damaged on the site. It pays for the rental of substitute equipment. There is usually a limit per day and an aggregate limit.

**Contractors Pollution Liability (CPL)** - CPL is designed to cover a contractor's ongoing and completed operations. Contractors' policies provide coverage for pollution related losses arising from the described operations of the named insured and may be available on a claims-made or occurrence form. This coverage typically protects contractors against claims for third-party bodily injury, property damage or cleanup costs/environmental damage arising from pollution conditions caused by the performance of covered operations. This coverage applies to sudden and accidental and can include gradual pollution events. The sudden and accidental coverage has a time limited reporting period – usually 120 hours. This means the pollution condition must be detected within 120 hours of commencement and then reported within 120 hours of detection. Some insurers offer a 240-hour reporting period.

**Installation Floater** - Coverage provided to goods (such as building materials or components, tools, or equipment) while in transit, waiting to be installed and as they are being installed. This floater does not provide coverage once the goods are installed.

**Products-Completed Operations** - One of the hazards insured by a general liability policy (CGL). It includes liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned.

**Professional Liability** - If a "professional" is alleged to have made an error or omission or is negligent with services rendered or not rendered, the Errors and Omissions policy provides financial protection to meet the costs of defending legal actions and providing compensatory damages if the professional is found legally liable.

**Project-Specific Policies** - An insurance policy which is set up specifically to cover a project from its start to finish, as opposed to ongoing CGL coverage carried by a contractor which covers multiple projects. The full aggregate limit is available in the event of a loss under a Project Specific policy, as opposed to possibly being depleted by losses which erode the aggregate on a CGL.

**Wrap-up Liability Policy** - Any construction project will require the services and input of numerous persons and entities. It can be very time consuming to ensure that each of these parties (contractor, sub-trades, consultants, etc.) has the appropriate amounts and types of insurance as specified in the various contracts. To overcome this hurdle, a 'wrap up' insurance policy can be used. This policy is all-encompassing and provides coverage for all of the parties involved in the project under one policy. It can be purchased either by the owner, or the owner can request that the contractor purchase the policy. Another advantage to such a policy is that there is one 'safety net' sized limit for all the construction players, and the inherent construction risks are then spread back across those players.

### **Contractor Bonds**

**Bid Bond** - A bid bond is used when a contractor (principal) is bidding on a tendered contract. It pre-qualifies the principal and provides assurance to the owner or general contractor that the principal will, in fact, enter into a contract if it is awarded. The bond guarantees that the obligee (*the party to whom the bond will be payable in the event of a default*) will be paid the difference between the principal's tender price and the next closest tender price in the event that the principal is awarded the contract but fails to enter into the contract with the obligee or provide the required performance bond or payment bond.

**Labour and Material Payment Bond** - The payment bond is issued in conjunction with the performance bond. The bond provides security to sub-contractors and suppliers that they will be paid according to terms of their contract.

**Maintenance Bond** - The bond provides security to the project owner that the contractor will maintain and repair the project according to the terms of the contract for a specific period of time after its completion.

**Performance Bond** - The bond provides security to the obligee that the contract will be performed according to its terms. If the principal fails to perform the contract, then the surety will either complete the contract, pay for the cost of completion in excess of the remaining contract funds, or pay the bond penalty.

## Sample Insurance Wordings

### Builders Risk

Broad Form Builders' Risk Insurance written in the joint names of the Contractor, Owner, Sub-contractors, and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall have limits of not less than 1.1 times the Contract Price and the full value as stated in the Agreement. Should the Owner provide any property to be incorporated into the structure, the policy must be endorsed to include the Owner's property. Coverage shall be maintained during the term of the contract and until 10 calendar days after the date of Substantial Performance of the Work. The Builders' Risk shall:

- a) Be endorsed to grant permission to occupy prior to the completion or acceptance of the entire work.
- b) Not be less than the insurance coverage provided by IBC Forms 4042 and 4047 or their equivalent replacement.
- c) Include the installation, testing, commissioning and subsequent use of any machinery and equipment including boilers, pressure vessels or vessels under vacuum.
- d) Apply to all products, labour, equipment and supplies of every nature, the property of the Owner or Contractor or for which the Owner or Contractor may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, erection, fabrication, construction or reconstruction of the structure.
- e) Be subject to a waiver of coinsurance.
- f) Include coverage for materials while in transit, awaiting installation or stored at off-site locations. Coverage shall be in an amount equal to the value of the material.
- g) Contractor purchased policies shall provide that in the case of a loss or damage payment shall be made to the Owner and the Contractor as their respective interests may appear, the Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, the Design Builder shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to a reasonable extension of Contract Time

### Boiler and Machinery Insurance

The Boiler and Machinery Policy shall be written in the joint names of the Contractor, Owner and Sub-contractors and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy limit shall equal the replacement value of all permanent or temporary boilers and pressure vessels and other insurable objects forming part of the work. The Contractor may elect to carry the testing, commissioning and subsequent use of these objects under the Boiler and Machinery Policy.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Aircraft, Drone and Watercraft Liability**

Aircraft and Watercraft Liability Insurance, if applicable, the Contractor shall provide and maintain with respect to any non-owned aircraft or watercraft connected to the project, liability insurance in an amount not less than \$\_\_\_\_\_ per occurrence for Third Party Liability including Passenger Hazards.

### **Contractor's Equipment Floater**

The contractor shall provide and maintain coverage for all equipment used in the project during the term of this Agreement. Coverage will be provided, on a broad form basis for construction machinery, equipment, tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

### **Contractor's Pollution Liability**

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Professional Liability**

The Professional shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 2 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (INSERT name of entity). The (INSERT name of entity) has the right to request that an Extended Reporting Endorsement be purchased by the Professional at the Professional's sole expense.

### **Commercial General Liability**

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The insurance coverage shall not be less than the insurance provided

by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses
- (j) Elevator and Hoist Liability
- (k) Attached Machinery – while loading & unloading

The CCDC under GC 11.1 Insurance includes the following verbiage:

“General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of Substantial Performance of the *Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.”

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) If the work involves asbestos removal, the policy shall either provide coverage for this exposure or coverage shall be provided through a Professional Liability Policy.
- c) To achieve the desired limits, umbrella or excess liability insurance may be used.
- d) The Owner reserves the right to request, in addition to the Commercial General Liability Insurance coverage, Wrap-up Liability. The Wrap-up shall be in the names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants, Planners and Project Managers. Limits and coverages shall be in compliance with the provisions outlined above.

If requesting a Wrap-up – the following verbiage can be used:

Wrap-up Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The Wrap-up shall be in the joint names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants and Project Managers. The policy will be carried from the date of commencement of the work until 24 months from the date of Substantial Performance of

the Work. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Cross-liability and severability of interest
- (b) Blanket Contractual
- (c) Products and Completed Operations
- (d) Premises and Operations Liability
- (e) Personal Injury Liability
- (f) Contingent Employers Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) Firefighting Expenses
- (i) Elevator and Hoist Liability
- (j) Attached Machinery – while loading or unloading

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) If the work involves asbestos removal, the policy shall either provide coverage for this exposure or coverage shall be provided through a Professional Liability Policy. All insurance policies, required by the Proponent, shall be primary and not additional to or contributing with any other insurance carried by or for the municipality.

*When the work requires asbestos abatement, a suggested wording for coverage:*

#### **Asbestos Abatement/Environmental Impairment Liability Insurance**

(a) Contractor, or Subcontractor when applicable, shall provide Asbestos Abatement/Environmental Impairment Liability insurance with limits of no less than \$ - \_\_\_\_\_ per occurrence. Such insurance shall include all operations associated with hazardous materials removal. If the policy is written on claims made basis, the contractor shall provide the municipality with proof of renewal for the next 5 years. Should the contractor cancel the policy, within that time period, the contractor must provide the municipality with 60 days' notice of cancellation. The municipality may require the contractor to purchase an Extended Reporting Endorsement at the contractor's sole expense.

(b) Asbestos abatement coverage may alternatively be provided under the General Liability insurance as specified provided the policy is specifically endorsed to provide this coverage and the limit of liability is in an amount not less than \$ \_\_\_\_\_ inclusive per occurrence. A copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance.

## Considerations

Because the insurance requirements are in accordance with the contract specifications, if you change the insurance requirements you must amend the contract.

There could be a situation where a Builders Risk policy is not obtained. The insured must be aware of the difference between this in that in the event of a claim, repairs could be protracted because of the investigations necessary when simply relying on the contractor's or sub-contractor's CGL policies.

You will need to address the deductible. Who will pay the deductible – the contractor or will it be shared?

Please review the CCDC.

## Major Renovation of an Existing Facility

### Builders' Risk Policy - Please Note:

If this is a major renovation where you will be using the CCDC and requiring a wrap-up, the contractor should also be responsible for the Builders' Risk. You should include in the limit of insurance the value of the entire building. Then you will need to contact your existing insurer to remove the building from your property schedule until the renovations are completed.

For a minor renovation, the Builders' Risk Coverage should be provided by you and the coverage should be underwritten by the insurer that currently insures the subject property. You do not want two different insurers providing coverage for two different parts of the same structure.

In some cases, minor renovations will not require a Builders' Risk Policy as your current IPE Policy includes provisions for renovations.

Please call your broker or IPE to discuss your requirements.

### Boiler and Machinery Insurance

The Boiler and Machinery Policy shall be written in the joint names of the Contractor, Owner and Sub-contractors and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy limit shall equal the replacement value of all permanent or temporary boilers and pressure vessels and other insurable objects forming part of the work. The Contractor may elect to carry the testing, commissioning and subsequent use of these objects under the Boiler and Machinery Policy.

### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### Aircraft, Drone and Watercraft Liability

Aircraft and Watercraft Liability Insurance, if applicable, the Contractor shall provide and maintain with respect to any non-owned aircraft, drone or watercraft connected to the project, liability insurance in an amount not less than \$\_\_\_\_\_ per occurrence for Third Party Liability including Passenger Hazards.

### Installation Floater

The Contractor shall, throughout the term of the contract, obtain and maintain an Installation Floater written on an "All Risk" perils basis of an amount not less than \$\_\_\_\_\_. Coverage applies while property is in transit to the installation site, while stored at a temporary location, awaiting installation at the work site, during loading and unloading as well as the course of installation until completed.

### **Contractor's Pollution Liability**

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Contractor's Equipment Floater**

The contractor shall provide and maintain during the term of this Agreement. Coverage will be provided, on a broad form basis, for construction machinery, equipment, tools, and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

### **Professional Liability**

The (Professional) shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 2 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (INSERT name of entity). The (INSERT name of entity) has the right to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

### **Commercial General Liability Insurance**

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors

- (i) Firefighting Expenses
- (j) Elevator and Hoist Liability
- (k) Attached Machinery – while loading and unloading

The CCDC under GC 11.1 Insurance includes the following verbiage:

“General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of Substantial Performance of the *Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.”

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) If the work involves asbestos removal, the policy shall either provide coverage for this exposure or coverage shall be provided through a Professional Liability Policy.
- c) To achieve the desired limits, umbrella or excess liability insurance may be used.
- d) The Owner reserves the right to request, in addition to the Commercial General Liability Insurance coverage, Wrap-up Liability. The Wrap-up shall be in the names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants, Planners and Project Managers. Limits and coverages shall be in compliance with the provisions outlined above.

If requesting a Wrap-up – it can be written as follows:

Wrap-up Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The Wrap-up shall be in the joint names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants and Project Managers. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses

- (j) Elevator and Hoist Liability
- (k) Attached Machinery – while loading and unloading

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.

All insurance policies required to be carried by the Proponent shall be primary and not additional to or contributing with any other insurance carried by the municipality.

*When the work requires asbestos abatement, a suggested wording for coverage:*

### **Asbestos Abatement/Environmental Impairment Liability Insurance**

(a) Contractor, or Subcontractor when applicable, shall provide Asbestos Abatement/Environmental Impairment Liability insurance with limits of no less than \$ \_\_\_\_\_ per occurrence. Such insurance shall include all operations associated with hazardous materials removal. If the policy is written on claims made basis, the contractor shall provide the municipality with proof of renewal for the next 5 years. Should the contractor cancel the policy, within that time period, the contractor must provide the municipality with 60 days' notice of cancellation. The municipality may require the contractor to purchase an Extended Reporting Endorsement at the contractor's sole expense.

(b) Asbestos abatement coverage may alternatively be provided under the General Liability insurance as specified provided the policy is specifically endorsed to provide this coverage and the limit of liability is in an amount not less than \$ \_\_\_\_\_ inclusive per occurrence. A copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance.

### **Crane Operators/Hook Liability**

If booms or cranes are involved in moving any materials or installing equipment (HVAC), the contractor will require Hook or Crane Operators Liability. The limit for this coverage should equal the cost of the most expensive piece to be moved or installed.

### **Other Considerations**

Because the insurance requirements are in accordance with the contract specifications, if you change the insurance requirements you must amend the contract.

There are times when owner-controlled insurance makes more sense and other times, when it makes more sense to have the contractor obtain the insurance on the project. The CCDC 21 Guide to Insurance makes the point that there are some real advantages to having the owner control the insurance on a project. In this case, the municipality is no longer in charge control of the insurance on the project - it will be the contractor that controls this aspect. If you have a project where there is a portion of it where your insurers

are suspending current property coverage while the project is ongoing, or at least one stage of the project, the owner should be fully vested and in control.

You will need to address the deductible. Who will pay the deductible – the contractor or will it be shared? If this is owner-controlled insurance, they will be aware of the deductible, but if they are relying on the GC's COC and wrap-up, they (the municipality) might not be aware of the deductible and with some of these larger contractors, it can be substantial - if you have a smaller contractor, it might not be possible or feasible for them to pay it - which could lead to them walking away from the job if they are forced to pay it - remembering that the reason we use a COC is to keep the project moving forward, if that same sub-contractor has to rely on their own CGL to pay the large deductible, the CGL adjuster will want to do a full investigation - again, time delays,.

Please review the CCDC.

