



The NYMIR Risk Transfer Program

This document is a tool for an individual charged with collecting and or recording insurance information and is intended to make several terms and processes immediately useable.

At NYMIR we often find that a local government has not requested adequate insurance documentation. Absent this documentation, the municipality could spend thousands of dollars defending a claim, along with large indemnity payments, that could have otherwise been paid by the responsible party. We work with our municipal clients, attorneys, construction managers, architects, and outside brokers in an effort to safe guard our member's resources.

This guide will illustrate the value of risk transfer, indicate types of projects where risk transfer can benefit your municipality, and provide a checklist of forms to request. NYMIR's Member Services Department is available for consultation and document review; please contact Susan O'Rorke at 518-437-1171 ext. 307 or at sororke@wrightinsurance.com for further assistance.

This guide provides sample contracts and agreements. However your municipal attorney should be consulted before implementation of any contract.

What are the benefits of using Risk Transfer?

Risk Transfers are ways to share or lessen the cost of financial exposure due to loss. In other words, make the party that is responsible for the loss pay for the damages.

When an entity successfully transfers the risk and indemnification, the transferee or its insurer is responsible for providing an immediate defense and indemnification of the transferor (you). When the responsible party pays for the cost of a claim (defense and the cost of injuries or damages) your insurance premiums may be lower and you will avoid paying deductibles. In some situations, you may avoid a claim that may not be covered by your insurance policy.

Let's say, you hire a contractor to repair your roof. While he's working on your roof, his ladder falls over and hits a resident walking into Town Hall, seriously injuring your resident. The resident sues you, as the owner of the property, and the contractor doing the repairs. You did nothing wrong, so why should you have to pay for the injuries? If you have the proper risk transfer in place, the contractor will be the one defending you in the claim and paying any damages on your behalf.

Projects or situations where Risk Transfer can be beneficial:

Leases

Construction Agreements

Transportation Contracts

Use of Facility Forms

Inter-Municipal Cooperation Agreements

Shared Services

Purchase Agreements

To make certain the proper transfer of an activity or exposure is in place, the other party is required to show proof of liability insurance, indicating that funds are available to guarantee the indemnification. In addition a *hold harmless indemnification* agreement should be included in the contract.

How do you transfer risk?

Contractual transfer and additional insured status are two ways to transfer risk.

Contractual transfers: Contractual transfers use indemnification and hold harmless agreements. Professional contracts, construction contracts, service contracts, and shared service agreements are examples of this type of transfer.

With an agreement in place to “hold you harmless”, the contractor or service provider has the financial responsibility to pay for the claim made against you. However, not all hold harmless and indemnification agreements are the same. Therefore, it is important to review these with your insurance professional and attorney before signing an agreement.

NYMIR recommends including hold harmless and indemnification agreements in your contracts. Entities can include indemnification and hold harmless agreements, as well as insurance procurement requirements, in purchase orders and in bid documents.

Additional Insured Status: Additional Insured Status occurs when an entity obtains additional insured status on another entity’s liability policy. When properly secured, a municipality obtaining additional insured status will receive defense and indemnification from the insurance carrier for covered losses. The entity has direct rights to the policy. As expected, the coverage terms, limits and conditions of the policy control the extent of coverage afforded to the additional insured, not the terms of the hold harmless or indemnification agreement.

Best practice is to use both contractual transfers and obtain additional insured status.

Additional Insured Endorsements

Additional insured endorsements modify a liability policy to include an entity as an additional insured. Additional insured endorsements contain language explaining the extent of coverage to be granted. Merely listing an entity as an additional insured on a certificate of insurance does not guarantee additional insured status for the entity. NYMIR subscribers should insist on specific endorsements in contracts and other agreements. (See sample listing of acceptable additional insured endorsements at the end of this document.) Given the numerous additional insured endorsements used, NYMIR advises contacting your insurance professional for a review of your certificates and additional insured endorsements when received/provided.

What does your municipality need to request of vendors, contractors, and facility users? Remember, SCALE and JUDGMENT. Here are some examples:

If local plumber Brian is able to come quickly to fix a bad toilet before a regularly scheduled meeting that evening; he is an example where risk outweighs the benefits of getting an insurance certificate. If you are paving a road and using an outside contractor for this processes then time and size would dictate getting an additional insured and even a hold harmless and indemnification agreement.

Now you've begun asking for certificates of insurance. Think about your ongoing contracts, a special project or circumstance, and use of the municipality's facilities.

