

RESOLUTION NO. 2008-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HUNTINGTON BEACH REVISING AND RESTATING THE
CITY'S INSURANCE AND INDEMNITY REQUIREMENTS

WHEREAS, there are persons and organizations who are engaged in various activities in the City, thereby subjecting the City to substantial risk of liability for damage to property and injury to persons; and,

The City desires to establish insurance and indemnification requirements; and, in appropriate cases, a procedure for the waiver thereof; and,

The City desires to establish internal staff responsibility for the administration of the insurance required by this Resolution and delineate the authority to make adjustments to requirements based upon unique and unusual circumstances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntington Beach that effective on the date of adoption of this Resolution, the insurance coverage and indemnity requirements shall be as follows:

SECTION I. DEFINITIONS AND FORMS REQUIRED

A. Definitions:

1. "Contractors" are any persons or entities who contract with the City and/or provide services to the City which are readily available and efficiently procured by competitive bidding.
2. "Design Professionals" are professional services contractors who contract with the City and/or provide architectural and/or engineering services to the City.
3. "Licensees/Lessees" are any persons or entities who contract with the City for the use of public property.
4. "Permittees" are any persons or entities who make application to the City for any use of or encroachment upon any public street, waterway, pier, or City property.
5. "Professional Services" are as defined by Huntington Beach Municipal Code section 3.03.
6. "Vendors" are any persons or entities who transfers property or goods to the City which may or may not involve delivery and/or installation.

B. Indemnity and Insurance Coverage Requirements Defined

1. General Liability: Combined single limit bodily injury, personal injury and property damage: Minimum limits of \$1,000,000 per occurrence.

- a. Coverage must include completed operations liability and unlimited blanket contractual liability and, where products are furnished, products liability.
 - b. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000 or an increased coverage as memorialized in the terms and conditions agreed to by the parties and the policy holder shall submit written notice of any known depletion of limits to City attached to the proof of insurance.
 - c. Claims made policies are not acceptable, except that claims made insurance for pollution liability shall be acceptable.
 - d. All deductibles in excess of \$5,000, or alternative forms of providing coverage must be approved through the Waiver Procedure set forth in Section III to this Resolution. The requirement for self-insured retention remains at zero.
 - e. The City, its, officers, elected or appointed officials, employees, agents and volunteers are to be covered as additional insureds by separate attached endorsement(s) approved by the City Attorney as respects liability arising out of action performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor; or automobiles owned, leased or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officers and employees.
 - f. For any claims related to the project, the contractor's insurance coverage shall be primary insurance as respects the City, its agents, officers, and employees. Any insurance or self-insurance maintained by the City, its agents, officers, and employees shall be excess of the contractor's insurance and shall not contribute with it.
 - g. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its agents, officers and employees.
 - h. The contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. Workers Compensation and Employers' Liability: In accordance with the applicable state statutes with limits in the case of workers' compensation and employers' liability in amounts not less than the State statutory limits.

Alternatively, a signed declaration of non-employee status shall be filed. A certificate or consent to self-insure issued by the California Director of Industrial Relations is also acceptable.

3. Professional Liability Insurance: Coverage must be provided at a minimum of \$1,000,000 per occurrence and in the aggregate. All deductibles in excess of \$10,000, or alternative forms of providing coverage must be approved through the Waiver Procedure set forth in Section III to this Resolution. The requirement for self-insured retention remains at zero.
 - a. Claims made policies are acceptable if the policy further provides that:
 1. The policy retroactive date coincides with or precedes the professional services contractor's start of work (including subsequent policies purchased as renewals or replacements).
 2. The professional services contractor will make every effort to maintain similar insurance during the required extended period of coverage following project completion, including the requirement of adding all additional insureds.
 3. If insurance is terminated for any reason, professional services contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this agreement or permit.
 4. The reporting of circumstances or incidents that might give rise to future claims.
4. Automobile Liability Coverage must be provided at a minimum of \$1,000,000 per occurrence.
 - a. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000 and the policy holder shall submit written notice of any known depletion of limits to City attached to the proof of insurance.
 - b. All deductibles in excess of \$1,000, or alternative forms of providing coverage must be approved through the Waiver Procedure set forth in Section III to this Resolution. The requirement for self-insured retention remains at zero.
 - c. The City, its officers, elected or appointed officials, employees, agents and volunteers are to be covered as additional insureds by separate attached endorsement(s). The coverage shall contain no special limitations on the scope of protection afforded to the City, its agents, officers and employees.
 - d. For any claims related to the project, the contractor's insurance coverage shall be primary insurance as respects the City, its agents, officers, and employees. Any insurance or self-insurance maintained by the City, its agents, officers, and employees shall be excess of the contractor's insurance and shall not contribute with it.