## Frequently Asked Questions

### **If the contract is requiring a Wrap-up Liability Policy, does the contractor still require a Commercial General Liability Policy?**

Yes. The contractor requires both policies. The Wrap-up Policy provides Completed Operations Coverage for 24 months. The standard CCDC requires that completed operations coverage be maintained for 6 years following substantial completion. The CGL provides the coverage after the Wrap-up expires. It could also act as a back up in the event of something not covered by the Builders Risk. For instance, in a case where no soft costs are purchased, you could see a situation where the General Contractor may be exposed (via their CGL) for soft costs.

### **The Contractor would like to make changes to the indemnification wording, is that acceptable?**

No. The wording used in the indemnification clause should be drafted by your legal counsel to give your Municipality the maximum amount of legal protection possible. The indemnification verbiage should stand up if challenged in Court. Amendments to the indemnification clause should only be made under the advice of a lawyer.

### **The Contractor's insurance does not meet the insurance requirements in our insurance contract. Should we alter the requirements to fit the contractor's insurance?**

No. The insurance requirements have been carefully considered and altering the language could weaken the protection they provide for the Municipality. The contractor should be required to obtain the appropriate insurance to meet the requirements listed in the contract. The contractor should meet your requirements. You should never be expected to meet their requirements. If you are faced with this situation, consider it a red flag.

**For the smaller contractors that we use for small jobs, it is not always possible or practical for them to obtain the higher insurance limits in our contracts. In these cases, can lower limits be permitted?**

Yes. There are some smaller contractors for whom the cost of obtaining higher limits would be prohibitive. You should consider the loss potential, the benefit to the Municipality of using this contractor and their ability to purchase the coverage requested at reasonable rates when lowering your required limits. It should be noted that if a roofing contractor has a \$5 Million liability policy, but a total loss to a facility is in excess of \$20 Million, the contractor will not be able to reimburse you if a total loss occurs. In situations like that, it is imperative that as the owner, you are even more cognizant of the robust risk management protocols this smaller contractor is undertaking. The municipality must understand what the work is, and how it will be undertaken as you will not be able to rely fully on the contractor's policy should a loss occur. So, the municipality is, essentially, co-insuring the contractor's liability.

**Does a contractor need professional liability coverage?**

Only if the contractor is altering the blueprints or adding his own design elements. If the contractor is simply following the blueprints given to him and only doing physical work, then a CGL should suffice. However, once the contractor engages in any form of design, professional liability is required because this "professional" exposure is expressly excluded under most CGL policies.

**Why do we need to reference IBC Forms 2100/2320 (liability) and 4042/4047 (property) in our contract language?**

The Canadian Construction Association (CCA) has a subcommittee called the Canadian Construction Document Committee (CCDC). They are the body that creates the standard contracts for the construction industry (i.e., CCDC 2 Stipulated Price Contract). Unlike automobile policies, property and liability policies aren't regulated by the government. Therefore, the Insurance Bureau of Canada (IBC) has created standard forms for these coverages and these standard forms outline the minimum requirements. The CCDC contracts mandate coverage not to be less than these forms. By referencing these forms, you ensure that the contractor purchases adequate insurance. When reviewing the insurance obtained by the contractor, it is imperative that any and all coverage language either meet or exceed the requirements. You need to be mindful of exclusionary language, such as hot-work exclusions, that might preclude coverage in the event of a loss.

## Developer Agreements

### Contractual Considerations

Prior to the registration of the Plan of Subdivision and the execution of the Subdivision Agreement, the Owner shall purchase and maintain insurance against all damages or claims for damage with a financially sound and reputable insurance company satisfactory to the Municipality and continue to maintain such insurance until an Assumption By-law has been passed by the Municipality. The Owner shall provide a Certificate of Insurance to the Municipality evidencing the insurance coverage required by the Owner and hereafter annually on the insurance renewal date.

The Owner's insurance shall be primary.

The insurance premium for the required insurance must be prepaid for a period of not less than one (1) year. The insurance policy must provide that it is not cancellable unless prior notice by registered mail has been received by the Municipality from the insurer not less than thirty (30) days prior to the cancellation date.

All parties must agree to immediately notify the other parties of any occurrence, incident, or event which may reasonably be expected to expose any of the parties to liability of any kind in relation to the development of the Subdivision.

The issuance of such insurance policy or policies shall not be construed as relieving the Owner from responsibility for any other or larger claims in excess of such policy or policies, if any, for which the Owner may be held responsible. Such insurance policy or policies shall be in a form acceptable to the Municipality's insurer and, without limiting the generality of the foregoing, shall provide:

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors

The policy shall include 30 days' notice of cancellation.

### **Explosion, Collapse or Underground Endorsement**

Where the Description of the Project, Supply or Work involves the use of explosives for blasting or vibration from pile driving or caisson work or the removal or weakening of support of such property, building or land, whether such support be natural or otherwise; Explosion, Collapse or Underground (XCU) coverage must be added by endorsement.

### **Automobile Liability Insurance**

Automobile Liability insurance covering third party property damage and bodily injury, including accident benefits as may be required by Applicable Laws arising out of any licensed vehicle operated by \_\_\_\_\_ in connection with this agreement with an inclusive limit of liability of two million dollars (\$2,000,000).

### **Installation Floater**

An Installation Floater written on an "All Risk" basis in an amount not less than \$ \_\_\_\_\_. Coverage is to apply while property is in transit to the installation site, while stored at a temporary location awaiting installation at the work site, during loading and unloading as well as the course of installation until completed.

### **Professional Liability Insurance**

Should the work involve professional design, the Owner shall ensure that any Professionals hired shall carry Professional Liability Insurance in the amount not less than \$ \_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$ \_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (Municipality). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (Municipality). The (Municipality) has the right to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

### **Environmental Impairment Liability Insurance**

The Owner shall purchase an Environmental Policy to cover injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual release. The policy shall include bodily injury, including sickness, disease, shock, mental anguish, and mental injury. The policy is to be renewed for 3 years after project completion and a Certificate of Insurance evidencing renewal shall be filed with the Municipality. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the contractor at the contractor's sole expense.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do Developers need to maintain insurance until the Municipality has assumed the subdivision?**

Slip-and-falls and trip-and-falls often occur on subdivisions prior to the Municipality assuming the development. Although the Developer has insurance, it does not prevent the injured party from naming the Municipality as well. Without this, the Municipality puts their insurance and deductible at risk. This happens rather frequently. A development is rarely perfect from day one. It's a construction site and developers sell the properties as fast as they can so there are people, including children, living in the middle of a construction zone. This is especially true when dealing with staged developments where one portion is completed and ready for habitation while construction is continuing in adjacent lots. The Municipality should also consider infrastructure - at what point does the Municipality accept the developed infrastructure such as storm sewers as their own? Have you done a complete inspection prior to sign-off? There is a concern that if the Municipality is "owning" the storm sewers, etc. while construction is still ongoing in some, if not all, of the development, they can end up being responsible for sewer back-ups when the system itself is not ready for full implementation. This can be mitigated by contracts and agreements, but it should be a consideration.

## Winter Road, Parking Lot and Sidewalk Maintenance

**Type of Operation:** Third party contractors hired by you to plow, salt, and sand your roads, sidewalks, or parking lots.

### Contractual Considerations

Managing independent contractors really comes down to how well the contract is written. You should consider the following within your contract.

**Health and Safety:** The contractor's health and safety policies should be provided to you prior to signing the contract. These policies should be equal to or better than yours.

**Training:** Train your contractors in your policies and procedures regarding documentation, de-icing agents to be used and the application rates, call-outs, salt vulnerable areas, health and safety procedures and incident/accident reporting.

**Equipment:** Address the satisfactory age and condition; required spare/back-up equipment; storage of equipment when not in service; payment of stand-by time; equipment to be supplied by municipality.

**Equipment Calibration and Inspection:** How often and by whom?

**Sand, Salt and Liquids:** Specify which de-icing agents are to be applied for various scenarios as well as application rates for each de-icing agent. Your best practices for yard maintenance and spill clean-up should be included.

**Call-out:** State, in the contract, the maximum timeframe from call-out to being on the road providing service and provide your best practices which are to be followed.

**GPS and Record Keeping:** Does the contractor require GPS? Will you provide the contractor with GPS units? The contractor should be required to complete your documentation and file the documentation with you. It is important to state in the contract that you own all the documentation. It is recommended that incident reports from contractors be submitted to the municipality: that way, they can decide whether there is an issue that needs to be addressed and whether some form of intervention is required on the part of the municipality.

**General:** Tender documents should include a clause(s) restricting the contractor to only complete work for the municipality when the equipment is deemed to be in service. Penalties for non-compliance must be written into the contract and should be substantial.

## Sample Insurance Wordings

### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year

with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) The policy shall include 30 days' notice of cancellation.
- (j) Attached Machinery

To achieve the desired limits, umbrella or excess liability insurance may be used.

### **Automobile Liability**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Contractor's Pollution Liability**

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

**The COI we received from the Contractor includes the following wording concerning our Additional Insured status. Should we accept it? *"only with respect to the operations of the insured"***

Yes. This wording is acceptable because you carry insurance for your own negligence but if you are drawn into a lawsuit that arises out of the Contractor's negligence, your additional insured status will provide coverage. If for instance, you are having a contractor

clear ice and snow on a parking lot, but not the sidewalks, the scope, as far as geographical locations should be noted on the contract so it could be "only with respect to the operations of the insured *as denoted in Schedule A.*"

### **Why should winter maintenance service providers be required to carry pollution liability?**

On January 16, 2015, the Ontario Superior Court ("ONSC") in Sarnia released its decision in *Steadman v Lambton (City)*, 2015 ONSC 101. The decision awarded over \$107,000 to Evelyn and Joseph Steadman, who sued the County of Lambton for 15 years of crop losses and a drop in property value, which was caused by the municipality's use of salt during winter road maintenance.

**For further information on winter road, parking lot and sidewalk maintenance, please review the below articles and checklists:**

- [Winter Sidewalk Maintenance](#)
- [Checklist for Winter Maintenance Log](#)
- [Checklist for Winter Inspection Log](#)
- [Checklist for Parking Lots Inspection Record](#)
- [Risk Management Considerations for Hiring Third Party Snowplowing Contractors: A Municipal Checklist](#)

## Summer Road Construction

**Type of Operation:** Municipal employees completing asphalt repair, grading shoulders, drainage maintenance, debris removal, Resurfacing or Expansion and new road construction.

### Definitions

**Contractor's Equipment Floater** - This policy provides coverage for the equipment the contractor owns, leases or rents or any other equipment for which the contractor may be liable. Coverage can also be endorsed to include rental expense. This can be a very important coverage if equipment is damaged on the site. It pays for the rental of substitute equipment. There is usually a limit per day and an aggregate limit.

**Contractors Pollution Liability (CPL)** - CPL is designed to cover a contractor's ongoing and completed operations. Contractors' policies provide coverage for pollution related losses arising from the described operations of the named insured and may be available on a claims-made or occurrence form. This coverage typically protects contractors against claims for third-party bodily injury, property damage or cleanup costs/environmental damage arising from pollution conditions caused by the performance of covered operations. This coverage applies to sudden and gradual pollution events.

**Products-Completed Operations** - It is one of the hazards insured by a general liability policy (CGL). It includes liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned.

### Bonding Considerations

For major road paving, consider the following bonds.

**Labour and Material Payment Bond** - The payment bond is issued in conjunction with the performance bond. The bond provides security to sub-contractors and suppliers that they will be paid according to terms of their contract.

**Maintenance Bond** - The bond provides security to the project owner that the contractor will maintain and repair the project according to the terms of the contract for a specific period after its completion.

**Performance Bond** - The bond provides security to the obligee that the contract will be performed according to its terms. If the principal fails to perform the contract, then the surety will either complete the contract, pay for the cost of completion in excess of the remaining contract funds or pay the bond penalty.

## Sample Insurance Wordings

### Contractor's Equipment Floater

The contractor shall provide and maintain coverage on equipment used during the term of this Agreement. Coverage will be provided, on a broad form basis, for construction machinery, equipment; tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense.

### Contractor's Pollution Liability

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. The policy shall provide coverage for pollution conditions caused by the operations performed at the job site. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### Commercial General Liability

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) 30 days' notice of cancellation
- (j) Attached Machinery

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) To achieve the desired limits, umbrella or excess liability insurance may be used.

### Automobile Liability Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or

operation of vehicles owned, operated or leased by the Contractor. If there is any design work by a professional engineer, you will require:

**Professional Liability - Only if there is a design requirement in the contract.**

The (*Professional*) shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (*INSERT name of entity*). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (*INSERT name of entity*). The (*INSERT name of entity*) has the right to request that an Extended Reporting Endorsement be purchased by the (*Professional*) at the (*Professional's*) sole expense.

**Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

**Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

**Frequently Asked Questions**

**Why do we require the contractor to carry pollution liability?**

The contractor's operation can result in environmental damage, such as accidental release of fuel oil, toxic gases from broken pipelines, release of contaminants.

**When do we require Professional Liability coverage?**

When you are having something "newly" designed or redesigned and a financial loss is suffered by the Municipality. This is especially important when the operation is in proximity to any body of water including underground aquifers.

**For further information on summer roads, please review the below article:**

- [FAQ for Seasonal and Summer Roads](#)

## Sidewalk Repair or Replacement

**Type of Operation:** Third party contractors hired by you to repair or replace sidewalks.

### Definitions

**Contractor's Equipment Floater** - This policy provides coverage for the equipment the contractor owns, leases or rents or any other equipment for which the contractor may be liable. Coverage can also be endorsed to include rental expense. This can be a very important coverage if equipment is damaged on the site. It pays for the rental of substitute equipment. There is usually a limit per day and an aggregate limit.

**Contractors Pollution Liability (CPL)** - CPL is designed to cover a contractor's ongoing and completed operations. Contractors' policies provide coverage for pollution related losses arising from the described operations of the named insured and may be available on a claims-made or occurrence form. This coverage typically protects contractors against claims for third-party bodily injury, property damage or cleanup costs/environmental damage arising from pollution conditions caused by the performance of covered operations. This coverage applies to sudden and gradual pollution events.

**Installation floater** - Coverage provided to goods (such as building materials or components, tools, or equipment) while in transit, waiting to be installed and as they are being installed. This floater does not provide coverage once the goods are installed.