If contractor George comes to replace my roof, as the owner I worry about fall and injury. If George and I have a contract, I can see his insurance certificate shows liability coverage, and I require that he name me as additional insured on the policy, in addition to a Hold Harmless and Indemnification Agreement. This means I may now turn in a claim to George's policy as an additional insured. If the contract is not legal, the additional insured is also not legal; then the Hold Harmless Agreement will apply. .

Let's say a sewer project starts on January 1st, will be 6 month duration, and the contractor's insurance renews March 1st. You have a project that will continue past his renewal date, therefore, you will have to remember to go back to ask for all new certificates.

Checklist

Steps for Public Entities in the Risk Transfer Process

- **Step One:** Create a policy for insurance requirements and ensure all employees are aware of the policy
- **Step Two:** Identify situations to transfer risk such as construction projects, facility users, consultants, and shared services.
- **Step Three:** Insert indemnification and hold harmless agreements in contracts, agreements, bid documents, and purchase orders.
- **Step Four:** Insert the applicable insurance requirements in contracts, agreements, bid documents, and purchase orders.
- **Step Five:** Work with municipal counsel and insurance advisor to insure the above are complete.
- **Step Six:** Require outside parties to submit insurance certificates two weeks prior to the commencement of work (exception made for emergency) or the use of the facilities requested.
- **Step Seven:** Review certificates; to insure compliance, send to your insurance representative for review.
- **Step Eight:** Include comments about deficiencies in writing or e-mail to vendor/user.
- **Step Nine:** Follow up for responses and corrections.
- **Step Ten:** Upon receipt of all required insurance documentation, it is then safe to move forward with your agreements, contracts, or activities.
- **Step Eleven:** If project/use will extend past the expiration date of insurance policies, pend to follow up for new certificates.
- **Step Twelve:** Maintain completed certificates for at least five (5) years, in the event of a claim or lawsuit, and in compliance with your records retention policy.

Special Considerations for Risk Transfer

1. Shared Equipment

Local Governments often enter in joint purchases of equipment. This may be done through Local Government Efficiency Grants which require both (or more) municipalities to own the equipment. This can pose a difficult dilemma regarding insuring this equipment. Each municipality can elect to share their proportional share of the equipment; however, this can present several problems at the time of a loss. It is best if one municipality takes the lead, securing the insurance and adding other involved entities as loss payee's on the policy.

2. Facility Users

NYMIR risk managers recommend including hold harmless and indemnification agreements as well as insurance procurement agreements within Facility Use applications. However, there are times when community groups or individuals may not have liability insurance. Insurance should certainly be mandated from groups protected by a public liability policy, such as organized athletic teams, scouts, schools and private-sector organizations. Uninsured groups who present a sizable liability exposure (like athletic teams or other groups that constantly use facilities) should be compelled to purchase a liability policy before a permit is granted.

3. Construction Managers

Unless acting strictly as a clerk of the works, construction management firms should provide proof of professional errors and omissions insurance, along with commercial general liability, automobile liability and workers' compensation insurance.

4. Medical Providers

Doctors, nurses, and other medical providers who are not employed by the municipality should provide proof of malpractice insurance along with workers compensation insurance.

5. IT Consultants

IT firms or individuals that provide consulting services or work on computer equipment should provide commercial general liability and professional Errors and Omissions insurance; including coverage for unauthorized access, failure of security, breach of privacy, as well as notification costs and regulatory defense.

6. Self-Insured Municipalities

There are a number of municipalities (such as counties, New York State agencies and the federal government) that do not transfer risk to an insurer, but instead retain, or self-insure these exposures by handling claims themselves. As self-insurers, there are no insurance certificates to generate. These entities will often offer a letter explaining that they are authorized to self-insure liability exposures. The letters often contain language that the governmental agency will pay for claims where the agency is legally responsible.

7. Working with Unlicensed Insurers – Excess and Surplus Lines Insurers

NYMIR's sample insurance requirements recommend outside companies (such as contractors, vendors, transportation companies and facility users) to have insurance issued by an insurer licensed in New York State. At times, usually because of underwriting reasons or because of the nature of the risk, companies may not be able to secure liability insurance with a licensed insurer. If a vendor is using one of these insurance carriers, contact your insurance provider for assistance.

Securing Proof of Workers' Compensation Insurance

The New York State Workers' Compensation Board (aka Board) no longer permits public sector entities in New York to accept ACORD forms as proof of Workers' Compensation from businesses that are applying for a permit, license, or contract. The Board now requires specific forms, depending on how Workers' Compensation is provided.

