



# Risk Transfer

## It's More Than Just Signing A Contract

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**REFINING RISK MANAGEMENT**

# Disclaimer

The material being provided in this presentation is for your general information, and is not a substitute for legal advice. Consult your entity's attorney for advice concerning specific situations.



# Overview

- **Contractual Risk Transfer**
- **Non-contractual Risk Transfer**
  - Insurance
  - Hold Harmless/  
Indemnification Agreements
  - Waivers
  - Performance and Payment Bonds
- **Examples**



# Contractual Risk Transfer

- **Contracts**
  - Be in writing
  - Identify clearly what is expected of each party
  - Identify how the parties will be compensated
  - Identify insurance requirements
  - Be sure to have these reviewed by legal counsel



# Non-Contractual Risk Transfer

- Insurance
- Hold Harmless Agreements/  
Indemnification Clauses
- Waivers
- Performance and Payment Bonds



# Insurance

- **The most common insurance coverages that are required:**
  - **Commercial General Liability**
  - **Business Auto**
  - **Professional**
  - **Workers' Compensation**
  - **Umbrella/Excess**
  - **Additional Insured Status**



# Insurance

- **Other Critical Issues**

- Coverage
- Indemnification
- Subrogation

**.....always subject to the exclusions,  
definitions and conditions of the policy**



# Coverage

- **Make sure that you review the coverage.**
- **Remember, many “standard form contracts” simply protect the interests of the contractor, or might actually attempt to shift the legal responsibility from the contractor to your entity.**





# Certificates of Insurance

## CERTIFICATE OF LIABILITY INSURANCE QUICK REFERENCE GUIDE

**ACORD** CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION is WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

1 PRODUCER This is the Contractor/Vendor/Service Provider's Agent/Broker's Name Address City, State ZIP	CONTACT NAME	PHONE (Area, No., Ext.)	FAX (Area, No.)
	EMAIL ADDRESS	INSURER(S) AFFORDING COVERAGE	
2 INSURED Contractor/Vendor/Service Provider's Name Address City, State ZIP	INSURER A : Insurance Company 1	NAIC #	
	INSURER B : Insurance Company 2		
	INSURER C : Insurance Company 3		
	INSURER D :		
	INSURER E :		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	AGGREGATE LIMIT	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Policy Number	Effective Date	Expiration Date	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (EA occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOSP AGG \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS	Y	Policy Number	Effective Date	Expiration Date	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	Y	Policy Number	Effective Date	Expiration Date	EACH OCCURRENCE AGGREGATE \$ 1,000,000 AGGREGATE \$ 2,000,000
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROFESSIONAL SERVICES/EXCLUSIVE OPERATIONS MEMBER EXCLUDED? (Mandatory in WA) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N/A	Policy Number	Effective Date	Expiration Date	<input checked="" type="checkbox"/> WA STAT. <input type="checkbox"/> OTHER EACH ACCIDENT \$ 500,000 ILL DISEASE - EA EMPLOYEE \$ 500,000 ILL DISEASE - POLICY LIMIT \$ 500,000
E	PROFESSIONAL LIABILITY	N	Policy Number	Effective Date	Expiration Date	UP TO \$2,000,000. Waiver of Aggregate \$4,000,000 Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Note: IF EXCESS/UMBRELLA IS NOT SHOWN, LIABILITY WILL NOT MEET THE RECOMMENDED MINIMUM

3 CERTIFICATE HOLDER Member's Name Member's Address City, State ZIP	4 CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2010/05)

The ACORD name and logo are registered marks of ACORD

- 1 **Producer:** Insurance agent or broker who issues the certificate
- 2 **Name of Insured:** Must match the legal name of the contractor
- 3 **Description of Operations:** Reference contact number, or project description, locations, vehicles or exclusions added by endorsement or special provisions. May also confirm that the member has been added as an "additional insured."
- 4 **Certificate Holder:** Member name (not department) and mailing address

- 5 **Insurers Affording Coverage:** Insurance companies must be acceptable to the member. If the contractor is self-insured, review of financial information may be required.
- 6 **Policy Effective Date:** Must be prior to or coincide with the contract date.
- 7 **Policy Expiration Date:** Coverage must be in force for the complete term of the contract. If insurance expires during the term of the contract, a new Certificate of Insurance must be received by the member at least 10 days prior to the expiration date. This new insurance must meet the terms of the original agreement.

- 8 **Notice of Cancellation:** LMCIT recommends that the contractor's insurance policies contain a provision that states a minimum of 30 days advance notice will be given to the member of any substantial change to or cancellation of any insurance policy listed on the certificate. The ACORD 25 (2010/05) version of the Certificate of Liability Insurance states notice will be given with the policy provisions.

*This is intended for general purposes only and should not be construed as legal or coverage advice on any specific matter. (8/2012)*



# Certificates of Insurance

- **Be sure to read/verify the coverages are what you agreed to with the contractor**
- **Request an endorsement naming your entity as an additional insured**
- **Create a reminder system**



# Hold Harmless/ Indemnification Agreements

- **The typical indemnification clause/agreement will require the indemnitor (contractor) to:**

**“indemnify and hold harmless” your organization for any losses that the indemnitor (contractor) incurs, or for damages for which they may be held liable.**



# 3 Types of Indemnification Clauses

- **Broad Form**—transfers the entire risk of loss
- **Intermediate Form**—liability is transferred for damages cause “in whole or in part” by the indemnitor
- **Limited Form**—the indemnitor assume liability only for its own negligence.