**Products-Completed Operations** - It is one of the hazards insured by a general liability policy (CGL). It includes liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned.

### Sample Insurance Wordings

#### Installation Floater

An Installation Floater written on an "All Risk" basis in an amount not less than \$\_\_\_\_\_. Coverage is to apply while property is in transit to the installation site, while stored at a temporary location awaiting installation at the work site, during loading and unloading as well as the course of installation until completed.

#### Contractor's Pollution Liability

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Contractor's Equipment Floater**

The contractor shall provide and maintain coverage on all equipment used during the term of this Agreement. Coverage will be provided, on a broad form basis, for construction machinery, equipment, tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

### **Commercial General Liability Insurance**

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses
- (j) Attached Machinery
- (k) 30 days' notice of cancellation

To achieve the desired limits, umbrella or excess liability insurance may be used.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$ \_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

A Certificate of Insurance must be posted 10 days before the work commences.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### How do Minimum Maintenance Standards apply to sidewalks?

Minimum Maintenance Standards provide guidelines that include snow accumulation, sidewalk width, surface discontinuities, prevention of ice formation and patrolling. The contractor should be well-versed in the expectations of sidewalk maintenance and understand how to mitigate areas of concern. Does the contract give them permission to fix any issues they observe? Do they only have the obligation to report? Does the municipality have a proper process to deal with issues as they are reported by on-the-ground contractors?

For further information on sidewalks, please review the below articles:

- [Winter Sidewalk Maintenance](#)
- [Sidewalk Inspection Procedures](#)

## Bridge, Culvert and Overpass Construction

**Type of Operation:** Third party contractors hired by you construct a bridge, culvert or overpass.

### Definitions

**Attached Machinery** - Equipment that is being used in the course of the work that is attached to a vehicle or trailer such as, crane, boom, generators, and lift cranes. Automobile insurers exclude the operation of the attached equipment when it is operating independently of the auto exposure. So, it is important that you confirm that the operation of this attached machinery is covered under the Commercial General Liability.

**Builder's Risk** - A type of insurance meant to insure property in the course of construction. Coverage is usually written on a Broad Form Basis and will cover the property at the construction site, offsite storage locations and in transit.

**Hook Liability** - If booms or cranes are involved in moving any materials or installing equipment, the contractor will require Hook or Crane Operators Liability which provides coverage for the piece of equipment that is being installed and is on the end of the crane. The limit for this coverage should equal the cost of the most expensive piece to be moved or installed.

**XCU Endorsement** - Provides coverage for Explosion, Collapse and Underpinning

### Bonding Considerations

**Bid Bond** - A bid bond is used when a contractor (principal) is bidding on a tendered contract. It pre-qualifies the principal and provides assurance to the owner or general contractor that the principal will in fact enter into a contract if it is awarded. The bond guarantees that the obligee will be paid the difference between the principal's tender price and the next closest tender price in the event that the principal is awarded the contract but fails to enter into the contract with the obligee or provide the required performance bond or payment bond.

**Labour and Material Payment Bond** - The payment bond is issued in conjunction with the performance bond. The bond provides security to sub-contractors and suppliers that they will be paid according to terms of their contract.

**Maintenance Bond** - The bond provides security to the project owner that the contractor will maintain and repair the project according to the terms of the contract for a specific period of time after its completion.

**Performance Bond** - The bond provides security to the obligee that the contract will be performed according to its terms. If the principal fails to perform the contract, then the surety will complete the contract, pay for the cost of completion in excess of the remaining contract funds or pay the bond penalty.

## Sample Insurance Wordings

### Builders' Risk Insurance (bridge construction)

Broad Form Builders' Risk Insurance written in the joint names of the Contractor, Owner, Sub-contractors, and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall have limits of not less than 1.1 times the Contract Price and the full value as stated in the Agreement. Should the Owner provide any property to be incorporated into the structure, the policy must be endorsed to include the Owner's property. Coverage shall be maintained during the term of the contract and until 10 calendar days after the date of Substantial Performance of the Work. The Builders' Risk shall:

- a) Not be less than the insurance coverage provided by IBC Forms 4042 and 4047 or their equivalent replacement.
- b) Apply to all products, labour, equipment and supplies of every nature, the property of the Owner or Contractor or for which the Owner or Contractor may have assumed responsibility (whether on site or in transit), that is to be used in or pertaining to site preparation, erection, fabrication, construction, or reconstruction of the structure.
- c) Be subject to a waiver of coinsurance.
- d) Include coverage for materials while in transit, awaiting installation or stored at off-site locations. Coverage shall be in an amount equal to the value of the material.
- e) (on Contractor purchased policies) provide that in the case of a loss or damage payment shall be made to the Owner and the Contractor as their respective interests may appear, the Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurer. When the extent of the loss or damage is determined, the Design Builder shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to a reasonable extension of Contract Time.

### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an additional insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability

- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses
- (j) Attached Machinery
- (k) 30 days' notice of cancellation
- (l) Elevator and Hoist Liability

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) If the work involves asbestos removal, the policy shall either provide coverage for this exposure or coverage shall be provided through a Professional Liability Policy.
- c) To achieve the desired limits, umbrella or excess liability insurance may be used.
- d) The Owner reserves the right to request, in addition to the Commercial General Liability Insurance coverage, Wrap-up Liability. The Wrap-up shall be in the names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants, Planners and Project Managers. Limits and coverages shall be in compliance with the provisions outlined above.

If requesting a Wrap-up Liability policy, it can be written as follows:

Wrap-up Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The Wrap-up shall be in the joint names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants and Project Managers. The policy will be carried from the date of commencement of the work until 24 months from the date of Substantial Performance of the Work. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 and IBC Form 2320. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Cross-liability and severability of interest
- (b) Blanket Contractual
- (c) Products and Completed Operations
- (d) Premises and Operations Liability
- (e) Personal Injury Liability
- (f) Contingent Employers Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) Firefighting Expenses
- (i) Attached Machinery
- (j) Elevator and Hoist Liability

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.

### **Contractor's Equipment Floater**

The contractor shall provide and maintain coverage on all equipment used during the term of this Agreement. Coverage will be provided, on a broad-form basis, for construction machinery, equipment, tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

### **Contractor's Pollution Liability**

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. The policy shall provide coverage on a gradual release for pollution conditions as a result of the operations performed at the job site. Coverage shall include bodily injury, property damage, clean-up and remediation costs. The Contractor shall purchase at minimum a 1 Year Extended Reporting Endorsement.

### **Professional Liability** (if there is any design work)

The (*Professional*) shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (*INSERT name of entity*). The (*INSERT name of entity*) has the right to request that an Extended Reporting Endorsement be purchased by the (*Professional*) at the (*Professional's*) sole expense.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Crane Operators/Hook Liability**

If booms or cranes are involved in moving any materials or installing equipment the contractor will require Hook or Crane Operators Liability. The limit for this coverage shall equal the cost of the most expensive piece to be moved or installed.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **If the contract is requiring a Wrap-up Liability Policy, does the contractor still require a Commercial General Liability Policy?**

Yes. The contractor requires both policies. The Wrap-up Policy provides Completed Operations Coverage for 24 months. The standard CCDC requires that completed operations coverage be maintained for 6 years following substantial completion. The CGL provides the coverage after the Wrap-up expire.

### **Why do we need to reference IBC Forms 2100/2320 (liability) and 4042/4047 (property) in our contract language?**

The Canadian Construction Association (CCA) has a subcommittee called the Canadian Construction Document Committee (CCDC). They are the body that creates the standard contracts for the construction industry (i.e. CCDC 2 Stipulated Price Contract). Unlike automobile policies, property and liability policies aren't regulated by the government. Therefore, the Insurance Bureau of Canada (IBC) has created standard forms for these coverages and these standard forms outline the minimum requirements. The CCDC contracts mandate coverage not to be less than these forms. So, by referencing these forms you make sure that the contractor purchases adequate insurance.

### **What is a bond and how does it differ from insurance?**

Bonds provide assurance to the project owner (obligee) that the contractor (principal) will perform according to the terms stated in the agreement. Construction bonds may come in two parts on larger projects: One to protect against overall job incompleteness, and the other to protect against nonpayment of materials from suppliers and labor from subcontractors.

There are generally three parties involved in a construction bond:

1. The investor/project owners, also known as the obligee.
2. The party or parties building the project (principal).
3. The surety company that backs the bond (surety).

To reduce the likelihood of a financial loss, the obligee requires all contractors to put up a bond. By submitting a construction bond, a principal stating that they can complete the job according to the contractual policy. The principal provides financial and quality

assurance to the obligee that not only does he have the financial means to manage the project but that the construction will be carried out to the highest quality specified. The contractor purchases a construction bond from a surety which runs extensive background and financial checks on a contractor before approving a bond.<sup>v</sup>

Bonds and insurance are similar but also very much different. In the majority of cases, construction contractors will be required to acquire both. However, they're also significantly different. This is the case, because bonds tend to be more beneficial to those working with the contractor, while the insurance is more advantageous to the contractor itself. Also, insurance is something that is normally maintained throughout the year. Bonds are generally only required when the contractor attempts to and accepts a contract.<sup>vi</sup>

## Underground Infrastructure Repair or Replacement

**Type of Operation:** Third-party contractors hired by you to repair or replace underground infrastructure. These recommendations also apply to watermains and sewers.

### Definitions

**Attached Machinery** - Equipment that is being used in the course of the work that is attached to a vehicle or trailer such as, crane, boom, generators, and lift cranes. Automobile insurers exclude the operation of the attached equipment when it is operating independently of the auto exposure. So, it is important that you confirm that the operation of this attached machinery is covered under the Commercial General Liability.

**Contractor's Equipment Floater** - This policy provides coverage for the equipment the contractor owns, leases or rents or any other equipment for which the contractor may be liable. Coverage can also be endorsed to include rental expense. This can be a very important coverage if equipment is damaged on the site. It pays for the rental of substitute equipment. There is usually a limit per day and an aggregate limit.

**Contractors Pollution Liability (CPL)** - CPL is designed to cover a contractor's ongoing and completed operations. Contractors' policies provide coverage for pollution related losses arising from the described operations of the named insured and may be available on a claims-made or occurrence form. This coverage typically protects contractors against claims for third-party bodily injury, property damage or cleanup costs/environmental damage arising from pollution conditions caused by the performance of covered operations. This coverage can apply to sudden and accidental releases and/or gradual pollution events.

**Hook Liability** - If booms or cranes are involved in moving any materials or installing equipment, the contractor will require Hook or Crane Operators Liability which provides coverage for the piece of equipment that is being installed and is on the end of the crane. The limit for this coverage should equal the cost of the most expensive piece to be moved or installed.

**Installation floater** - Coverage provided to goods (such as building materials or components, tools, or equipment) while in transit, waiting to be installed and as they are being installed. This floater does not provide coverage once the goods are installed.

**Products-Completed Operations** - It is one of the hazards insured by a general liability policy (CGL). It includes liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned.

**XCU Endorsement** - Provides coverage for Explosion, Collapse and Underpinning

### Bonding Considerations

For large projects consider the following bonds.

**Labour and Material Payment Bond** - The payment bond is issued in conjunction with the performance bond. The bond provides security to sub-contractors and suppliers that they will be paid according to terms of their contract.

**Maintenance Bond** - The bond provides security to the project owner that the contractor will maintain and repair the project according to the terms of the contract for a specific period of time after its completion.

**Performance Bond** - The bond provides security to the obligee that the contract will be performed according to its terms. If the principal fails to perform the contract, then the surety will complete the contract, pay for the cost of completion in excess of the remaining contract funds or pay the bond penalty.

The bond provides security to the obligee that the contract will be performed according to its terms. If the principal fails to perform the contract, then the surety will either complete the contract, pay for the cost of completion in excess of the remaining contract funds or pay the bond penalty.

**Road Cut Bond** - The bond conforms to a Municipal by-law and guarantees that the contractor will restore the road to the original condition.

**Sewer Tapper Bond** - The bond conforms to a Municipal by-law and guarantees that the contractor will restore the road to the original condition.

## Sample Insurance Wordings

### Installation Floater

An Installation Floater written on an “All Risk” basis in an amount not less than \$\_\_\_\_\_. Coverage is to apply while property is in transit to the installation site, while stored at a temporary location awaiting installation at the work site, during loading and unloading as well as the course of installation until completed.

### Contractor’s Pollution Liability

The Contractor shall carry a Contractor’s Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs. The Contractor shall purchase at minimum a 3 Year Extended Reporting Endorsement.

### Contractor’s Equipment Floater

The contractor shall provide and maintain coverage for equipment used during the term of this Agreement. Coverage will be provided, on a broad form basis, for construction machinery, equipment, tools and stock that will be used by the Contractor in the performance of the work. The coverage will also include rental expense. Coverage is to be carried from the date of commencement of the work until one year after the date of Substantial Performance of the Work.

### Commercial General Liability

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses
- (j) Attached Machinery
- (k) 30 days’ notice of cancellation
- (l) Elevator and Hoist Liability

The following may apply:

- a) If applicable to the construction project described in the Agreement, coverage shall include shoring, blasting, excavation, underpinning, demolition, pile driving, caisson work and work below ground surface including tunneling and grading.
- b) If the work involves asbestos removal, the policy shall either provide coverage for this exposure or coverage shall be provided through a Professional Liability Policy.
- c) To achieve the desired limits, umbrella or excess liability insurance may be used.
- d) The Owner reserves the right to request, in addition to the Commercial General Liability Insurance coverage, Wrap-up Liability. The Wrap-up shall be in the names of the Owner, Contractor, all Sub-contractors, Architects, Engineers, Consultants, Planners and Project Managers. Limits and coverages shall be in compliance with the provisions outlined above.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Crane Operators/Hook Liability**

If booms or cranes are involved in moving any materials or installing equipment the contractor will require Hook or Crane Operators Liability. The limit for this coverage shall equal the cost of the most expensive piece to be moved or installed.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **When would the Contractor's XCU endorsement respond?**

Explosion, Collapse, and Underground Hazard (XCU) coverage is required for contractors who grade, trench, or dig underground, generally to a depth of greater than 12 inches.