- *Businesses Covered by a New York State Workers' Compensation (WC) insurance policy* must provide proof of WC coverage on form C-105.2. This form is issued by a private insurer providing WC, or its designated agent.
- *Entities Insured through the New York State Insurance Fund (NYSIF)* must provide proof of WC insurance through form U 26.3, which is issued directly by the NYSIF.
- *Entities Insured through a group trust* must provide proof of Workers' Compensation coverage on form GSI-105.2 (2/02). This form is issued directly by the trust's third-party administrator.

Securing Proof of New York State Statutory Disability Benefits

Before issuing permits, licenses, or entering into contracts, it is advised to seek proof of disability insurance. There are three forms that must be provided for proof of coverage. They are:

- Certification of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage – CE -200; or
- Certificate of New York State Disability Benefits Insurance – DB-120.1. The business' disability benefits carrier will send this form to the government entity upon request; or
- Certificate of New York State Disability Benefits Self-Insurance – DB-155. Self-insured businesses in New York State, for disability benefits insurance must call the Workers' Compensation Board's Self-Insurance Office 518- 402-0247 to obtain this form.

NYMIR SAMPLE AGREEMENTS

NYMIR provides the following sample policies and agreements. These are recommendations and not requirements. Every municipality's situation will vary; therefore, it is important that your municipal attorney review the agreements. Your local broker should also be involved in this process.

The decision to accept or alter insurance requirements rests solely with the municipality.

A completed copy of each endorsement must be attached to the certificate of insurance.

USE OF FACILITIES

NAME AND ADDRESS OF MUNICIPALITY

APPLICATION FOR USE OF COMMUNITY FACILITIES

Today's Date: _____ Date(s) Requested: _____

Facility Requested: _____ Room: _____

INFORMATION ABOUT GROUP

Name of Organization or Individual: _____

Time: _____ to _____. Supervisor in charge: _____

Mailing Address: _____

Telephone: (Day) _____ (Night) _____

INFORMATION ABOUT INTENDED USE OF MUNICIPALITY FACILITIES

Purpose of Use: _____

Total Participants Expected: _____ Adults: _____ Children: _____

Is equipment required? Yes _____ No _____

If needed, state what type and for what purpose: _____

Is an admission fee charged? Yes _____ No _____

If refreshments are served, give details: _____

Other: _____

AGREEMENT

The undersigned is over 21 years of age and has read this form and attached regulations and agrees to comply with them. He/she agrees to be responsible to the Municipality for the use and care of the facilities. He/she, on behalf of Municipality does hereby covenant and agree to defend, indemnify and hold harmless the Municipality from and against any and all liability, loss, damages, claims, or actions (including costs and attorneys' fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in connection with the actual or proposed use of Municipality property, facilities and/or services by Municipality.

Signature and Position within Organization

SAMPLE INSURANCE AGREEMENT - USE OF FACILITIES

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the permittee hereby agrees to effectuate the naming of the Municipality as an additional insured on the permittee's insurance policies.
2. The policy naming the Municipality as an additional insured shall:
 - a. Be an insurance policy from an A.M. Best rated "Secure" or better insurer, licensed in New York State.
 - b. State that the permittee's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - c. The Municipality shall be listed as an additional insured by using endorsement CG 2026 or equivalent. A completed copy of the endorsement must be attached to the certificate of insurance.
 - d. At the Municipality's request, the permittee shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the permittee will provide a copy of the policy endorsements and forms.
3. The permittee agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
4. Required Insurance:
 - a. **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 aggregate, with no exclusions for athletic participants.
 - b. **Excess Insurance:**
\$1,000,000 each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.
5. Permittee acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipality. The permittee is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.
6. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The permittee further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also NYMIR, as the Municipality's insurer.

SAMPLE INSURANCE AGREEMENT –CONTRACTORS

For smaller and low hazard contracts (such as inside painting, simple construction repairs, etc.)

Notwithstanding any terms, conditions or provisions in any other writing between the parties, the contractor hereby agrees to effectuate the naming of the Municipality as an additional insured on the contractor's insurance policies, with the exception of workers' compensation and NYS disability insurance.