C. Certificate of Insurance Requirements Defined

1. Form. Evidence of insurance coverage and limits as required by the City shall be furnished to the City as a certificate holder on the "Acord" or similar form approved by the City Attorney. (See samples attached herein as Exhibit "A").
 - a. The description of work to be performed, the City department involved in the performance, and the City staff contact person must be clearly identified on the "Acord" or similar form evidencing insurance coverage.
 - b. All forms of insurance shall identify the City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers as an additional insured by separate attached endorsement with respect to general liability and automobile liability coverages.
 - c. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
2. Approval of Certificate Insurance certificates must be approved by the City Attorney prior to commencement of any performance under a contract or issuance of any permit, as authorized by the City Charter.
3. Acceptability of Insurers Insurance must be placed with insurer with a Best's rating of no less than A: VII and insurer must be a California admitted carrier.

SECTION II INSURANCE AND INDEMNIFICATION REQUIREMENTS

A. INSURANCE

1. Contractors and Permittees must meet the requirements as set forth in Exhibit "B" incorporated by reference and attached herein. Permittees who do not use vehicles or equipment in connection with the permit, shall not be required to provide auto insurance. To be exempt from this requirement, permittees must execute a declaration such as Exhibit I attached hereto and incorporated by this reference.
2. Professional Services providers must meet the requirements as set forth in Exhibit "C" incorporated by reference and attached hereto.
3. Licensees/Lessees must meet the requirements as set forth in Exhibit "D" incorporated by reference and attached hereto.
4. Vendors
 - a. Vendors supplying goods including delivery, service and/or installation must meet the requirements of Exhibit "B".

- b. Vendors supplying goods only without delivery, service and/or installation are required to provide products liability coverage only.
5. The insurance requirements of persons or organizations not identified herein shall be as designated by the agreement. All certificates of insurance designated must conform to the requirements of this Resolution.
6. Exceptions.
- a. Public entities are exempt from the requirements of this resolution. Any insurance and indemnity requirements of a public entity shall be pursuant to Section II(A)(5).
 - b. Persons providing judicial or quasi-judicial services as independent contractors, such as judges, arbitrators, hearing officers, expert witnesses, and court reporters shall be exempt from all insurance coverage requirements. Any insurance and indemnity requirements shall be pursuant to Section II(A)(5).
 - c. Each person making application for a permit for private property construction, alteration, improvement, demolition, or repair of any building or structure shall sign a declaration under penalty of perjury verifying workers' compensation coverage or exemption from coverage, as required by Section 19825 of the Health and Safety Code and, at the time of permit issuance, contractors shall show their valid workers' compensation insurance certificate.
 - d. Persons contracting with the City under subdivision agreements are exempt from providing evidence of workers' compensation.
 - e. Oil operators as regulated by Huntington Beach Municipal Code Section 15.16 and pipeline franchises as regulated by Huntington Beach Municipal Code Section 3.44 are exempt from the requirements of this resolution.
 - f. Taxicabs/Vehicles-for-hire as regulated by Huntington Beach Municipal Code Section 5.50 are exempt from the requirements of this resolution.
 - g. Trucking companies, including those regulated under Huntington Beach Municipal Code Section 10.32, are exempt from the minimum insurance requirements of this resolution but must submit proof of workers' compensation insurance and general liability insurance in accordance with the requirements of the Public Utilities Commission (PUC) regulations which include: 1) the general liability insurance requirements are \$600,000 combined single limit or \$250,000 bodily injury or death of one person and \$500,000 protection against total liability for bodily injury or death of more than one person from any one accident. 2) this is subject to the same \$250,000 limitation for each person and \$100,000 protection for accidental damage or destruction of property other than property being transported. 3) the City of Huntington Beach must be

named as certificate holder but does not need to be named as additional insured.