**For further information on wastewater infrastructure, please review the below article:**

- [Risk Management Consideration Public Watermain Supply & Wastewater Infrastructure](#)

## Ambulance Services Mutual Aid Agreement

**Type of Operation:** Two or more municipalities agreeing to assist one another by providing additional ambulance services in certain situations.

### Definitions

**Requesting municipality** - The municipality that is requesting mutual aid assistance.

**Responding municipality** - The municipality responding to the request for mutual aid assistance.

### Sample Insurance Wordings

Each party to the agreement covenants and agrees to carry, at all times during the agreement, the following policies of insurance and to provide a Certificate of Insurance evidencing coverage in effect.

#### Property Insurance

Broad Form Property Policy insuring against loss or damage to any kind of owned, rented or leased equipment or property that is being used or could be used to provide Mutual Aid Ambulance Services pursuant to this agreement in an amount not less than the full replacement cost.

#### General Liability Insurance

General Liability Policy insuring against injury or damage to persons or property, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ with a limit of not less than \$ \_\_\_\_\_. The policy shall be endorsed to include each party to the agreement as an additional insured with respect to the Mutual Aid Ambulance Services as per the signed agreement. The policy shall further be endorsed to include:

- (a) cross-liability,
- (b) contractual liability,
- (c) personal injury, and
- (d) Non-owned Automobile Coverage with a limit of not less than \$ \_\_\_\_\_ and shall include contractual non-owned coverage.

#### Medical Malpractice Insurance

Medical Malpractice with a limit of not less than \$ \_\_\_\_\_. The coverage can be provided as a stand-alone policy or included in the coverage afforded by the General Liability Policy referenced above.

#### Automobile Liability Insurance

Automobile Liability Policy covering third party property damage and bodily injury liability and all statutory coverages as may be required by Applicable Laws arising out of any

licensed vehicle operated in connection with the Agreement with limits not less than \$\_\_\_\_\_. The policy shall further provide All Perils Loss or Damage coverage with respect to any vehicles used to provide the services pursuant to this agreement.

All policies of insurance shall:

a) Be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_.

b) Include a provision for 30-day notice of cancellation except for Automobile which shall provide 15-day notice of cancellation

Certificates of Insurance evidencing coverage as outlined above shall be provided to all parties within 10 days of signing the agreement.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

### **Other Considerations**

The agreement should be signed by all Councils and Emergency Services and meet the requirements of Provincial Ambulance Acts as well as Municipal or Local Government Acts.

## **Frequently Asked Questions**

### **What is the difference between automatic aid and mutual aid?**

Automatic aid occurs when the original incident is first dispatched, while mutual aid is usually requested on an *ad hoc* basis by the local incident commander.

## Fire Services Mutual Aid Agreement

**Type of Operation:** Two or more municipalities agreeing to assist one another by providing additional fire services in certain situations.

### Definitions

**Mutual Aid** - A program to provide/receive assistance in the case of a major emergency in a municipality, non-municipal community or area; and to provide a mechanism that can be used to activate reciprocal responses to incidents that exceed the capability of the participant or non-municipal participant.

**Fire Protection Services** include:

- (a) fire suppression, fire prevention and fire safety education,
- (b) mitigation and prevention of the risk created by the presence of unsafe levels of carbon monoxide and safety education related to the presence of those levels,
- (c) rescue and emergency services,
- (d) communication in respect of anything described in clauses (a) to (c), (e) training of persons involved in providing anything described in clauses (a) to (d), and
- (e) the delivery of any service described in clauses (a) to (e).

**Home Fire Chief** - The fire chief of the municipality, non-municipal community or area experiencing a major emergency.

**Home Fire Department** - The fire department of the municipality, non-municipal community or area experiencing a major emergency.

**Major Emergency** - A situation that, in the opinion of the fire chief, constitutes a danger of major proportions to life, property and/or the environment.

### Sample Insurance Wordings

#### Property Insurance

Broad Form Property Policy insuring against loss or damage to any kind of owned, rented or leased equipment or property that is being used or could be used to provide Mutual Aid Fire Protection Services pursuant to this agreement in an amount not less than the full replacement cost.

#### General Liability Insurance

General Liability Policy insuring against injury or damage to persons or property, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ with a limit of not less than \$\_\_\_\_\_. The policy shall be endorsed to include each party to the agreement as an additional insured with respect to the Mutual Aid Fire Protection Services as per the agreement. The policy shall further be endorsed to include cross-liability, contractual liability and personal injury.

### Medical Malpractice Insurance

Medical Malpractice coverage with a limit of not less than \$\_\_\_\_\_. The coverage can be provided as a stand-alone policy or included in the coverage afforded by the General Liability Policy referenced above.

### Non-owned Automobile Coverage

Non-owned Automobile coverage with a limit of not less than \$\_\_\_\_\_ and shall include contractual non-owned coverage.

### Automobile Liability Insurance

Automobile Liability Policy covering third party property damage and bodily injury liability and all statutory coverages as may be required by Applicable Laws arising out of any licensed vehicle operated in connection with the Agreement with limits not less than \$\_\_\_\_\_. The policy shall further provide All Perils Loss or Damage coverage with respect to any vehicles used to provide the services pursuant to this agreement.

All policies of insurance shall:

- a) Be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_.
- b) Include a provision for 30-day notice of cancellation except for Automobile which shall provide 15-day notice of cancellation

Certificates of Insurance evidencing coverage as outlined above shall be provided to all parties within 10 days of signing the agreement.

**If Fire Inspections form part of the services provided in the agreement, then the party providing the service should also provide Errors and Omissions Insurance.**

### A sample wording is as follows:

The (Assisting Municipality) shall take out and keep in force Errors and Omissions insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from the fire inspection services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (Municipality). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (Municipality). The (Municipality) has the *right to request that an Extended Reporting Endorsement be purchased by the (Assisting Municipality) at the (Assisting Municipality's) sole expense.*

**You may consider Environmental coverage (for any Hazmat services; chemicals, etc.). A sample wording is:**

Environmental Liability Policy in an amount of not less than \$\_\_\_\_\_ per occurrence, against claims for bodily injury, including sickness, disease, shock, mental

anguish, mental injury as well as injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and gradual release. The policy will be renewed for three (3) years after contract termination. Should the policy be non-renewed, 90-day notice of nonrenewal must be provided and the (Assisted Municipality) has the right to request that an extended reporting period be purchased at the (Assisting Municipality's) sole expense.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

### **Other Considerations**

The agreement should be signed by all Councils and Fire Services and meet the requirements of Provincial Fire Protection/ Prevention Acts as well as Municipal or Local Government Acts.

## **Frequently Asked Questions**

### **What is the Province of Ontario Mutual Aid Plan (MAP)?**

Ontario is the most populous province in Canada, with diverse demographics and various physical geographies. While instructed by the Office of the Fire Marshal, Fire Coordinators from across the province have assisted, and continue to assist, in the development and revision of the MAP. These individuals represent fire service responders ranging from single to multi-station fire departments. Large or small, all fire departments in Ontario have a significant role in the operational processes of the MAP. The success of the MAP relies directly on their collaborative contributions and involvement.

## Fire Protection Services Agreement

**Type of Operation:** You are hiring a third party, either a private company or another Municipality, to provide fire services.

### Definitions

**Hazmat** - Abbreviation for “hazardous materials”—substances in quantities or forms that may pose a risk to health, property, or the environment. HAZMATs include such substances as toxic chemicals.

### Sample Insurance Wordings

The fire service provider should be required to carry the following insurance:

#### Property Insurance

Broad Form Property Policy insuring against loss or damage to any kind of owned, rented or leased equipment or property that is being used or could be used to provide Fire Protection Services pursuant to this agreement in an amount not less than the full replacement cost.

#### General Liability Insurance

General Liability Policy insuring against injury or damage to persons or property, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ with a limit of not less than \$\_\_\_\_\_. The policy shall be endorsed to include the Municipality as an additional insured with respect to the Fire Protection Services as per the agreement. The policy shall further be endorsed to include cross-liability, contractual liability and personal injury.

#### Medical Malpractice Insurance

Medical Malpractice coverage with a limit of not less than \$\_\_\_\_\_. The coverage can be provided as a stand-alone policy or included in the coverage afforded by the General Liability Policy referenced above.

#### Non-owned Automobile Coverage

Non-owned Automobile coverage with a limit of not less than \$\_\_\_\_\_ and shall include contractual non-owned coverage.

#### Automobile Liability Insurance

Automobile Liability Policy covering third party property damage and bodily injury liability and all statutory coverages as may be required by Applicable Laws arising out of any licensed vehicle operated in connection with the Agreement with limits not less than \$\_\_\_\_\_. The policy shall further provide All Perils Loss or Damage coverage with respect to any vehicles used to provide the services pursuant to this agreement.

All policies of insurance shall:

- a) Be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_.
- b) Include a provision for 30-day notice of cancellation except for Automobile which shall provide 15-day notice of cancellation

Certificates of Insurance evidencing coverage as outlined above shall be provided to all parties within 10 days of signing the agreement.

**If Fire Inspections form part of the services provided in the agreement, then the party providing the service should also provide Errors and Omissions Insurance (Professional Liability).**

**A sample wording is as follows:**

The (*Service Provider*) shall take out and keep in force Errors and Omissions insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from the fire inspection services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (*Municipality*). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (*Municipality*). The (*Municipality*) has the *right to request that an Extended Reporting Endorsement be purchased by the (Service Provider) at the (Service Provider's) sole expense.*

**You may consider Environmental coverage (for any Hazmat services; chemicals, etc.). A sample wording is:**

Environmental Liability Policy in an amount of not less than \$\_\_\_\_\_ per occurrence, against claims for bodily injury, including sickness, disease, shock, mental anguish, mental injury as well as injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, cleanup or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and gradual release. The policy will be renewed for three (3) years after contract termination. Should the policy be non-renewed, 90 days' notice of nonrenewal must be provided and the (Assisted Municipality) has the right to request that an extended reporting period be purchased at the (Assisting Municipality's) sole expense.

**Primary Coverage**

The Service Provider's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

## **Certificate of Insurance**

The Service Provider shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Which legislation establishes municipal responsibilities for fire protection services?**

In Ontario, the *Fire Protection and Prevention Act*, mandates that all municipalities must establish a program in their municipality that includes public education with respect to fire safety and certain components of fire protection. In addition, all municipalities must appoint a community fire safety team or establish a fire department.

### **How does professional liability insurance differ from general liability insurance?**

Professional liability is a claims-made policy, and will have different reporting requirements than a typical CGL policy. As well, retroactive dates, where the policy "goes back in time" need to be considered when thinking about coverage.

## Fire Dispatch Services

**Type of Operation:** You are hiring a third party, either a private company or another Municipality, to provide fire dispatch services.

### Definitions

**Professional Liability Insurance** - Professional liability insurance protects businesses against charges of negligence or harm, based on a professional service or advice you provided. It's also known as errors and omissions (E&O) insurance.

### Sample Insurance Wordings

The fire dispatch service provider should be required to carry the following insurance:

#### Property Insurance

Broad Form Property Policy insuring against loss or damage to any kind of owned, rented or leased equipment or property that is being used or could be used to provide Fire Dispatch Services pursuant to this agreement in an amount not less than the full replacement cost.

#### General Liability Insurance

General Liability Policy insuring against injury or damage to persons or property, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ with a limit of not less than \$ \_\_\_\_\_. The policy shall be endorsed to include the Municipality as an additional insured with respect to the Fire Dispatch Services as per the agreement. The policy shall further be endorsed to include cross-liability, contractual liability and personal injury.

### Frequently Asked Questions

#### Should Dispatch Service Providers be required to carry professional liability insurance?

Dispatch claims are generally covered under their CGL. Dispatchers are not “professionals,” so they don’t need to carry professional liability insurance. Municipalities should be aware this could change, given the dynamics of things like Telehealth. Dispatchers are not professional as long as all they are doing is dispatching; if they are trained or need to be certified in any way (ie: to deal with mental-health crises), that might change.

## Commercial Leases

**Type of Operation:** You are the Landlord leasing premises to a long-term Tenant.

### Definitions

**Leasehold Improvements** - Alterations made to rental premises to customize it for the specific needs of the Tenant. These improvements can either be completed by the Landlord or the Tenant. Examples of leasehold improvements are; partitions, flooring, kitchen equipment, fire protection systems and light fixtures. Leasehold improvements should be defined in the agreement.

### Sample Insurance Wordings

The Tenant should be required to have the following:

#### All-Risks Property Insurance

All-risks, also known as all-perils (including sewer back-up, flood and earthquake) property insurance in an amount equal to the full replacement cost of Property of Every Description and kind owned by the Tenant or for which the Tenant is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement;

#### Commercial General Liability Insurance

The Tenant shall at their expense, obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Landlord and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add the Landlord as an Additional Insured with respect to the operations of the Named Insured (the tenant)
- (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) Hostile fire
- (h) The policy shall provide 30 days prior notice of cancellation

#### Tenant's Legal Liability Insurance

Tenant's legal liability insurance for the actual cash value of the building and structures on/within the demised premises, including loss of use thereof;

### **Boiler and Machinery Insurance**

Comprehensive Boiler and Machinery insurance on mechanical equipment in the premises controlled by the Tenant. Landlord is to be named as an Additional Insured if the *objects* (mechanical equipment) insured qualify as tenant's improvements or if they conceivably could form part of the building.

### **Business Interruption Insurance**

Lessee shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to Lessor for a period of up to one (1) year if the premises are destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.

Each policy will provide that the insurer will not have any right of subrogation against the Landlord on account of any loss or damage covered by such insurance or on account of payments made to discharge claims against or liabilities of the Landlord or Tenant covered by such insurance. The cost or premium for each and every such policy will be paid by the Tenant.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why is it important to ensure Tenants have their own insurance?**

If a tenant suffers a loss and they are not insured, they will likely come after the Landlord for the damages. Furthermore, the landlord will then be responsible for removal of debris, etc. and you, as landlord, would not have insurance *per se* for that equipment. Also, if the tenant doesn't have insurance, and they burn down your premises, you will be basically uninsured for that portion of the loss because you would only, for instance, carry building coverage and not a property of every description policy.