1. The policy naming the Municipality as an additional insured shall:
 - a.) Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York State licensed insurer is preferred.
 - b.) State that the contractor's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - c.) Additional insured status shall be provided by standard or other endorsements that extend coverage to the Municipality for both on-going and completed operations. A completed copy of the endorsements must be attached to the certificate of insurance.
 - d.) The certificate of insurance must describe the specific services provided by the contractor (e.g., painting, carpentry, and plumbing) that are covered by the liability policies.
 - e.) At the Municipality's request, the contractor shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the contractor will provide a copy of the policy endorsements and forms.
 - f.) A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/05) must be included with the certificates of insurance.

2. The contractor agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.

3. Required Insurance:
 - a.) **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/ \$2,000,000 general and products/completed operations aggregates. The general aggregate shall apply on a per-project basis.
 - b.) **Automobile Liability:**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - c.) **Workers' Compensation, Employers' Liability and NYS Disability Insurance:**
Statutory Workers' Compensation, Employers' Liability Insurance and NYS Disability Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
 - d.) **Excess Insurance:**
\$1,000,000 each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.

SAMPLE INSURANCE AGREEMENT –CONTRACTORS

For larger, high hazard contracts (such as roof repairs, trenching work, etc.)

1. Notwithstanding any terms, conditions or provisions in any other writing between the parties, the contractor hereby agrees to effectuate the naming of the Municipality as an additional insured on the contractor's insurance policies, with the exception of workers' compensation and NYS disability insurance.
2. The policy naming the Municipality as an additional insured shall:
 - a. Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York State licensed insurer is preferred.
 - b. State that the contractor's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - c. Additional insured status shall be provided by standard or other endorsements that extend coverage to the Municipality for both on-going and completed operations. A completed copy of the endorsements must be attached to the certificate of insurance.
 - d. The certificate of insurance must describe the specific services provided by the contractor (e.g., roofing, trenching, and plumbing) that are covered by the liability policies.
 - e. At the Municipality's request, the contractor shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the contractor will provide a copy of the policy endorsements and forms.
 - f. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/05) must be included with the certificates of insurance.
3. The contractor agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
4. Required Insurance:
 - a. **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/ \$2,000,000 general and products/completed operations aggregates.
The general aggregate shall apply on a per-project basis.
 - b. **Automobile Liability:**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - c. **Workers' Compensation, Employers' Liability and NYS Disability Insurance:**
Statutory Workers' Compensation, Employers' Liability Insurance and NYS Disability Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
 - d. **Excess Insurance:**
\$2,000,000 each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.
 - e. **Owners Contractors Protective Insurance (OCP):**
\$1,000,000 per occurrence/\$2,000,000 aggregate, with the Municipality as the named insured.
 - f. **Builders Risk Insurance or Installation Floater:**
For projects involving new construction or extensive remodeling, Builders Risk Insurance or Installation Floater should also be requested. Coverage shall be on a direct risk of loss basis in the amount of \$_____ (cost of project). The Municipality shall be an additional insured, as their interest may apply.

SAMPLE INSURANCE AGREEMENT - TRANSPORTATION

- I. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the organization hereby agrees to effectuate the naming of the Municipality as an unrestricted additional insured on the organization's insurance policies, with the exception of workers' compensation.
- II. The policy naming the Municipality as an additional insured shall:
 - Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York licensed insurer is preferred.
 - Provide for 30 days notice of cancellation.
 - State that the organization's coverage shall be primary coverage for the Municipality, its Board, employees and volunteers.
 - State that the policy affirmatively provides coverage for claims of negligent hiring, training and supervision, which may arise in the context of sexual molestation, abuse harassment, or similar sexual misconduct.
 - The Municipality shall be listed as an additional insured by using endorsement CG 2010 11 85 or broader. The certificate must state that this endorsement is being used, and a copy of the endorsement must be attached to the certificate of insurance.
- III. The organization agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
- IV. The insurance producer must indicate whether or not they are an agent for the companies providing the coverage.
- V. Required Insurance:
 - **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 aggregate.
 - **Automobile Liability:**
\$5,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - **Workers' Compensation and NYS Disability:**
Statutory Workers' Compensation, Employers' Liability and NY State Disability Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
- VI. Organization acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipality. The organization is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.
- VII. The Municipality is a member/owner of the New York Municipal Insurance Company (NYMIR). The organization further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the municipality but also NYMIR, as the Municipality's insurer.

