

South Dakota Public Assurance Alliance

Insurance Clause Language and Hold Harmless/Indemnification Clause Language for Contracts and Agreements

Local governmental agencies frequently enter into contracts and agreements for a wide range of services and goods. When providing these services and goods, a contractor or vendor could potentially cause damages to a third party for which the local government entity may be held liable. To address the liability exposures these contracts and agreements create, it is important that contracts contain adequate hold harmless/indemnification and insurance requirements language, and that certain requirements are met. SDPAA has established the following guidelines to assist local governments in practicing contract and agreement risk management.

HOLD HARMLESS/INDEMNIFICATION CLAUSE

All contracts and agreements should contain an adequate hold harmless/indemnification clause which ensures that the party responsible for actions resulting in claims for damages becomes financially responsible for those claims.

SDPAA Recommended HOLD HARMLESS/INDEMNIFICATION Clause

(Contractor) agrees to indemnify and hold the (Name of Entity), its officers, agents, and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require (Contractor) to be responsible for or to defend against claims or damages arising solely from errors or omissions of the (Name of Entity), its officers, agents, or employees.

INSURANCE REQUIREMENTS

All contracts and agreements should require commercial general liability, or its equivalent, worker's compensation, and automobile liability. Professional liability coverage is required for medical professionals, attorneys, architects, engineers, accountants, or financial planners.

Contracts for certain types of services may present a higher level of risk. **Be mindful that the amount paid for goods or services is not an accurate indication of a contract's or agreement's loss exposure.** In cases of particular high levels of risk, request copies of the contractor's insurance policies to review for adequate coverage and limits, and acceptable deductibles.

Depending upon the nature of the contracted services, coverages not included in a general liability policy may be necessary (i.e. pollution liability coverage). If you are uncertain as to the level of risk involved in the contract or agreement, the type of coverage or limits of liability coverage necessary, contact the SDPAA at sdpaa@sdmunicipalleague.org or 800.658.3633.

If a contractor is permitted to hire subcontractors, the contract should include language which subjects the subcontractor(s) to the same hold harmless/indemnification and insurance requirements.

To verify that the contractor or vendor has insurance coverage required in the contract or agreement, and that the entity and its employees are named as additional insureds, Certificates of Insurance should be required.

All contracts and agreements should be reviewed by your attorney.

SDPAA recommended INSURANCE REQUIREMENTS

(Contractor) shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall add the (Name of Entity) and its employees as additional insureds.

(Contractor) shall maintain business automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

(Contractor) shall procure and maintain workers' compensation and employers' liability as required by South Dakota law.

If any alcoholic beverages are involved, including beer or wine, the following language should be added to the Insurance Requirements:

(Contractor) shall maintain Liquor Liability insurance with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall add the (Name of Entity) and its employees as additional insureds.