



ADMINISTRATIVE MEMORANDUM COUNTY OF SAN MATEO

NUMBER: C-1

SUBJECT: Hold Harmless and Insurance Language for Agreements with Independent Contractors

RESPONSIBLE DEPARTMENT: County Attorney's Office

APPROVED:  **DATE:** 3/30/23
Michael Callagy, County Executive Officer

This Administrative Memorandum rescinds and replaces Administrative Memorandum C-1, dated January 26, 2015, making minor revisions and updates to the policy of Hold Harmless and Insurance Clauses for Agreement with Independent Contractors.

To protect the County's self-insurance program and to assure excess insurance carriers that the County is dealing with responsible contractors, and to effectuate the public policy that contractors take appropriate legal responsibility for their actions, the following hold harmless and insurance language will be included in contracts with independent contractors. It is the responsibility of each department head to see that the hold harmless and insurance requirements are met.

In certain situations, it may be appropriate to use the mutual hold harmless language (provided below) instead of the standard hold harmless language, and the County Attorney's Office shall be consulted regarding the use of the mutual hold harmless language in those situations. Situations warranting use of the mutual hold harmless language might include agreements with other governmental entities or situations involving a community-based organization (CBO) where it makes sense as a policy matter to have the County and the CBO indemnify each other. The mutual hold harmless language is intended to be more flexible than the standard hold harmless, and the County Attorney's Office can recommend use of alternative language when appropriate.

This memorandum acknowledges that in relation to a specific contract the department may be unable to get an independent contractor to agree to the hold harmless language and/or there may be reasons to modify the insurance requirements. Changes to the standard hold harmless language and/or insurance requirements are permitted pursuant to this memorandum only to the extent that all such changes are in the best interests of the County as indicated by the approval of the department and subsequent review and advice of the County Attorney's Office and the Department of Human Resource's Risk Management Division (Risk Management).

When making decisions about which insurance to include, the department should rely upon guidance provided by Risk Management, but most contracts for services should include comprehensive general liability (CGL) and workers' compensation/employment liability coverage. To the extent that the vendor is using motor vehicles as part of the services outlined by the agreement, the motor vehicle coverage should be included. And to the extent the vendor is providing professional services, especially services provided by anyone who maintains a professional license (for example, doctors, lawyers, nurses, therapists, architects, engineers, etc.), professional liability coverage should be included. The amounts listed below are standard amounts that can be increased with input from Risk Management and the County Attorney's Office if the circumstances of the services warrant additional coverage. If a contractor is unable to secure insurance coverage in the listed amount(s), the department should consult Risk Management to ascertain whether a lesser amount of insurance coverage is acceptable. If the department needs more assistance concerning the types of insurance required or the amounts, Risk Management should be consulted.

The Department of Human Resource's Procurement Division may, with approval of the County Attorney's Office and Risk Management, make changes to the template language listed below. The County's contract template also includes an intellectual property indemnification provision that is to be included when relevant. If a department is unsure whether that provision should be included in a particular agreement, it should consult the County Attorney's Office.

General Hold Harmless:

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Contractor or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

Mutual Hold Harmless (Requires County Attorney's Office and Risk Management consultation):

a. *It is agreed that Contractor shall defend, hold harmless, and indemnify County and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms*

and conditions of this Agreement and which result from the acts or omissions of Contractor and/or its officers, employees, agents, and servants.

b. Contractor shall defend, hold harmless, and indemnify County from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Contractor's representatives for services provided under this Agreement.

c. It is agreed that County shall defend, save harmless, and indemnify Contractor and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of County and/or its officers and employees.

d. The duty of each party to defend, hold harmless, and indemnify the other as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

e. In the event of concurrent negligence (or intentional/reckless acts) of County and/or its officers and employees, on the one hand, and Contractor and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative fault.

Insurance:

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. *Liability Insurance*

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability \$1,000,000*
- (b) Motor Vehicle Liability Insurance \$1,000,000*
- (c) Professional Liability \$1,000,000*

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.