SAMPLE INSURANCE REQUIREMENTS – LEASES

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the tenant hereby agrees to effectuate the naming of the Municipality as an additional insured on the tenant's insurance policies.
2. The policy naming the Municipality as an additional insured shall:
 - Be an insurance policy from an A.M. Best rated "secure" or better, New York State admitted insurer.
 - The Municipality shall be listed as an additional insured by using endorsement CG 2026 or equivalent.
 - State that the tenant's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
3. The tenant agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
4. Required Insurance:
 - **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 aggregate on a per location basis; \$300,000 damage to rent premises each occurrence limit.
 - **Excess Insurance:**
\$2,000,000 each occurrence and aggregate on a "follow-form" basis.
 - **Property Insurance:**
Coverage for the tenant's business personal property, improvements and betterments and extra expense. The deductible shall not exceed \$1,000. The policy shall contain a waiver of subrogation in favor of the Municipality.
5. Tenant acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipality. The tenant is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.
6. At the Municipality's request, the tenant shall provide a copy of the declaration page of the liability policy with a list of endorsements. If so requested, the tenant will provide a copy of the policy endorsements.
7. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The tenant further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also NYMIR, as the Municipality's insurer.

SAMPLE INSURANCE AGREEMENT – ARCHITECTS & ENGINEERS

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the consultant hereby agrees to effectuate the naming of the Municipality as an additional insured on the architect/engineer's insurance policies, with the exception of workers' compensation, NY State Disability and professional liability insurance. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
2. The policy naming the Municipality as an additional insured shall:
 - a. Be purchased from an A.M. Best rated "Secure" New York State licensed insurer. A New York State licensed insurer is preferred. The decision to accept specific insurers lies exclusively with the Municipality.
 - b. State that the architect/engineer's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - c. Additional insured status shall be provided by standard or other endorsements that extend coverage to the Municipality for both on-going and completed operations. The decision to accept an endorsement rests solely with the Municipality. A completed copy of the endorsements must be attached to the certificate of insurance.
3.
 - a. The architect/engineer agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
 - b. At the Municipality's request, the architect/engineer shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the architect/engineer will provide a copy of the policy endorsements and forms.
4. Required Insurance:
 - a. **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 aggregate.
 - b. **Automobile Liability:**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - c. **Workers' Compensation and N.Y.S. Disability:**
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
 - d. **Architects & Engineers' Professional Errors and Omissions Insurance:**
\$2,000,000 per occurrence/\$2,000,000 aggregate for the professional acts of the architect/engineer performed under the contract for the Municipality. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work. If the architect or engineer is providing or managing environmental services, the errors & omissions policy must be endorsement to include coverage for these services.
 - e. **Excess Insurance:**
\$_____ each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.
5. Architect/engineer acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract. The architect/engineer is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the Municipality to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the Municipality.
6. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The architect/engineer further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also NYMIR, as the Municipality's insurer.

SAMPLE INSURANCE AGREEMENT – ENVIRONMENTAL CONTRACTORS

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the contractor hereby agrees to effectuate the naming of the Municipality as an additional insured on the contractor's insurance policies, with the exception of workers' compensation and N.Y. State Disability insurance.
2. The policy naming the Municipality as an additional insured shall:
 - a. Be an insurance policy from an A.M. Best rated "Secure" or better insurer, authorized to conduct business in New York State. A New York licensed insurer is preferred. The decision to accept specific insurers lies exclusively with the Municipality.
 - b. State that the contractor's coverage shall be primary and non-contributory coverage for the Municipality, its Board, employees and volunteers.
 - c. Additional insured status shall be provided by standard or other endorsements that extend coverage to the Municipality for both on-going and completed operations. The decision to accept an endorsement rests solely with the Municipality. A completed copy of the endorsements must be attached to the certificate of insurance.
3.
 - a. The certificate of insurance must describe the specific services provided by the contractor (e.g., remediation or abatement services) that are covered by the commercial general liability, environmental and the excess policies.
 - b. At the Municipality's request, the contractor shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the contractor will provide a copy of the policy endorsements and forms.
 - c. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/05) must be included with the certificates of insurance.
4. The contractor agrees to indemnify the Municipality for any applicable deductibles and self-insured retentions.
5. Required Insurance:
 - a. **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 general and products/completed operations aggregates. The general aggregate shall apply on a per-project basis.
 - b. **Automobile Liability:**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - c. **Workers' Compensation, Employers Liability and NYS Disability Insurance:**
Statutory Workers' Compensation, Employers' Liability Insurance and NYS Disability Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
 - d. **Environmental Contractors Liability Insurance:**
With coverage for the services rendered for the Municipality, including, but not limited to removal, replacement enclosure, encapsulation and/or disposal of hazardous materials, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. \$2,000,000 per occurrence/\$2,000,000, including products and completed operations. If a retroactive date is used, it must pre-date the inception of the contract. If the contractor is using motor vehicles for transporting hazardous materials, the contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948 or equivalent) as well as proof of MCS 90.
 - e. **Excess Insurance:**
\$_____ each Occurrence and Aggregate. Excess coverage shall be on a follow-form basis.
6. Contractor acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Municipality. The contractor is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.
7. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The contractor further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also NYMIR, as the Municipality's insurer.

