

Indemnification and Donated Services – Administrative Procedures

6.1.6

PURPOSE

The purpose of this Policy is to establish the administrative framework for the implementation of City Council's direction to authorize the City Manager to negotiate and execute indemnity provisions in a donated services agreement.

AUTHORITY

On October 2, 2007 the City Council authorized the City Manager to negotiate and execute mutual indemnity provisions in donated service agreements, where the City Manager concludes that the benefit received by the City outweighs the risk to the City and the contracts are otherwise within the City Manager's authority to execute. The City Council also approved a framework for a risk analysis to be conducted in conjunction with any recommended mutual indemnity provision.

SCOPE OF APPLICATION

The administrative procedures outlined in this policy apply to all City employees to provide direction when staff receives a request as part of a public/private partnership to include a mutual indemnification provision in a donated services agreement.

DEFINITIONS

An "indemnity provision" means a contractual promise by the person giving the indemnity to protect the other party to the contract against loss or damage. For example, assume a consultant negligently designed a building for the City resulting in a member of the public being injured. The injured person probably would sue the City as the owner of the building and may or may not sue the consultant who designed the building. In the absence of an express indemnity provision in the contract with the consultant, the City might be able to bring the consultant into the lawsuit, if the consultant was not sued by the injured party; and the City could shift liability to the consultant to the extent the injury was caused by the consultant's negligence or breach of contractual obligation.

A "limited indemnity" provision means a party in a contractual agreement only agrees to pay for loss or damage under specified circumstances.

A "mutual indemnity" provision means both parties in a contractual agreement agree to protect the other party against loss or damage.

A "public-private partnership" means agreements between the City and businesses, nonprofit organizations, or individual donors to enhance the improvement, operation, and/or maintenance of public facilities beyond levels possible through current City funding. Public-private partnerships do not include situations in which the City pays fair market value for services.

Indemnification Risk Assessment

This form is required for requests that the City provide mutual or limited indemnity provisions in contracts involving donated services. Must be completed prior to contract approval.

- Internal Form -

Date Submitted: _____ **Lead Department:** _____

Partner/Contractor Name: _____

To be completed by the Lead Department in coordination with the City Attorney's Office and Risk Management, and Public Works if applicable.

1. Provide a brief summary of the scope, and schedule of the project including a description of the services to be donated and the estimated fair market value of the donation to be received from the donor (or "see attached"):
2. Contract amount (maximum payable by City):
3. Partner requesting: Mutual Indemnification Limitation of Liability
Provide the language of the indemnification that the City is asked to sign and a brief description of the justification:

4. Describe applicability of the following criteria to the proposed contract:

a. Provider's experience with similar projects or services	
b. Provider's history of liability claims on similar projects or services	
c. Provider's insurance coverage for the project or service	
d. Provider's quality control measures for workmanship and manufacturer's warranty	
e. Provider's conformance with engineering specifications and plan review	
f. Inspection by City staff to ensure compliance with specifications	
g. Community benefits of project	
h. Impact on existing resources	

5. Identify the staff person(s) that was coordinated with in the Departments listed below:

Risk Management: _____ Attorney's Office: _____

Public Works: _____ Other: _____

I have reviewed the risk assessment described above, determined that the benefit to City outweighs risk undertaken by the City, and recommend contract approval.

Lead Department Head

Date

RECOMMENDED:

Title

Date

APPROVED:

City Manager

Date