Another reason is because in a situation where a tenant has a slip-and-fall inside their premises, but they have no insurance, the injured party will then sue them and the municipality could, as the building owner be exposed. If nothing else, they will have to defend the action. It's much better to ensure the tenant is properly insured against their own first-party damage as well as damage to your property as well as liability and then have stipulations in the lease agreement as to the tenant's and your responsibilities.

### **Should we require the tenant to carry Business Interruption?**

If the lease requires that the tenant continue to pay rent after a building loss, it is prudent to require that the tenant carry some form of coverage to meet this obligation.

### **When should a tenant be required to insure the building?**

If you are not going to have any over-arching control over the building and, typically, there are not co-tenants, it might be appropriate for the tenant to provide at least some coverage for the building too.

### **What is an aggregate?**

Distinct from a per-claim limit, which states the amount an insurer will pay for each individual claim made during the policy period, the aggregate limit is the maximum amount an insurer will pay for all such claims made against the insured during the policy period, no matter how many separate claims might be made.<sup>vii</sup>

The aggregate limit applies to both indemnity payments and defense costs incurred on the insured's behalf. When the cumulative sum of all the payments an insurer has made during a single policy period exceeds the aggregate limit, the policy's coverage is exhausted. This means the insurer is relieved of its duty to defend the insured (or any additional insured) in any ongoing or subsequent litigation, and the insured must pay any outstanding damages or claims expenses out of pocket. This is why it is important, as the Landlord, to ensure the aggregate is high enough.<sup>viii</sup>

## **Frequently Asked Questions**

### **Can we add our tenant to our property insurance policy instead of requiring the tenant to carry their own insurance on their leasehold improvements?**

Not unless the lease states that the Municipality becomes the owner of the tenant's leasehold improvements once they are installed otherwise the Municipality will not have an insurable interest in the improvements and will be unable to insure them.

### **Why is it necessary for the lease to require that a commercial tenant have non-owned automobile coverage?**

The policy responds to the liability arising from vehicles that are not owned by the Municipality but where the courts may make a link to the Municipality because the non-owned vehicle was being used on the Municipality's behalf at the time of the accident.

In Ontario, the primary responsibility for a vehicle's operation rests with the registered owner of that vehicle. Typically, personally owned vehicles carry Third Party Liability limits of \$1M, \$2M or at most \$5M. The commercial tenant will likely have staff.

Should that staff have a serious auto accident while fulfilling this contract – an accident so significant as to exhaust their own auto policy – every attempt will be made to draw in the Municipality so that their Non-Owned Auto policy would have to respond. To distance the Municipality from suit, a further layer of liability is provided if the commercial tenant has non-owned automobile liability coverage. The claim would play out as:

1. A significant auto accident on way to work involving an employee of your commercial tenant.
2. The employee's auto policy responds but is exhausted due to the severity of the third-party injuries e.g. hits van containing a family.
3. Non-Owned Auto of employer (commercial tenant) responds and provides another layer of liability on top of the liability afforded by the employee's personal auto insurance.
4. Non-Owned Auto of Municipality brought into suit by plaintiff counsel as other insurance avenues are inadequate to pay the amount needed to compensate for the third-party injuries incurred in the accident.

Basically, Non-Owned auto is considered a standard extension of the Commercial General Liability policy. It is inexpensive and provides an extra layer of liability that could insulate the municipality from liability for damages.

## Facility Rentals - Alcohol Being Served

**Type of Operation:** You are temporarily renting your premises for an event where alcohol will be served.

### Definitions

**Party Alcohol Liability (PAL) Insurance** - Provides protection from liability when lawsuits are brought against organizations who host functions with alcohol service.

### Sample Insurance Wordings

When the Renter is a corporation or organization:

#### Commercial General Liability Insurance

Commercial General Liability Insurance satisfactory to the Owner and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_/occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add the Owner as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Tenants' Legal Liability
- (f) Products and Completed Operations coverage
- (g) Contractual Liability
- (h) The policy shall provide 30 days prior notice of cancellation
- (i) **Host Liquor Liability**

When the Renter is an individual:

#### Homeowner's Liability Insurance

Homeowner's liability insurance satisfactory to the Owner and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall have a limit of liability of not less than \$ \_\_\_\_\_. The Owner must be added as Additional Insured.

#### Party Alcohol Liability Insurance

Party Alcohol Liability in an amount not less than \$ \_\_\_\_\_ and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The municipality shall be added as an additional insured.

**All-Risks Property Insurance**

All risks (including sewer damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of Property of Every Description and kind owned by the User or for which the User is legally responsible, and which is located on or about the Premises.

**Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

**Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

If a Homeowner, a Certificate of Insurance for the PAL Policy as well as a COI from the individual's insurance broker confirming Homeowner's Liability.

**For further information on facility rentals with liquor service, please review the below article:**

- [Checklist - Facility Rental with Liquor Service](#)

## Facility Rentals - No Alcohol

**Type of Operation:** You are temporarily renting your facility (includes ice rink, pool, etc.) and no alcohol will be served.

### Definitions

**Facility-User Group Solution** - A Facility-User Solution provides policyholders with the knowledge that the person(s) renting or leasing their facilities have liability insurance for events they are hosting. Policyholders also have peace of mind knowing they have been added as an 'Additional Insured' to that liability insurance. As an Additional Insured, their interests are covered should a claim occur as a result of negligence by someone renting or leasing the facilities.

### Sample Insurance Wordings

When the Renter is a corporation or organization:

#### Commercial General Liability Insurance

Commercial General Liability Insurance satisfactory to the Owner and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_.

The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add the Owner as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Tenants' Legal Liability
- (f) Products and Completed Operations coverage
- (g) Contractual Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) The policy shall provide 30 days prior notice of cancellation

When the Renter is an individual:

#### Homeowner's Liability Insurance

Homeowner's liability insurance satisfactory to the Owner and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall have a limit of liability of not less than \$\_\_\_\_\_. The Owner must be named as Additional Insured.

### **All-Risks Property Insurance**

All-risks (including sewer back-up damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of Property of Every Description and kind owned by the Renter or for which the Renter is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why should facility users be required to carry non-owned automobile liability insurance?**

If a group using your facility has members who are driving their own vehicles to help with set-up and they are involved in an MVA on your premises, the vehicle owner's policy would respond first but only to their automobile liability limit. The group's non-owned automobile insurance would respond next. This minimizes the risk that the Municipality's insurance policies may be triggered.

**For further information on facility rentals, please review the below article:**

- [Checklist for Facility Rentals](#)

## Lending Equipment

**Type of Operation:** You are lending equipment required for fire-fighting, snow removal, etc. to another municipality.

### Contractual Considerations

The equipment will be insured by the owner but it can be insured by the borrower while it is in their possession. The contract should include this insurance requirement for the borrower:

### Sample Insurance Wordings

The Borrower should be required to carry:

#### Commercial General Liability Insurance

Commercial General Liability Insurance satisfactory to the Owner and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_.

The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add the Owner as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

#### All-Risks Property Insurance

All-risks (including sewer back-up, flood and earthquake) property insurance in an amount equal to the full replacement cost of Property of Every Description and kind owned by the Tenant or for which the Tenant is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement.

## Frequently Asked Questions

**Do we need a formal agreement in place?**

If the municipality that owns the equipment wants the person borrowing to be responsible for damages, there should be an agreement in place. It should outline who is responsible in the event of a loss when the equipment is in the borrower's care custody and control.

If you are the municipality that owns the equipment and is lending it, you must have a formal agreement in place. The agreement protects the equipment itself as well as any liability to which the lending municipality may be exposed. All this must be detailed in a formalized way. It should also be stipulated in the agreement any "incident" that occurs to said equipment is reported back to the owner immediately, and not at the end of the lending period. The agreement should then list (but not exclusively) what you define an incident to be so it is clear.

## Shared Data/Network Agreements

**Type of Operation:** You are sharing data and/or a network with another entity such as the secondary use of personal health data by a Public Health Unit when the data was originally collected for clinical purposes.

### Definition

**Data Liability/Network Security** - Data liability is third-party coverage for liability arising from an organization's failure to prevent unauthorized use or access of its network, transmission of a computer virus to a third-party or theft of confidential information.

### Sample Insurance Wordings

#### Data Liability Insurance

Data liability/Network Security coverage, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and in an amount not less than \_\_\_\_\_. Coverage is to respond to but not be limited to the following occurrences:

1. Privacy violations including but not limited to unauthorized access to or dissemination of private information; failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations such as MFIPPA, regarding the collection, access, transmission, use and accuracy. Coverage shall extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy.
2. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within the Contractor's computer network or other third-party computer information systems and will further include expenses related to third-party computer forensics.
3. Data Breach Expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches.

The policy shall be maintained continuously during the term of this Agreement and for an additional (two) years after the termination or expiration of the Agreement. If coverage is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Customer. The Customer has the right to request an Extended Reporting Endorsement by purchased by the Contractor at the Contractor's sole expense. The term of the Extended Reporting Endorsement will be decided by the Customer and Contractor.

## Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_ /occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) Work performed on behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

## Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

## Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### What is a data-sharing agreement?

A data-sharing agreement ensures that organisations and their suppliers are clear about their roles and responsibilities. It also sets standards of what both parties can expect from the arrangement and what is expected of them. As a component of the agreement, it also stipulates the purpose of the data sharing and covers (and potentially limits) what happens to the information at each stage.

### What are the benefits of having a data-sharing agreement in place?

The data-sharing agreement ensures that both parties are complying with their obligations under provincial privacy statutes and best practices. It also stipulates what is expected of both parties in the event of an incident.

**What is shared reporting and why is it important?**

If the vendor has an incident, a hack, or anything really, the municipality should be informed immediately so they can defend themselves accordingly.

**For further information on cyber-security policy and procedures, please review the below article:**

- [Cyber Security Policy and Procedures](#)

## Technology Vendors

**Type of Operation:** You are purchasing software, support and/or network hosting services from a Vendor.

### Definitions

**Hosting services** - Technology services offered to you or your company by a provider that hosts the physical servers running that service somewhere else. Access to the service is usually provided through a direct network connection that may or may not run via the Internet.

**Network** - A group of inter-connected (via cable and/or wireless) computers and peripherals that is capable of sharing software and hardware resources between many users.

**Data breach** - An incident in which sensitive, protected or confidential data has potentially been viewed, stolen or used by an individual unauthorized to do so. Data breaches may involve personal health information (PHI), personally identifiable information (PII), trade secrets or intellectual property.

### Sample Insurance Wordings

Technology vendors should be required to carry the following insurance:

#### Commercial General Liability

The Service Provider shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_ /occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days' prior notice of cancellation

### **Technology Errors and Omissions Insurance and Network Security**

Coverage shall be purchased in an amount not less than \$\_\_\_\_\_ per occurrence and \$\_\_\_\_\_ in the aggregate and coverage shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall include coverage for claims resulting from network risks such as data breaches, unauthorized access, theft of confidential information, invasion of privacy, destruction, alteration or damage to electronic information, intellectual property infringement such as copyright, trademarks, service marks and trade dress. The policy shall be renewed for 3 years after contract termination. Evidence of coverage must be provided to the municipality. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the contractor at the contractor's sole expense.

### **Data Liability Insurance**

Data Liability/Network Security coverage, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and in an amount not less than \_\_\_\_\_. Coverage is to respond to but not be limited to the following occurrences:

1. Privacy violations as a result of but not limited to unauthorized access to or dissemination of private information; failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use and accuracy. Coverage shall extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy.
2. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial-of-service attacks, spread of virus within the Contractor's computer network or other third-party computer information systems, and will further include expenses related to third-party computer forensics.
3. Data Breach Expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches.

The policy shall be maintained continuously during the term of this Agreement and for an additional (two) years after the termination or expiration of the Agreement. If coverage is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Customer. The Customer has the right to request an Extended Reporting Endorsement by purchased by the Contractor at the Contractor's sole expense. The term of the Extended Reporting Endorsement will be decided by the Customer and Contractor.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **What is a Limitation of Liability?**

Most software vendor contracts will contain a Limitation of Liability. The vendor is attempting to limit the amount for which they will be liable in the event their negligence causes you to suffer damages. We often see contractors attempt to limit liability to at most, the amount paid for the original contract cost. If this clause remains in an agreement, a catastrophic data breach which could cost \$1Million to remedy, and is the direct fault of the contractor, could be limited in recovery to a \$20,000 contract. The remainder will be the responsibility of the municipality.

### **Should we agree to allow the Vendor to limit their liability?**

We do not recommend allowing Vendors to limit their liability because it is our position that if they make a negligent error, they should be fully responsible to the municipality and not be limited by language in the agreement. In a scenario where a municipality is hiring a vendor to provide some sort of cyber service, if their liability is limited (often limited to the maximum that the contract is valued at), that is the most the vendor will have to pay, which means the municipality will have to bear the financial responsibility of a cyber breach: and depending on the exposure, this can be a considerable amount.

### **If the technology vendor provides services remotely and does not have a facility where clients would attend, do we still need to require Commercial General Liability insurance?**

Yes. Even if a suit is unfounded, the vendor must defend itself. A computer programmer general liability policy protects the programmer in these circumstances and pays for costs related to such lawsuits, up to the limits of their policy. A computer programmer general liability policy also protects them from certain intellectual property claims related to images, code or other copyrighted material. It pays for claims related to copyright infringement, advertising liability, slander and libel.

### **Why should technology vendors be required to carry both Technology Errors and Omissions and data liability (cyber)?**

To ensure there are no gaps in coverage, both policies should be required. If your system is hacked because of a technology vendor, their cyber cover would respond. If the vendor has an error in their code that made your system vulnerable, their technology errors & omissions policy would respond.

### **What is Data Sovereignty and why is it important?**

Data sovereignty is the concept that information which has been converted and stored in binary digital form is subject to the laws of the country in which it is located. Many of the current concerns that surround data sovereignty relate to enforcing privacy regulations and preventing data that is stored in a foreign country from being subpoenaed by the host country's government.<sup>ix</sup>

## Professional Services

**Type of Operation:** You are hiring a professional to provide services such as By-law Enforcement, Building Inspection, Training, Accounting, Consulting.