SAMPLE INSURANCE AGREEMENT – PROFESSIONAL CONSULTANTS – OTHERS

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the consultant hereby agrees to effectuate the naming of the Municipality as an additional insured on the consultant's insurance policies, with the exception of workers' compensation, NY State disability and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
2. The policy naming the Municipality as an additional insured shall:
 - a. Be an insurance policy from an A.M. Best rated "secured" insurer, authorized to conduct business in New York State.
 - b. State that the consultant's coverage shall be primary coverage for the Municipality, its Board, employees and volunteers.
3. The Municipality shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.
4. The consultant agrees to indemnify the Municipality for any applicable deductibles.
5. Required Insurance:
 - a. **Commercial General Liability Insurance:**
\$1,000,000 per occurrence/\$2,000,000 aggregate.
 - b. **Workers' Compensation and N.Y.S. Disability:**
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees.
 - c. **Professional Errors and Omissions Insurance:**
\$2,000,000 per occurrence/\$2,000,000 aggregate for the professional acts of the consultant performed under the contract for the Municipality. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.
 - d. **Fidelity Bond:**
For dishonest acts of the consultant's employees with coverage for computer fraud and fund transfer including client coverage.
 - e. **Excess Insurance:**
On a "Follow-Form" basis, with limits of \$3,000,000 each occurrence and aggregate.
6. Consultant acknowledges that failure to obtain such insurance on behalf of the Municipality constitutes a material breach of contract. The consultant is to provide the Municipality with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the Municipality to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the Municipality.
7. The Municipality is a member/owner of the NY Municipal Insurance Reciprocal (NYMIR). The consultant further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the Municipality but also NYMIR, as the Municipality's insurer.

**HOLD HARMLESS AGREEMENT
(USE OF FACILITIES)**

FACILITY USER does hereby covenant and agree to defend, indemnify and hold harmless the NAME OF MUNICIPALITY from and against any and all liability, loss, damages, claims, or actions (including costs and attorneys fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in connection with the actual or proposed use of NAME OF MUNICIPALITY property, facilities and/or services.

**HOLD HARMLESS
(CONTRACTOR-TRANSPORTATION)**

The CONTRACTOR/VENDOR hereby agrees to defend, indemnify and hold harmless the MUNICIPALITY from and against any and all liability, loss, damage, claim or action, to the extent permissible by law, arising out of operations performed or services provided by the contractor/vendor under the contract, [including the transportation of persons.]

(Municipality)

(Contractor)

Information in brackets for transportation contracts only.

Anatomy of a Certificate of Insurance

An insurance certificate is a document that lists specific information about an entity’s insurance coverage, the insurance companies involved, as well as additional insured status. While there are different versions of a certificate, they all tend to follow the ACORD model.

This section will explain the different parts of an ACORD form certificate.