# Broad Form

**“To the fullest extent permitted by law, Contractor agrees to defend and indemnify the City, and its officers, employees and volunteers from and against all claims, damages, losses, and expenses, including attorney fees arising out of or resulting from the performance of work under this Agreement regardless of whether or not it is caused in part by the negligent acts, errors or omissions of the City, and its officers, employees or volunteers. Contractor agrees this indemnity obligation shall survive the completion or termination of this Agreement.”**



# Intermediate Form

**“To the fullest extent permitted by law, Contractor agrees to defend and indemnify city, and its officers, employees and volunteers, from and against all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from the performance of work under this Agreement; but only to the extent caused in whole or in part by the negligent acts, errors, or omissions of the City and its officers employees or volunteers. Contractor agrees this indemnity obligation shall survive the completion or termination of this Agreement.”**



# Limited Form

**“To the fullest extent permitted by law, Contractor agrees to defend and indemnify the City, and its officers, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of or resulting from the performance of work under this Agreement, but only to the extent caused in whole or in part by the negligent acts, errors or omissions of the Contractor. Contractor agrees that this indemnity obligation shall survive the completion or termination of this Agreement.”**



# Waivers

- **Include an indemnification clause (generally a limited form)**
- **Include a provision that the Contractor agrees to be personally liable if there's no insurance coverage, or if the coverage is not of an acceptable amount.**





# Waiver

## WAIVER AND RELEASE

### CONTRACTOR

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

### EVENT LOCATION

Normandale Lake Bandshell  
5901 West 84<sup>th</sup> Street  
Bloomington, MN 55431

DATE OF OCCUPANCY AND USE: \_\_\_\_\_

TIME OF OCCUPANCY AND USE: \_\_\_\_\_

PURPOSE OF OCCUPANCY: Arts in the Parks Performance

The undersigned, hereafter referred to as “Contractor”, for and in consideration of the City of Bloomington’s authorization to utilize the above-listed property; and, for and in consideration of the City of Bloomington’s waiver of its standard insurance requirements, does hereby consent and agree to the following:

Contractor shall indemnify, defend and hold harmless the City of Bloomington, its officials, employees, and agents from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the undersigned’s (including its officials, agents, or employees) use and occupancy of the premises.

Contractor understands that he/she will be solely responsible for any and all damages or losses to Contractor’s personal property while located at the above-listed property.

Contractor certifies that he/she has had an opportunity to review this WAIVER AND RELEASE and to have it reviewed by an attorney of his/her choosing; that he/she is familiar with and understands the risks of utilizing and occupying the premises for the purpose described above; and, that he/she assumes all risks in connection with the use and occupation of the premises.

4. The person signing this Waiver represents and warrants that the Contractor has authorized him/her to execute this Agreement on its behalf and agrees to be bound by its terms and conditions, including the agreement of the Contractor to indemnify and hold the City harmless. In the event the Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liabilities of the Contractor, as set forth herein, personally.

Date: \_\_\_\_\_

Group Name: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_



# Performance Bonds

- **Generally used with service/construction contracts**
- **Allows your organization to complete the project, and requires the Contractor to “pay the difference” between the agreed to price and that of a replacement contractor.**



# Payment Bonds

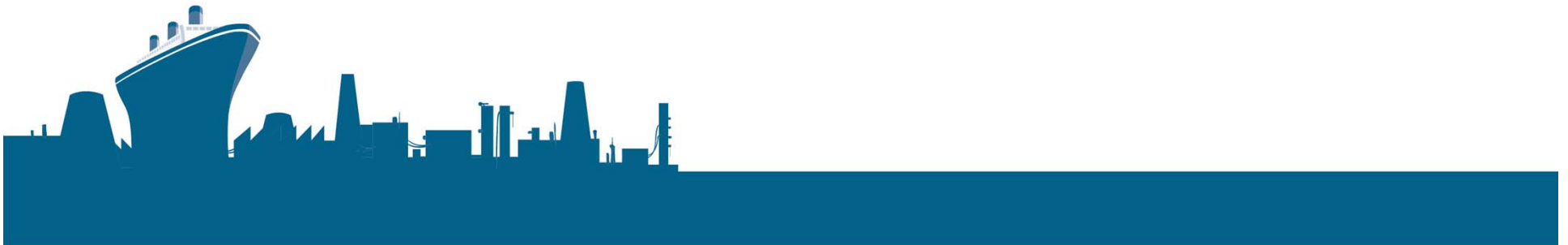
- **Requires the Contractor to pay for the materials and/or labor required to perform the contract.**



# Example #1

**Resident Jim wants to rent a park shelter, where he's going to set up a bounce house, have a petting zoo for the kids and a beer garden for the parents.**

**HOW DO YOU TRANSFER THE RISK?**



# Example #2

Tim's Tree Trimming Services has won the bid for trimming all of your entity's public trees. The are significantly lower in price than the next lowest bidder.

Things are going well, but in July, Tim and his wife decide to take a vacation so he tells you he can't complete the contract.

**HOW DO YOU TRANSFER THE RISK?**



## **Example #3**

**Cathy runs a cleaning company that has won the cleaning contract for your building. As part of the contract process, she sends over a certificate of insurance and you notice that she doesn't have adequate GL insurance limits.**

**HOW DO YOU TRANSFER THE RISK?**



# QUESTIONS???

## Contact Information:

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