### Definitions

**Professional Service Providers** - Individuals who provide your company with specialized service, including but not restricted to lawyers, accountants and management consultants.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_ /occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

#### Professional Liability Insurance

The (Professional) shall take out and keep in force Professional Liability insurance in the amount of \$ \_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$ \_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (INSERT name of entity). The (INSERT name of entity) has the right

to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do we need to require professional liability insurance in addition to the commercial general liability?**

General liability policies exclude damages caused by negligence in performing professional services.

### **Is errors and omissions the same as professional liability?**

Yes. Errors and omissions insurance is another name for professional liability insurance. So, you'll still get the same coverage, despite the different names.

**For further information on contracting with professionals, please review the below article:**

- [Risk Management Considerations for Contracting with Professionals](#)

## Janitorial Services

**Type of Operation:** You are hiring an independent contractor to provide janitorial services for your building.

### Definitions

**Independent contractor** - Someone who contracts to do a specific piece of work, and provides his or her equipment, and executes the work under his or her terms, without being subject to direction as to how and specifically when to carry out the tasks, is generally considered an independent contractor, not an employee.

**Fidelity bond** - A crime coverage that provides an employer protection against losses - either monetary or physical - caused by its employees' fraudulent or dishonest actions. The bond only protects the employees stealing from their employer. Since you are the customer, you must require the Third-Party Extension. This brings in coverage for the janitorial firm's employees stealing from you. This is different from liability protection garnered from a liability policy. Liability policies address negligent acts, fidelity bonds address dishonest acts.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

#### Fidelity Bond Including the Third-Party Extension

Coverage shall be written in an amount of not less than \_\_\_\_\_ and shall be endorsed to include Third-Party Extension.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Should we hire janitorial service providers who are not bondable or insured?**

No. The risk exposure with cleaning services can be quite high. You are allowing 24-hour access to your entire facility. If something gets broken or a mishap occurs, the bond will protect the facility - otherwise, the municipality may be responsible - for both damage, as well as any liability. In addition, there could be workplace injuries and the potential for unintentional damage or loss. You do not want your organization to be held liable.

## Children's Services

**Type of Operation:** You are contracting with a third party to provide programming/sports/crafts, daycare services, etc. to children.

### Definitions

**Third Party** - An independent contractor who is not an actual employee.

**Abuse Liability** - This coverage provides institutions with coverage for vicarious liability or independent negligence contributing to the abuse.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name)\_and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add (INSERT your\_Name)\_as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) The policy shall provide 30 days prior notice of cancellation
- (h) Coverage shall extend to protect volunteers

#### Abuse Liability

The proponent shall provide, as a stand-alone policy or as part of the Commercial General Liability, abuse liability which shall include coverage for physical and sexual abuse. Coverage shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for the following limit of liability \_\_\_\_\_.

#### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

#### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### **If we receive a Certificate of Insurance, do we need to ask for a Police Check as well?**

Yes. A police record check is just one tool to help organizations determine an applicant's suitability for certain types of opportunities. Record checks should be used in addition to interviews, reference checks and verification of credentials/licences and insurance.

Depending on the exposure (children, vulnerable populations, disabled individuals), record checks may need to be more frequent. There are also different levels of police record checks that may be required. Be sure to have a full understanding of what is required and ensure these checks are maintained throughout the interactivity with the "clients."

### **For further information on abuse and vicarious liability, please review the below article:**

- [Risk Management Considerations for Abuse & Vicarious Liability](#)

## Third-Party Instructors

**Type of Operation:** Municipalities offer a wide variety of programming and for many of these programs, instruction is provided by third-party contractors. For example, yoga instructors, dance classes, various fitness programs, children's programming, etc. We find that in many cases there is no formal contract between the parties and accordingly, no insurance requirements.

### Definitions

**Third Party** - A person or group besides the two primarily involved in a situation, especially a dispute.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_ /occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

#### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

#### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### **What are some other considerations when dealing with independent contractors who provide services?**

There should always be a contract in place that includes a description of the programming, a Hold-Harmless and Indemnification clause in favour of the municipality and a requirement for the municipality to be added as an Additional Insured to the instructor's liability policy.

The municipality should also be doing due diligence to ensure the contractor has a valid business license and they are certified to do what they are advertising. The contractor should also be prepared to be responsible for any damage they do to the facility. It should also be clear whether they will be storing any of their equipment in the facility, which is not recommended.

### **For information on fitness boot camps, please review the below article:**

- [Risk Management Considerations for Fitness Boot Camp](#)

## Entertainers

**Type of Operation:** You are hiring a musician or other performer for a special event or performance.

### Definitions

**Dependent Contractor** - A hybrid of independent contractor and an employee. If the Municipality hires a certain entertainer on a regular basis, the Municipality must be careful that the contract is drafted clearly and the musician is treated in a manner that reinforces that the musician is an independent contractor or they may be deemed an dependent contractor for income tax purposes.

**Independent Contractor** - Someone who contracts to do a specific piece of work, provides his or her equipment and executes the work under his or her own terms, without being subject to orders from any other person, is generally an independent contractor, not an employee.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the - Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) The policy shall provide 30 days prior notice of cancellation

OR

#### Performer Liability Policy

Performer liability insurance with a limit of liability of no less than \$1,000,000/occurrence and a deductible of no more than \$500 satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for bodily injury, property damage and personal injury.

### **All-Risks Property Insurance**

All risks (including sewer back-up, flood and earthquake) property insurance in an amount equal to the full replacement cost of Property of Every Description and kind owned by the Performer or for which the Performer is legally responsible, and which is located on or about the municipal premises.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do we need to ensure independent entertainers are not deemed to be dependent contractors?**

If the Canada Revenue Agency determines that an entertainer who is an independent contractor hired by your Municipality, is actually a dependent contractor, the Municipality will be required to submit source deductions and submit them to the federal government even though the Municipality did not collect them from the entertainer.

**For information on outdoor entertainment stages, please review the below article:**

- [Risk Management Considerations for Outdoor Entertainment Stages](#)

## Security-Firm Services

**Type of Operation:** You are hiring a private firm to provide security at a special event.

### Definitions

**Employee Dishonesty with Third-Party Extension** - Usually an employee dishonesty bond provides coverage when an employee steals from their employer. The Third-Party Extension provides coverage when an employee of a contractor steals from a customer (the municipality).

### Sample Insurance Wordings

The Security firm should be required to carry the following insurance:

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name)\_and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_/occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your\_Name)\_as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96); Coverage to include damage caused by operating or moving vehicles
- (e) Products and Completed Operations coverage
- (f) Contractual Liability
- (g) The policy shall provide 30 days' prior notice of cancellation
- (h) Care, Custody and Control Exclusion not applied to property being protected
- (i) Personal Injury coverage to include False Arrest
- (j) Failure to Perform exclusion removed
- (k) Intentional Injury to protect persons and property included
- (l) Lost Key and Halon Release Coverage

#### Employee Dishonesty with Third-Party Extension

Employee Dishonesty coverage written by an insurer licensed to conduct business in the Province of \_\_\_\_\_ in an amount of \_\_\_\_\_. Coverage shall include the Third-Party Extension.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Do you need a license to be a security guard in Ontario?**

Yes. A security guard license allows individuals to work in a job where they mainly protect persons or property. A valid license card is required to work as a security guard. Working without a valid license is a violation of the Ontario Private Security and Investigative Services Act.

### **Why is it important that the CGL include the “Care, Custody and Control Exclusion not applied to property being protected” endorsement?**

The care, custody, or control (CCC) exclusion generally applies to property that is not owned by the insured, such as rental equipment or goods being transported. CCC implies that if an individual damages property that is in their care but is not their property, their insurance will not cover the damages. This endorsement brings this coverage back so that if the security firm damages your property, their policy will respond.

## Armoured Vehicles

**Type of Operation:** You are hiring an armoured vehicle to provide secure transportation for your cash.

### Definitions

**Employee Dishonesty with Third-Party Extension** - Usually an employee dishonesty bond provides coverage when an employee steals from their employer. The Third-Party Extension provides coverage when an employee of a contractor steals from a customer.

### Sample Insurance Wordings

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name)\_and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
  - (b) Add (INSERT your\_Name)\_as an Additional Insured with respect to the operations of the Named Insured
  - (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
  - (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96); Coverage to include damage caused by operating or moving vehicles
  - (e) Products and completed operations coverage
  - (f) Contractual Liability
  - (g) The policy shall provide 30 days' prior notice of cancellation
  - (h) Care, Custody and Control Exclusion not applied to property being protected
  - (i) Personal Injury coverage to include False Arrest
  - (j) Failure to Perform exclusion removed
  - (k) Intentional Injury to protect persons and property included
  - (l) Lost Key and Halon Release Coverage

#### Employee Dishonesty with Third-Party Extension

Employee Dishonesty coverage written by an insurer licensed to conduct business in the Province of \_\_\_\_\_ in an amount of \_\_\_\_\_. Coverage shall include the Third-Party Extension.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **If the proponent provides all-risk insurance which covers employee fidelity, is the fidelity bond required?**

Yes. Employee fidelity will only cover the proponent if their employee steals from them. The third-party extension on the fidelity bond responds if the proponent's employee steals from the Municipality.

## Concession Operator

**Type of Operation:** You are hiring an Operator for your concession booth at the municipal arena or other municipal facility.

### Definitions

**Lock-and-key Replacement endorsement** - The insurer agrees to pay for the cost of replacing keys and electronic passes or access cards in the care of the Insured or a custodian of the insured.

**Halon release endorsement** - Coverage for property damage caused by accidental discharge of a Halon Fire Protection System.

### Sample Insurance Wordings

The Concession Operator should be required to carry the following insurance:

#### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name)\_and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
  - (b) Add (INSERT your\_Name)\_as an Additional Insured with respect to the operations of the Named Insured
  - (c) The policy shall contain a provision for cross-liability and severability of interest in respect of the Named Insured
  - (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96); Coverage to include damage caused by operating or moving vehicles
  - (e) Products and Completed Operations coverage
  - (f) Contractual Liability
  - (g) The policy shall provide 30 days' prior notice of cancellation
  - (h) Failure to Perform exclusion removed
  - (i) Lock-and-Key Replacement
  - (j) Halon Release Cover

#### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not

less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### **Tenant's Legal Liability Insurance**

Tenant's legal liability insurance for the actual cash value of the building as well as structures and equipment within the demised premises, including loss of use thereof.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do Concession Operators need to carry automobile liability insurance?**

If the Operator does not carry sufficient automobile liability insurance and their vehicle is involved in an accident on municipal property, there is an increased risk that your Municipality's insurance will be called upon through allegations of negligent snow removal or disrepair.

Another consideration is loading and unloading. If the facility has a loading dock and the Operator has deliveries being made, the loading area could be damaged while they are backing in.

### **Should we ensure Concession Operators are registered with WSIB?**

Yes. This is very important because the workplace could be construed to be the facility so if they injure themselves, it could fall on the facility's WSIB policy if the municipality doesn't confirm the Operator has their own.

## Public Transit Operator

**Type of Operation:** You are hiring a private firm to provide public transit services.

### Definitions

**Collision** - Coverage to repair or replace vehicles damaged in an at-fault accident.

**Comprehensive** - Coverage that is not automatically included that protects your vehicles when they are damaged other than from a collision (theft, vandalism, fire, etc.)

### Sample Insurance Wordings

The Operator should be required to carry the following insurance:

#### Garage Automobile Liability Insurance

The \_\_\_\_\_ shall maintain a Standard Garage Automobile Policy which includes 3rd party liability coverage of not less than \$\_\_\_\_\_ per occurrence; Collision damage of not less than \$\_\_\_\_\_ (usually we see \$200 - \$500K) per occurrence and Comprehensive coverage of not less than \$\_\_\_\_\_ (usually we see \$200 - \$500K)

#### Owned Automobile Liability Insurance

An owned automobile liability policy that provides coverage to carry passengers for compensation for at least the minimum limits required for the jurisdiction in which they are operating and a Public Vehicle Operating Licence where required.

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) The policy shall include 30 days' notice of cancellation.

### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

### Contractual Considerations

If the Municipality owns the vehicles, the Municipality's automobile liability coverage would ostensibly "follow the vehicle." If the Contractor will be performing maintenance on municipally owned vehicles at their own facility, the Contractor should be required to carry a garage automobile liability policy. The Contractor should also have a Commercial General Liability policy with non-owned auto liability coverage naming the Municipality as Additional Insured.

If the vehicles are owned by the Contractor, the Contractor must carry the automobile liability insurance. The limit would depend on the seating capacity of the vehicle pursuant to the *Public Vehicles Act*.

Item	Column 1 Amount of Insurance	Column 2 Seating Capacity for Passengers of Each Vehicle
1.	\$1,000,000	1 to 7 passengers
2.	\$5,000,000	8 to 12 passengers
3.	\$8,000,000	13 or more passengers

## Disaster-Relief Services

**Type of Operation:** You are contracting with an organization such as the Red Cross for the provision of disaster-relief services.

### Definitions

**Disaster Relief** - Monies or services made available to individuals and communities that have experienced losses due to disasters such as floods, wildfires, hurricanes, earthquakes, drought, tornadoes, and riots.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Owners and Contractors Protective
- (i) The policy shall include 30 days' notice of cancellation.

#### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$ \_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

#### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

#### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### What are the 5 types of disaster management?

1. Prevention – actions taken to avoid an incident.
2. Mitigation – measures that prevent a disaster, reduce the chance of a disaster happening or reduce the damaging effects of unavoidable disasters.
3. Preparedness – measures taken to increase a municipality's ability to respond when a disaster occurs.
4. Response – actions carried out immediately before, during and immediately after a disaster which are aimed at saving lives, reducing economic losses, and alleviating suffering.
5. Recovery – actions taken to return a community to normal or near-normal conditions, including the restoration of basic services and the repair of physical, social and economic damages.

### What is considered a disaster?

Disasters are serious disruptions to the functioning of a community that exceed its capacity to cope using its own resources. Disasters can be caused by natural, man-made and technological hazards, as well as various factors that influence the exposure and vulnerability of a community. It is very important that the agreement state exactly what is considered a disaster and the parameters of the agreement.