<p>INSURED AND INSURERS AFFORDING COVERAGE</p>	<p>Lists the named insured and the insurance companies providing coverage. The named insured should be the party with whom the municipality is contracting with, or allowing use of facilities. The insurers should be acceptable to the municipality.</p>
<p>COVERAGES</p> <ul style="list-style-type: none"> • Commercial General Liability (CGL) • Automobile Insurance • Garage Liability • Excess/Umbrella Liability • Workers’ Compensation and Employers’ Liability • Other 	<p>The Coverages section contains information about the insurance provided by the insurer(s) to the named insured. They are separated by coverage type in six rows.</p> <p>All contain policy numbers, policy dates and limits.</p> <p>The first box provides information about how the policy is written. Insurance requirements for construction projects often ask for the general aggregate to apply on a “per project” basis. This information is contained in the first column.</p> <p>Automobile insurance policies can cover different types of vehicles. Many specifications ask for automobile coverage with “Symbol One,” meaning that any automobile (owned or hired, for example) are covered. In most cases, the liability limits apply on a combined single limit basis. This information is in the last box.</p> <p>Garage insurance is rarely required and applies to contracts with automobile repair shops. The limits are usually \$1,000,000 auto and other than auto.</p> <p>The box on the right lists the limits that apply on an each occurrence and aggregate basis.</p> <p>Since proof of Workers’ Compensation must be provided on a specific form and not on an ACORD form, municipalities must check and see if the right form is being used. For additional information on Workers’ Compensation certificates, see <i>Securing Proof of Workers’ Compensation Insurance</i> on page 6.</p> <p>This row is used to list other coverages, such as Builders Risk, professional liability or additional excess coverage.</p>
<p>DESCRIPTION OF OPERATIONS/LOCATIONS/ VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS</p> <ul style="list-style-type: none"> • CERTIFICATE HOLDER – CANCELLATION 	<p>Insurers list information about the coverage provided to the named insured, applicable exclusions and additional insured language.</p> <p>The municipality must be listed as the certificate holder.</p> <p>Insurers “endeavor” to give written notice to certificate holders prior to cancelling the policy. The number of days is indicated in the Cancellation section.</p>
<p>SIGNATURE</p>	<p>All certificates must be signed.</p>

Risk Transfer and Insurance Terms

Below are a few terms used in Risk Transfer that special meanings:

Additional Insured: An entity that has been added to another party's policy. They obtain all the benefits of the policy, to the extent granted by the policy language, or additional insured endorsement.

Additional Insured Endorsement: A modification to a liability policy that lists an entity as an additional insured. Most additional insured endorsements contain language qualifying the coverage granted.

Asbestos Abatement Insurance: A liability insurance policy for contractors who perform asbestos abatement work.

Builders Risk Insurance: A property insurance policy that provides coverage for buildings and materials while they are under construction. A builder's risk policy can protect the contractor as well as the owner.

Certificate of Insurance: A document that is used to prove that an entity is insured. It lists the insured, producer (broker or agent), and the insurance companies providing coverage, policy terms, limits, and conditions. It may also include additional insured language, but it is not acceptable proof of additional insured status.

Certificate Holder: The entity listed on a certificate of insurance that is eligible for notification in the event the policies listed on the certificate of insurance are cancelled. A certificate holder is not necessarily an additional insured.

Commercial Automobile Insurance: A liability policy that provides coverage for motor vehicle exposures.

Commercial General Liability Insurance: A liability policy that provides coverage for the public liability exposures of an entity.

Errors and Omissions Insurance: Liability coverage for entities that have professional liability exposures, such as consultants, auditors and construction managers.

Environmental Liability Insurance: Environmental liability provides coverage for environmental liability or pollution exposures.

Excess and Surplus Lines Insurers: An unlicensed insurer who is authorized to write certain types of coverage.

Excess or Umbrella Insurance: Excess or umbrella policies provide additional liability limits over underlying coverages, typically the Commercial Automobile and Commercial General Liability policies

Exposure: The probability of loss, usually financial loss.

Indemnification Agreement: An agreement wherein one party (indemnitor, such as a facility user) agrees to pay or indemnify the indemnitee (municipality) for any loss or liability that the indemnitee incurs.

Insurance Procurement Agreement: The insurance requirements contained in a contract or agreement.

Hold Harmless Agreement: An agreement wherein one party agrees to hold the other free from responsibility for liability, injuries or damage that may arise out of the agreement at hand.

Loss Payee: An entity other than the named insured that receives payment or whose name is included on a claims payment under a property policy.

Named Insured: The organization or person to whom a liability policy is issued. The named insured is designated on the declarations page.

Owners Contractors Protective (OCP) Policy: A policy that covers an entity (such as a municipality as the property owner) for injury or damage created by the actions of an independent contractor, performing work for the insured entity. It also covers liability related to the insured's responsibility of supervising such contractors.

Self-Insured Retention: The part of an exposure that is retained by the entity and not transferred to an insurer. In practice, the entity pays all claims and expenses that fall within the self-insured retention.

Unlicensed Insurer: For the purposes of this manual, an unlicensed insurer is an insurer that is not licensed in New York State to write certain lines of insurance.

Common Problems and Pitfalls Concerning Risk Transfers

As with any process, there are different degrees of compliance with a request for additional insured status or the execution of a hold harmless agreement. Sometimes the other party's broker, attorney or insurance company does not understand the requirements, or the insurer does not/cannot comply with the requirements. In other cases, the other party does not have the coverage and may not want to expend the funds to purchase the insurance.