7. Indemnity

- a. Contractors and Permittees shall be required to indemnify City, pursuant to the indemnity provision attached hereto and incorporated herein by this reference as Exhibit "E".
- b. All design professionals shall be required to indemnify City pursuant to the indemnity provision attached hereto and incorporated herein by this reference as Exhibit "F".
- c. All other persons or organizations, including but not limited to professional service providers other than Design Professionals as defined by this Resolution, shall be required to indemnify City, pursuant to the indemnity provision attached hereto and incorporated by reference as Exhibit "G".

SECTION III. WAIVER OR MODIFICATION PROCEDURE

A. Waivers or Modification Request Form.

A department Request for Waiver or Modification, Exhibit "H" attached, shall be completed and forwarded to the Risk Manager for all requests for waiver or modifications of the minimum indemnification and insurance requirements. Claim history, financial statements and scope of work must be submitted as attachments with any request for waiver.

B. Waiver or Modification Authority.

The Risk Manager and the City Attorney may approve any waiver or modification of the insurance and indemnification requirements, including requests for indemnification of third parties. A denial may be appealed to the City Administrator.

C. Waiver Criteria.

The criteria to evaluate any requests for waiver shall include the following:


- a. The type of waiver or modification requested;
- b. The reason for the waiver or modification;
- c. The nature of the scope of work;
- d. The cost of the contract;
- e. The liability exposure of the City;
- f. The cost and availability of the coverage requested;
- g. The claim history of the requesting party;
- h. The past experience of the City with the requesting party; and
- i. The past experience of the City with other contracting parties of a similar nature.

SECTION IV. Resolution 2007-03 and all other resolutions in conflict herewith are hereby repealed.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting held 6th day of October 2008.



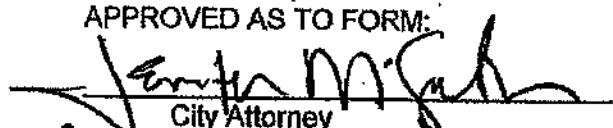
Mayor

INITIATED AND APPROVED:


Director of Human Resources

REVIEWED AND APPROVED:


City Administrator

APPROVED AS TO FORM:


City Attorney
9.24.08

Attachments

- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E
- Exhibit F
- Exhibit G
- Exhibit H
- Exhibit I

POLICY NUMBER: _____

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

ADDITIONAL INSURED-OWNERS, LESSEES, OR CONTRACTORS (Form B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY

SCHEDULE

Name of Person or Organization:

**CITY OF HUNTINGTON BEACH
2000 MAIN STREET
HUNTINGTON BEACH, CA 92648-2702**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

RE: ALL OPERATIONS OF THE NAMES INSURED FOR THE CERTIFICATE HOLDER.

CITY OF HUNTINGTON BEACH, ITS ELECTED OR APPOINTED OFFICIALS, AGENTS, OFFICERS, EMPLOYEES, AND VOLUNTEERS.

*****THIS IS A SAMPLE ENDORSEMENT PAGE WHICH MUST BE A SEPARATE PAGE FROM THE CERTIFICATE OF LIABILITY***

*In order to be approved by the City Attorney, all wording noted in **red**, must be exact.*



CITY OF HUNTINGTON BEACH
2000 Main Street, Huntington Beach, CA 92648-2702

Declaration of Non-Employer Status

The State of California requires every enterprise or business to provide workers compensation insurance coverage. If you have no employees, you may make a declaration to that effect by completing and signing this form and returning to:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648-2702

I certify that in the performance of the activity or work for which this permit is issued, I shall not employ any person in any manner so as to become subject to California Workers' Compensation Insurance requirements.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued under this declaration if I hire any employee(s) or become subject to the provision of the laws requiring Workers' Compensation Insurance.

Company / Organization: _____

Address: _____

Applicant [please print]: _____

Title, if any: _____

Applicant's Signature: _____

Date Signed: _____

Telephone Number: _____



CITY OF HUNTINGTON BEACH
2000 Main Street, Huntington Beach, CA 92648-2702

DECLARATION OF PERMITTEE

I certify that no vehicle(s) will be used or operated in the performance of the task(s) or event(s) for which this permit is granted.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued in connection with or in the performance of said task(s) or events(s) if any vehicle(s) is used.

Signature of Permittee: _____

Print Name: _____

Company Name (if applicable): _____

Date Signed: _____