## Professional MMA Event

**Type of Operation:** These requirements only apply to professional MMA events that showcase professional fighters. If the event includes minors, these requirements do not apply. If you are hosting such an event, please call us.

## Definitions

**Heart and circulatory rider** - An endorsement on the Participant medical policy that provides coverage if a Participant suffers a cardiac episode arising out of their participation in the event.

## Sample Insurance Wordings

### Commercial General Liability Policy

The Promoter underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence. Coverage shall include but not be limited to the following:

- (a) Bodily Injury including wrongful death, Personal Injury and Property Damage
- (b) Name the Municipality as an Additional Insured
- (c) Cross-Liability and Severability of Interest
- (d) Blanket Contractual
- (e) Premises and Operations
- (f) Products and Complete Operations
- (g) Contingent Employers Liability
- (h) Intentional Acts Coverage – must be included
- (i) 30 days' notice of cancellation
- (j) Should pyrotechnics be included in the performance, coverage must include pyrotechnics

### Medical Policy for all Participants

The policy must include the Heart and Circulatory Rider.

### Medical Doctors who Attend the Event on behalf of the Promoter

Medical doctors hired by the promoter must provide a Certificate of Insurance evidencing coverage from the CMPA for the event that includes giving medical advice as required, conducting pre-fight medical examinations, giving ring-side medical support during the bouts and performing post-fight medical examinations and ensuring that the appropriate medical suspensions are put in place, to protect the health and safety of the contestants.

### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

**Please Note:** you require proof of a medical policy which includes the standard coverages and is endorsed to include the heart and circulatory rider because the Promoter's CGL coverage will include the "participant's exclusion". The insurer will not remove this exclusion. So, if a fighter claims for injuries sustained during the fight, the Promoter's CGL will not respond. To cover this gap, Promoters can purchase Medical Policies for the fighters.

If the Promoter is also providing security guards and serving alcohol during the event, please contact either your insurance broker or IPE. These issues will need to be addressed.

## Animal Control Services

**Type of Operation:** You are hiring an independent contractor to provide animal control services that include By-law enforcement.

### Definitions

**Distrain** - To seize someone's animal to obtain payment of rent or other money owed.

**Replevy** - A procedure whereby seized animals may be provisionally restored to their owner pending the outcome of an action to determine the rights of the parties concerned.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Owners and Contractors Protective
- (i) The policy shall include 30 days' notice of cancellation.

#### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$ \_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

#### Professional Liability Insurance

The (Professional) shall take out and keep in force Professional Liability insurance in the amount of \$ \_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$25,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing

renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (INSERT name of entity). The (INSERT name of entity) has the right to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Which animals can be impounded?**

In Ontario, the *Pounds Act* states that the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig or other cattle, geese or other poultry, distrained for unlawfully running at large or for trespassing and doing damage, delivered to him or her for that purpose by any person resident in the pound-keeper's division who has distrained the same.

### **When may animals be retained by distrainer?**

If the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if it is distrained by a resident of the municipality for straying in the resident's premises, instead of delivering the animal to the pound-keeper, the resident may retain the animal in the resident's own possession, if the resident makes no claim for damages done by the animal and duly gives the notices hereinafter required.

## Water and Wastewater Operator/Manager

**Type of Operation:** You are hiring a Contractor to manage a municipally owned wastewater treatment facility.

### Definitions

**Standards of a Reasonable and Prudent Operator** - The standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions (including the conditions of the Facilities at the Effective Date) as contemplated by this Contract.<sup>x</sup>

### Sample Insurance Wordings

#### Property Insurance

“All Risks” including earthquake and flood for full Replacement Value and including all reported properties including buildings and equipment situated within 1,000 feet of the premises. Includes pumping stations.

#### Boiler and Machinery Insurance

Insuring against loss or damage arising from an accident with Pressure Objects, Production Machines, and Machinery and Service Supply in use or connected ready for use. Coverage shall include fired and unfired pressure vessels (Excess of 15PSI) piping, production machinery and service supply.

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Tenant’s Legal Liability
- (i) Work performed on Behalf of the Named Insured by Sub-Contractors
- (j) The policy shall include 30 days’ notice of cancellation.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### **Professional Liability Insurance**

The (Professional) shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$25,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (INSERT name of entity). The (INSERT name of entity) has the right to request that an Extended Reporting Endorsement be purchased by the (Professional) at the (Professional's) sole expense.

### **Environmental Impairment Liability Insurance**

The Manager shall carry an Environmental Impairment Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Data Liability Insurance**

Data liability/Network Security coverage, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and in an amount not less than \_\_\_\_\_. Coverage is to respond to but not be limited to the following occurrences:

1. Privacy violations as a result of but not limited to unauthorized access to or dissemination of private information; failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use and accuracy. Coverage shall extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy.
2. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within the Contractor's computer network or other third-party computer information systems and will further include expenses related to third party computer forensics.

3. Data Breach Expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches.

The policy shall be maintained continuously during the term of this Agreement and for an additional (two) years after the termination or expiration of the Agreement. If coverage is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Customer. The Customer has the right to request an Extended Reporting Endorsement by purchased by the Contractor at the Contractor's sole expense. The term of the Extended Reporting Endorsement will be decided by the Customer and Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do Wastewater Operators need to carry data liability insurance?**

In 2021, a computer hacker gained remote access to a water treatment facility in Oldsmar, Florida, and tried to compromise the water supply. A quick-thinking operator was able to interrupt the real-time attack, avoiding a potential public health emergency.

Increasingly, hackers are using a form of malware attack called ransomware against victims. The ransomware prevents users from accessing their systems or data and demands the organization pay to regain access. A number of Canadian municipalities have experienced ransomware attacks over the past several years.

In the face of these increased threats, Canadian utilities are being prompted to assess their cyber systems for vulnerabilities and take action to protect their operations.<sup>xi</sup>

## Marina Operators

**Type of Operation:** You are hiring a third-party operator to manage a municipal marina.

### Definitions

**Hull and Machinery** - This coverage protects the insured vessel or fleet against physical damage caused by a peril of the sea or other covered perils while the vessel is in transit over water.

**Protection and Indemnity (P&I) Insurance** - Liability Insurance for practically all maritime liability risks associated with the operation of a vessel, other than that covered under a workers compensation policy and under the collision clause in a hull policy. There is no standard P&I form with the specific terms and conditions for each insured tailored by underwriters based on the nature of the risk and the character and amount of insurance desired by the insured.

### Contractual Considerations

The Operator should be required to indemnify the Municipality for any damages it causes whether through negligence, tort, breach of contract or willful misconduct.

### Sample Insurance Wordings

The Operator should be required to carry:

**Marine Operators Legal Liability insurance** of at least \$2M that provides coverage for the risks associated with marina operations including the exposure related to the watercraft in the Operator's care, custody, and control.

### Contractor's Pollution Liability

The Contractor shall carry a Contractor's Pollution Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs. (Note: This coverage is especially relevant if a gas dock is involved in the marina operations.)

### Commercial General Liability Insurance (if marine operator policy does not include land exposures)

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured

- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Owners and Contractors Protective
- (i) The policy shall include 30 days' notice of cancellation.

WSIB coverage for all employees, agents, subcontractors and/or licensees

If the Managers have owned automobiles, we would recommend they be required to provide proof of automobile liability insurance.

If the Marine Operator has owned vehicles:

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

## **Frequently Asked Questions**

### **Why do Marine Operators need a specific policy instead of Commercial General Liability?**

Marina Operators Legal Liability Coverage insures the risks associated with everyday marina operations, specifically the exposure related to the watercraft in your care, custody, and control (CCC). Coverage that would not be available if you had just a standard General Liability Policy.

**For further information on marinas, please review the below article:**

- [Risk Management Considerations for Marinas](#)

## Waste Collection Services

**Type of Operation:** You are hiring a contractor to provide waste collection services.

### Definitions

#### Contractor's Pollution Liability Insurance

Coverage for contractors who perform work on third party premises where they may be in jeopardy of causing an environmental incident.

#### Contractual Considerations

Will the Contractor be depositing the waste at a private or municipal facility? This will determine the types of insurance the Contractor should carry. If they are depositing the waste at their own privately owned facility, they will need pollution liability (premises) as well as contractor's pollution liability.

### Sample Insurance Wordings

#### Commercial Property Insurance

All risks (including sewer damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Contractor or for which the Contractor is legally responsible, and which will be used to provide the services.

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Owners and Contractors Protective
- (i) The policy shall include 30 days' notice of cancellation.

#### Business Vehicle Liability/Fleet Insurance

Commercial Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### **Environmental Impairment Liability Insurance**

The Manager shall carry an Environmental Impairment Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$ \_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Business Interruption Insurance**

All Risks business interruption insurance that provides coverage for loss caused by any risk that is not specifically excluded.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **What is waste collection service?**

Waste collection is the collection and transport of waste to the place of treatment or discharge by municipal services or similar institutions, or by public or private corporations, specialized enterprises or general government.

### **What are the different types of collection systems?**

Based on their mode of operation, collection systems are classified into two categories: hauled-container systems and stationary-container systems.

## Emergency Mutual Assistance

**Type of Operation:** Mutual Assistance Agreements enable municipalities, in advance of an emergency, to set the terms and conditions of the assistance which may be requested or provided.

### Definitions

**Emergency Plans Act** - Authorizes municipalities to enter into agreements wherein each party may provide assistance, in the form of personnel, services, equipment and material, if called upon to do so by a requesting municipality in times of emergency.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) Firefighting Expenses
- (j) Attached Machinery
- (k) 30 days' notice of cancellation

To achieve the desired limits, umbrella or excess liability insurance may be used.

#### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

#### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### **In Ontario, which legislation mandates and empowers municipalities to prepare for, respond to and recover from emergency situations?**

The *Emergency Management and Civil Protection Act* (R.S.O. 1990) requires that all municipalities within the Province of Ontario have both an Emergency Management Program and an Emergency Plan (Sections 2.1 and 3.1 respectively). Both the Program and the Plan must be empowered by municipal by-law.

**Ontario Regulation 380/04** sets in place the standards for municipal emergency management programs and details the essential program components. Those essential components include the following:

- Emergency Management Program Coordinator
- Emergency Management Program Committee
- Municipal Emergency Control Group
- Emergency Operations Centre
- Emergency Information Officer
- Emergency Response Plan

## Medical Professionals (doctors, dentists, medical directors)

**Type of Operation:** You are hiring medical professionals to offer services on behalf of the Municipality.

### Definitions

**CMPA** - Canadian Medical Protective Association provides insurance coverage for medical professionals.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Owner as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) 30 days' notice of cancellation

To achieve the desired limits, umbrella or excess liability insurance may be used.

#### Professional Liability

The (*Professional*) shall take out and keep in force Professional Liability insurance in the amount of \$\_\_\_\_\_ providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$\_\_\_\_\_ per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and acceptable to the (INSERT name of entity). The policy shall be renewed for 2 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the (*INSERT name of entity*). The (*INSERT name of entity*) has the right to request that an Extended Reporting Endorsement be purchased by the (*Professional*) at the (*Professional's*) sole expense.

### **Medical Malpractice Insurance**

Medical Malpractice coverage with a limit of not less than \$\_\_\_\_\_. The coverage can be provided as a stand-alone policy or included in the coverage afforded by the General Liability Policy referenced above.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do medical directors require both medical malpractice and professional liability insurance?**

If you are hiring a medical director, their CMPA policy only covers actual medical care and not administrative duties, so a separate policy is required to cover administrative and supervisory responsibilities.

## Student Placement

**Type of Operation:** You are an employer (hospital, retirement home, public health unit) accepting students for practical work experience placements.

## Definitions

**Reciprocal Indemnification** - Indemnification wording that includes an obligation for both parties to indemnify the other if the negligence or actions of the indemnifying party causes damages to the indemnified party.

## Sample Insurance Wordings

### Commercial General Liability

The Proponent shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_ /occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Contractual Liability
- (g) Work performed on Behalf of the Named Insured by Sub-Contractors
- (h) The policy shall provide 30 days prior notice of cancellation

### Medical Malpractice Insurance (if applicable)

Medical Malpractice with a limit of not less than \$ \_\_\_\_\_. The coverage can be provided as a stand-alone policy or included in the coverage afforded by the General Liability Policy referenced above.

### Primary Coverage

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### Certificate of Insurance

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## Frequently Asked Questions

### Why should insurance and indemnification requirements be reciprocal in student placement agreements?

In agreements where each of the parties has distinct responsibilities, each party should be responsible for damages they cause to the other by negligently performing their duties. For example, if a student were to perform a medical procedure that they were not trained to do or without supervision and the patient suffers injury, the hospital would likely also be brought into the claim and would want to be indemnified for any damages it is not responsible for.

**For further information on placement agreements, please review the below article:**

- [Risk Management Considerations for Affiliation and Placement Agreement Clauses](#)

## Snowmobile Club Land Use

**Type of Operation:** You are permitting a snowmobile club to use municipal property for a snowmobile trail.

### Contractual Considerations

Indemnification should be reciprocal and both parties should be required to include the other as Additional Insured on their liability policy.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- (a) Name the Municipality as an Additional Insured
- (b) Cross-liability and severability of interest
- (c) Blanket Contractual
- (d) Products and Completed Operations
- (e) Premises and Operations Liability
- (f) Personal Injury Liability
- (g) Contingent Employers Liability
- (h) Tenant's Legal Liability
- (i) The policy shall include 30 days' notice of cancellation.

#### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Proponent.

### Frequently Asked Questions

#### What is the main role played by local snowmobile clubs?

They support the local land agency officials, build shelters and support grooming efforts.

**For further information on snowmobile land use requests, please review the below article:**

- [Risk Management Considerations for Snowmobile Land Use Requests](#)

## Encroachment Agreements

**Type of Operation:** The Municipality is permitting a private landowner to encroach on municipal property.

### Definitions

**Encroachment** - A situation in real estate where a property owner violates the property rights of his neighbor by building on or extending a structure to the neighbour's land or property intentionally or otherwise.