The following discussion addresses common risk transfer problems and possible solutions.

Problem/Issue	Possible Solution
Expired or soon to expire policies	A current certificate must be produced whenever a policy expires if the insured contractor or facilities user will be doing work or using the municipality's facilities after the expiration date of the policy.
Missing required coverages	In some cases, outside entities may purchase required coverage from two separate brokers and/or different insurers. For example, many contractors purchase Workers' Compensation Insurance from the New York State Insurance Fund. Check and see if a separate insurance certificate may be needed from another insurance producer.
Insufficient limits	Occasionally, outside parties may not be able to obtain coverage for the required amounts, so the existing coverages they do have will be on the certificate. Outside entities can be given a chance to increase or change the limits.
The certificate does not have a thirty day notice of cancellation.	At least thirty days notice should be provided for cancellation unless for non-payment of premium.
The policy declarations page is sent instead of the certificate of insurance	The declarations page does not provide adequate evidence of coverage. It only deals with the insurance provided by the one insurer, and does not address cancellation. A certificate of insurance should be requested.
No additional insured status	This could be an oversight, an attempt to restrict coverage to the municipality, or a way to evade an extra cost to list an additional insured. A certificate showing your municipality as an additional insured should be requested.
Requested additional insured endorsement is not provided	Insurance producer may not have asked for the endorsement, or the producer may not have the authority to produce the endorsement. A copy of the endorsement must be obtained.
The wrong additional insured endorsement is provided	The correct endorsement should be obtained. NYMIR will consider endorsements that provide equivalent protection.
Insurer uses a "Blanket" additional insured endorsement or, refers policy language that provides additional insured status on an automatic basis	Often insurance companies use "Blanket" additional insured language that either appears in an endorsement or in the policy itself. The most common criteria for "Blanket" additional insured status is that your municipality must be required by written contract or agreement to be an additional insured. If you are required to be named as an additional insured by a written contract i.e. construction agreement/contract or facilities use agreement, then additional insured status is automatic. Your contract/agreement must also state the insurance must be primary and non-contributory.
Your municipality is not correctly identified on the certificate	Sometimes the name of an individual will appear on the certificate or your municipality's proper name is not used. The municipality must always be correctly identified on the certificate as well as any other documentation such as agreements or endorsements.
Restrictive additional insured endorsement is listed on the certificate	Often insurance companies have restrictions and or specific criteria in order for additional insured status to be granted, or, they use restrictive language as a matter of policy. NYMIR recommends only the broadest language be used so as not to restrict the municipality's additional insured status.
Indemnification/Hold Harmless Agreement is written on the certificate	This must never be a part of a certificate of insurance as a certificate is not considered an insurance contract. Indemnification/Hold Harmless Agreements should be a separate document or included in a separate contract.
Policy number on the endorsement does not match the policy number on the certificate	This could be a mistake or they may be using an old endorsement from another policy. The policy numbers must always be the same.

<p>A self-insured retention (SIR) applies to one of the policies</p>	<p>The company submitting the certificate uses an SIR as part of their insurance program. This means that they are responsible for claim payments and expenses within the SIR, not the insurer writing the policy. In order to ensure that you receive protection for losses that occur within the SIR, obtain a letter from the organization, on their letterhead, indicating that they will finance the cost of claims and expenses for your municipality that fall within the SIR.</p>
<p>An unlicensed insurer provides the coverage</p>	<p>If an insurer is not licensed in New York, there is no protection from the New York State Insurance Fund in the event the insurer becomes insolvent. NYMIR recommends that your contracts require all insurance companies to be licensed to do business in New York.</p>
<p>The company cannot obtain coverage with a licensed insurer</p>	<p>At times, companies may not be able to secure liability insurance with a licensed insurer. When this occurs, <u>and if the municipality can make an exception</u>, NYMIR Risk Management staff will evaluate the financial stability of the unlicensed insurer and advise whether or not it is warranted to accept the unlicensed insurer.</p>
<p>The insurer does not have an acceptable rating rated by A.M. Best</p>	<p>Insurers without acceptable ratings should not be accepted.</p>

References

New York State Workers' Compensation Board

Information about complying with the New York State Workers' Compensation and Disability Benefits Laws:

<http://www.wcb.state.ny.us/content/main/Employers/Employers.jsp>

Access to Workers' Compensation and Disability Benefits forms:

<http://www.wcb.state.ny.us/content/main/Forms.jsp>