

# Arizona Department of Transportation

## ENGINEERING CONSULTANT SERVICES

### Insurance Requirements Effective January 2015

#### 4.20 INSURANCE

The Consultant and all Subconsultants shall provide their insurance agent/producer with a copy of the insurance requirements within this section.

The Consultant and all Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees or Subconsultants, and the Consultant is free to purchase additional insurance.

The Consultant may purchase an excess or umbrella policy to secure these limits. If the Consultant or Subconsultant uses any excess or umbrella insurance to meet the required limits then this excess or umbrella insurance must be "follow form" equal to or broader in coverage than the underlying insurance requirements, including but not limited to, additional insured endorsements and waiver of subrogation endorsements.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** The Consultant shall provide coverage with limits of liability not less than those stated below.

#### 1. **Commercial General Liability – Occurrence Form**

The policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000  
 Products and completed operations coverage shall be maintained for three (3) years after completion of design
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

<u>Contract Value</u>	<u>Required Insurance</u>			
\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increase in Contract value require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.

- b. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
- c. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

**2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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If work is performed on the active roadway then Consultant or Subconsultant shall provide a minimum of \$5,000,000 Combined Single Limit coverage.

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant, involving automobiles owned, leased, hired or borrowed by the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
- b. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- c. Policy shall contain a severability of interest provision.

**3. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- b. This requirement shall not apply to: Separately, EACH Consultant or Subconsultant exempt under A.R.S. §23-901, AND when such Consultant or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Consultant) form.

**4. Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

<u>Contract Value</u>	<u>Required Insurance</u>
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\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increased value of the Contract require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.
- b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work (**APPENDIX A**) of this Contract.
- d. Consultant is required to carry professional liability insurance regardless of the type of contract or the scope of work and it shall not be waived without prior approval from Risk Management.

**5. Aircraft Liability – Per Occurrence Form (if applicable)**

If the Consultant or their Subconsultant will be using aircraft to perform any portion of this Contract then aircraft liability shall be provided. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Hangarkeepers Liability \$1,000,000
- Per Seat Limit \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$50,000
- Each Occurrence \$5,000,000

- a. The policy shall be endorsed to include the following additional insured language: “The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.” Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by the Contract.
- b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

**6. Valuable Papers Coverage**

Valuable papers insurance shall be included in the policy for a minimum of \$25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Consultant in the completion of this Contract.

**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The Consultant's policies shall stipulate that the insurance afforded the consultant shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

2. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.

- C. **NOTICE OF CANCELLATION:** With the exception of the 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require a 30-day written notice to the State of Arizona. Such notice shall be sent directly to ECS and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Consultants insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** The Consultant shall furnish the Department (ECS) with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements shall be received and approved by the Department (ECS) before work commences. Each insurance policy required by this Contract shall be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of this Contract

All certificates required by this Contract shall be sent directly to ECS. The ECS Contract number and project description shall be noted on the certificate of insurance. The Department reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONSULTANTS:** The Consultant is responsible for ensuring and/or verifying that all Subconsultants have current, valid, and collectable certificates of insurance that are consistent with the minimum requirements within the Consultant Contract. This is applicable to all lines of insurance within the Contract. The Department reserves the right to request that the Consultant provide proof that its Subconsultants have the required insurance coverage at any time.
- G. **EXCEPTIONS:** Requests for exceptions to insurance requirements for Subconsultant(s) shall be provided in writing to ECS and the ADOT Risk Manager prior to the start of work and will be reviewed for any risks to the Department. No work by the involved Subconsultant(s) shall proceed until ADOT makes a decision regarding the request.

#### **4.21 INDEMNIFICATION (RESPONSIBILITY FOR CLAIMS AND LIABILITIES)**

To the extent permitted by law, consultant shall indemnify and hold harmless the State of Arizona, its departments, agencies, boards, commissions and their officers and employees from all liabilities, damages, losses and costs, including reasonable attorney fees and court cost, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of the consultant or other persons employed or used by the consultant in the performance of the contract or subcontract. "Other persons employed or used" means a subconsultant to a consultant or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with the contract.