**Dominant Tenement** - A parcel of real property that enjoys the benefit of an easement over another parcel of real property. The real property burdened or subject to the easement is referred to as the servient tenement.

**Servient Tenement** - The real property burdened or subject to the easement is referred to as the servient tenement.

### Sample Insurance Wordings

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- a. Name the Municipality as an Additional Insured
- b. Cross-liability and severability of interest
- c. Blanket Contractual
- d. Products and Completed Operations
- e. Premises and Operations Liability
- f. Personal Injury Liability
- g. Contingent Employers Liability
- h. Tenant's Legal Liability
- i. Work performed on Behalf of the Named Insured by Sub-Contractors
- j. The policy shall include 30 days' notice of cancellation.

### Frequently Asked Questions

#### What is an encroachment agreement?

An encroachment agreement is a legal and binding agreement between the municipality and a property owner whose property abuts the municipal property which permits the property owner to have an encroachment on municipal property. An encroachment is an

improvement made to municipal property that is located entirely or partly in, on, under or above the municipality's property.

**What are some examples of encroachments?**

- Awnings
- Landscaping
- Porches
- Portion of existing building
- Signs, where not otherwise prohibited
- Steps
- Wheelchair ramps and other accessibility features<sup>xii</sup>

**For further information on encroachments, please review the below article:**

- [Encroachments in the Area Adjacent to a Sidewalk](#)

## Airport Operators

**Type of Operation:** An independent contractor will be operating the Municipality's airport.

### Definitions

**Aviation Liability** - Coverage for risk areas associated with airports and aviation operations such as public liability, commercial general liability and passenger liability.

**Aviation Products Liability** - Coverage for components used in aircraft or other aviation Products.

**Aviation Cargo** - Coverage for losses or physical damage to cargo while in transit or in flight.

**Aircraft Crew and Personal Accident** - Coverage for bodily injury or death to a member of aircraft crew.

**Hangar Keeper's Liability** - Coverage for damages caused to objects of customers entrusted to the insured party (including aircraft).

**In-flight** - Aircraft coverage for all phases of flight and ground operation, including while parked or stored.

**Passenger Liability** - Bodily injury coverage for passengers who are injured or killed during a flight.

**War and Terrorism** - Coverage in case of a hijack, bomb threat, abduction, or hostage scenario.

### Sample Insurance Wordings

#### Aviation Liability Insurance

Aviation Liability Insurance, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$\_\_\_\_\_ per occurrence, an aggregate limit of not less than \$\_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$\_\_\_\_\_. This policy shall include but not be limited to:

- aircraft hull and aircraft liability:
- aviation liability: coverage for risk areas associated with airports and aviation operations such as public liability, commercial general liability and passenger liability
- aviation products liability: coverage for components used in aircraft or other aviation products
- aviation cargo: coverage for losses or physical damage to cargo while in transit or in flight
- aircraft crew and personal accident: coverage for bodily injury or death to a member of aircraft crew

- hangar keeper's liability: coverage for damages caused to objects of customers entrusted to the insured party (including aircraft)
- in-flight: aircraft coverage for all phases of flight and ground operation, including while parked or stored
- passenger liability: bodily injury coverage for passengers who are injured or killed during a flight
- war and terrorism: coverage in case of a hijack, bomb threat, abduction or hostage scenario
- The Municipality is to be added as additional insured.

### **Environmental Impairment Liability Insurance**

The Manager shall carry an Environmental Impairment Liability Policy, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ for a limit of not less than \$\_\_\_\_\_. Coverage shall include bodily injury, property damage, clean-up and remediation costs.

### **Property Insurance**

Including coverage for buildings, hangars, equipment, tools, and general business property.

### **Onsite Auto Coverage**

Insurance for plows, fuel trucks, golf carts, courtesy cars, etc.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **What Is Aviation Insurance?**

Aviation insurance is financial protection designed to cover the risks associated with operating aircraft and aviation. As the aviation industry has hazards that are not common with other methods of transport, a specific type of liability insurance is required to cover these unique risks. These risks can involve the maintenance and use of aircraft, property damage, loss of cargo, or injury to people. Aviation insurance protects both its owners and aircraft operators from unforeseen losses.

### **Additional Considerations**

Because it is a huge exposure for airports, there should be no PFAS/PFOS exclusions of any kind (they exist in fire-fighting chemicals as well as de-icing for airplanes and are now excluded under our policies).

## Moving Companies

**Type of Operation:** You are hiring a moving company to transport municipal property from one location to another.

### Definitions

**Cargo** - Goods carried on a ship, aircraft, or motor vehicle.

### Sample Insurance Wordings

#### All-Risks Cargo Insurance

All risks property insurance in an amount equal to the full replacement cost of property of every description and kind to be moved by the Contractor while it is in the Contractor's care, custody and control. Coverage is to be apply from the place of origin to the final destination.

#### Commercial General Liability Insurance

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_, for a limit of not less than \$ \_\_\_\_\_ per occurrence, an aggregate limit of not less than \$ \_\_\_\_\_, within any policy year with respect to completed operations and a deductible of not more than \$ \_\_\_\_\_. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- a. Name the Municipality as an Additional Insured
- b. Cross-liability and severability of interest
- c. Blanket Contractual
- d. Products and Completed Operations
- e. Premises and Operations Liability
- f. Personal Injury Liability
- g. Contingent Employers Liability
- h. Work performed on Behalf of the Named Insured by Sub-Contractors
- i. The policy shall include 30 days' notice of cancellation

#### Automobile Insurance

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$ \_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

## Frequently Asked Questions

### What should be included in the moving contract?

Consumer contracts for moving services should be in writing if they are worth more than \$50 and they should clearly show the terms of your agreement with the business.

All consumer contracts for moving services should include:

- the mover's name, address and contact information
- a description of the service(s) and an itemized list of prices
- the total amount that you will have to pay
- start and end dates for the service
- the terms of payment
- the name of the mover's insurance provider and their policy number
- who is responsible for any damage or loss
- the number of staff, the estimated number of hours and the size of the vehicle(s) that will be needed
- any licences or customs documents that may be needed to cross a border

## Farmers Markets

**Type of Operation:** You are permitting a farmer's market to operate on municipal property.

### Definitions

**Joint and several liability** - When two or more parties are jointly and severally liable for a tortious act, each party is independently liable for the full extent of the injuries stemming from the tortious act.

### Sample Insurance Wordings

#### All Risks Property Insurance

All risks (including sewer damage, flood and earthquake) property insurance in an amount equal to the full replacement cost of property of every description and kind owned by the Tenant or for which the Tenant is legally responsible, and which is located on or about the Demised Premises, including, without limitation, anything in the nature of a leasehold improvement;

#### Commercial General Liability Insurance

The Vendor shall, at their expense obtain and keep in force during the term of the Lease, Commercial General Liability Insurance satisfactory to the Municipality and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$ \_\_\_\_\_/occurrence with an aggregate of not less than \$ \_\_\_\_\_
- (b) Add the Landlord as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Broad Form Property Damage
- (g) Contractual Liability
- (h) Hostile fire
- (i) The policy shall provide 30 days prior notice of cancellation

## Frequently Asked Questions

### **What is the difference between a public market and a farmers' market?**

Unlike farmers markets, which often exist only seasonally and may pop up just once or twice a week, a public market is open daily, year-round, in a permanent location.

### **Do Vendors need their own insurance?**

Yes. Vendor liability coverage protects vendors if a liability claim is filed against them in the event that the vendor causes Bodily Injury or Property Damage to the event host or visitors to your stall during the time you are operating as a vendor. If Vendors do not carry sufficient limits, joint-and-several liability could come into play and the Municipality could be liable for more than their fair share.

## Electric Vehicle Charging Station Providers

**Type of Operation:** You are permitting a third-party electrical vehicle charging station provider to install charging stations on municipal property.

### Definitions

**Networked EV Chargers** - Part of a charging network, connected via the internet, and can provide functions such as billing, access control and real-time updates of the patron's charging experience. Networked chargers are typically more expensive than non-networked chargers but can offer some serious benefits, especially if they are used in a Multi-Unit Residential setting, where access control and billing data is needed for multiple users.

**Non-Networked EV Chargers** - These stations can be installed in combination with a revenue grade meter which allows for energy monitoring without any subscription fee. Basic power-sharing and access control feature via a key are also offered by some brands.

### Sample Insurance Requirements

#### Commercial General Liability

The Service Provider shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the (INSERT your Name) and underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ . The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$\_\_\_\_\_/occurrence with an aggregate of not less than \$\_\_\_\_\_
- (b) Add (INSERT your Name) as an Additional Insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \_\_\_\_\_ (usually \$2,000,000) and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Broad Form Property Damage
- (g) Contractual Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) The policy shall provide 30 days' prior notice of cancellation

### **Technology Errors and Omissions Insurance and Network Security**

Coverage shall be purchased in an amount not less than \$ \_\_\_\_\_ per occurrence and \$ \_\_\_\_\_ in the aggregate and coverage shall be underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_. The policy shall include coverage for claims resulting from network risks such as data breaches, unauthorized access, theft of confidential information, invasion of privacy, destruction, alteration or damage to electronic information, intellectual property infringement such as copyright, trademarks, service marks and trade dress. The policy shall be renewed for 3 years after contract termination. Evidence of coverage must be provided to the municipality. If the policy is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Municipality. The Municipality has the right to request that an Extended Reporting Endorsement be purchased by the contractor at the contractor's sole expense.

### **Data Liability Insurance**

Data liability/Network Security coverage, underwritten by an insurer licensed to conduct business in the Province of \_\_\_\_\_ and in an amount not less than \_\_\_\_\_. Coverage is to respond to but not be limited to the following occurrences:

1. Privacy violations including but not limited to unauthorized access to or dissemination of private information; failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations such as MFIPPA, regarding the collection, access, transmission, use and accuracy. Coverage shall extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy.
2. Network Security to protect against incidents arising from system security failures such as, but not limited to, unauthorized access, theft or destruction of data, electronic security breaches, denial of service, spread of virus within the Contractor's computer network or other third-party computer information systems and will further include expenses related to third-party computer forensics.
3. Data Breach Expenses including crisis management and credit monitoring expenses related to electronic and non-electronic breaches.

The policy shall be maintained continuously during the term of this Agreement and for an additional (two) years after the termination or expiration of the Agreement. If coverage is to be cancelled or non-renewed for any reason, 90-day notice of said cancellation or non-renewal must be provided to the Customer. The Customer has the right to request an Extended Reporting Endorsement by purchased by the Contractor at the Contractor's sole expense. The term of the Extended Reporting Endorsement will be decided by the Customer and Contractor.

### **Automobile Insurance**

Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of \_\_\_\_\_, having an inclusive limit of not less than \$\_\_\_\_\_ per occurrence for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Contractor.

### **Primary Coverage**

The proponent's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the municipality.

### **Certificate of Insurance**

The proponent shall provide a Certificate of Insurance evidencing coverage in force at least 10 days prior to contract commencement.

## **Frequently Asked Questions**

### **Why do we need to require cyber-liability insurance?**

Vendor clouds have access to hundreds of chargers, and if compromised, can increase the risk of attack exponentially.

Physical and/or remote access to EV charging station components, including charge ports, power electronics, controllers, and local generation (e.g., PV and energy storage) could be paths to cause power fluctuations, leading to altered operations at the charging station, escalated privileges to administrative systems, exfiltration of financial information (including personally identifiable information), and reduced grid stability. One compromised EV supply equipment component can open the door to a variety of exploitable vulnerabilities.<sup>xiii</sup>

## Contracts Requiring Special Coverages

### Special Events

We have not included any insurance recommended wordings because special events can take many forms and it is the form of the event that determines the type of insurance required. For example, pyrotechnics, fireworks, valet parking services, inflatables, amusement devices, etc. all require specialized coverage.

### Contracting with Homeowners or Private Landowners

The nature and purpose of the contract will determine the insurance coverages. We will need to review the contract.

### Roofers

They require special consideration especially if they use hot tar. Hot tar roofers will have a Warranty on their policy that you should address.

### Welders

Welders usually have a Welding Warranty attached to their policy. This should be addressed in your contract.

### **Special insurance and contractual considerations also apply to:**

Funding Agreements  
Garage Operations  
Short Term Rentals  
Contracting with Volunteer Associations  
Recycling

We strongly recommend that you always work with your insurance broker or insurer.

<sup>i</sup> <https://www.victorinsurance.ca/en/pl/resources/claims-examples/claims-examples-builders-risk.html>

<sup>ii</sup> <https://www.mindengross.com/docs/default-source/publications/risk-allocation-in-leases---an-update-on-deslaurier-custom-cabinets-v-1728106-ontario-inc>

<sup>iii</sup> <https://mccagueborlack.com/uploads/articles/178/paying-future.pdf?1399435581>

<sup>iv</sup> <https://Microsoft Word – 9 – Pollution Claim Examples>

<sup>v</sup> <https://www.investopedia.com/terms/c/construction-bond.asp>

<sup>vi</sup> <https://www.constructionbond.ca/difference-between-construction-bonds-and-contractors-insurance/>

<sup>vii</sup> <https://www.phelps.com/insights/What-Is-an-Aggregate-Limit-and-Why-Is-it-Important.html#:~:text=Distinct%20from%20a%20per%2Dclaim,separate%20claims%20might%20be%20made.>

<sup>viii</sup> <https://www.phelps.com/insights/What-Is-an-Aggregate-Limit-and-Why-Is-it-Important.html>

<sup>ix</sup> <https://www.techtarget.com/whatis/definition/data-sovereignty>

<sup>x</sup> [https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp\\_testdumb/documents/s\\_asia\\_contract\\_for\\_the\\_operation\\_maintenance\\_of\\_water\\_and\\_sewerage\\_systems\\_0.pdf](https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp_testdumb/documents/s_asia_contract_for_the_operation_maintenance_of_water_and_sewerage_systems_0.pdf)

<sup>xi</sup> <https://www.ocwa.com/news/cybersecurity-be-aware-stay-safe>

<sup>xii</sup> <https://www.hamilton.ca/home-neighbourhood/house-home/property/encroachment-agreements>

<sup>xiii</sup> <https://www.osti.gov/biblio/1885974>