Sacramento City Unified School District

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2023-24 NO. BS-31

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DATE: March 6, 2024

TO: All Principals, Administrators, Admin Assistants, and Office Managers

FROM: Janea Marking, Chief Business and Operations Officer

RE: District Standards for Vendor Insurance Minimums

The purpose of this bulletin is to provide information on district insurance requirements. Board Policy 3530 requires a risk management program that protects district resources and promotes safety of students, staff, and the public. Insurance is required for all engagements, including student interaction, professional services, technology, and construction/remodeling projects.

School Insurance Authority (SIA), the district's insuring agent, requires staff to

- Uphold board policies
- Implement the district Risk Management Program per the thresholds established

During a recent contract audit process, it was identified that the district was not applying insurance requirements consistently. In an effort to minimize the district's risk of liability, we are working toward ensuring all vendors meet minimum requirements.

- All vendors must provide a Certificate of Insurance. The insurance coverage depends on the type of services. The Quick Reference guide attached provides minimums and higher risk activities that may warrant additional insurance based on district determination; for more detailed information, SCUSD Contracts Process.
- Vendors with a current year Purchase Order may continue providing services through June 30, 2024, or expiration of the contract term, with no additional paperwork.
- For new contracts through June 30, 2024, and all contracts as of July 1, 2024, vendors are expected to meet all minimum threshold requirements before a purchase order can be approved.
- Vendors must have an approved Purchase Order before beginning services.

- All vendors are required to have background checks/fingerprints prior to services.

- A Data Share Agreement is required if the use of services or products requires access to district data. This document is intended to ensure that data security and privacy requirements will be met by outside agencies with access to district information. Contact Technology Services at support@scusd.edu to request the initiation of a Data Sharing Agreement or to ask questions.

Going forward, anyone not meeting minimum requirements will not be able to contract with the district until all requirements are met, with no exceptions. Additionally, vendors can not be paid without an approved purchase order or board approval. We appreciate that you share in the priority to maintain a safe and healthy environment for our students, staff, and community.

Risk Management and Purchasing teams are always available to answer questions about the process. Please feel free to contact Risk Management at (916) 643-9421 or Purchasing Services at (916) 643-9465. You may also visit our website at www.scusd.edu.

A copy of this communication has been sent to all vendors.

Attachments: Insurance Coverages and Limits Quick Reference
Insurance and Indemnity Guide for Contracts

Insurance Coverages and Limits
Quick Reference

NOTE: ***This document is to be used as a general guide only, as the specific risk factors for each project, activity and event must be evaluated to determine the appropriate limits.***

- **Professional Services** – Services from an accountant, architect, attorney, claims administration firm, consultant, insurance broker, engineer, financial advisor, medical professional, or other person who maintains a professional license.

  Requirements

  Professional Liability: $2M limits
  Cyber Liability: $1M - $2M limits or higher
  General Liability: $1M - $2M limits
  Workers Compensation: Statutory limits

- **Student Interaction (1-on-1 or large groups)** – Projects involving hired/volunteer adults working with students in school activities, therapy, recreational programs, athletics, studies, or any activities involving the custodial care of children.

Requirements for 1-on-1 Student Interaction
Sexual Abuse Molestation (SAM): $3M - $5M limits
General Liability: $2M - $4M limits
Workers Compensation: Statutory limits

Requirements for Large Groups Student Interaction
Sexual Abuse Molestation (SAM): $1M - $3M limits
General Liability: $2M - $4M limits
Workers Compensation: Statutory limits

IMPORTANT:

- Each contract/agreement must be clear that contractors working with students must have background checks, be fingerprinted, and supervised by staff while on campus.
- One-on-one interaction with students is prohibited unless supervised by staff.
- Limitations on where the contractors are allowed to travel on campus must be clarified in the agreements, as well.

- **Technology Vendors - Software Hardware**

  Requirements

  Professional Liability: $2M limits
  Cyber Liability: $1M - $2M limits or higher
  General Liability: $1M - $2M limits
  Workers Compensation: Statutory limits
  Data Share agreement requirements

- **Construction or Remodeling Projects**

  Requirements

  Pollution Liability: $2M - $10M limits
  Builders Risk/Course of Construction: based on cost of project
  General Liability: - $2M - $30M limits or higher
  Workers Compensation: Statutory limits

- **Hazardous or Waste Materials** – Removal of asbestos or lead-based paint; or the use, application, transport, removal, cleanup, or disposal of hazardous material

  Requirements

  Pollution Liability: $2M - $10M limits
  General Liability: $2M - $10M limits or higher
  Workers Compensation: Statutory limits

Insurance and Indemnity in Contracts: A Guide to Risk Transfer Fundamentals

REVISED February 2024

Contents

Purpose 4

Section 1 Contractual Risk Transfer: Overview and Miscellaneous Definitions 5

Contractual Risk Transfer 5

Indemnity 5

Insurance 5

Certificate of Insurance 5

Additional Insured Endorsement 5

Endorsement Forms 6

Limits of Insurance 6

Limitations of Liability clauses 6

"Occurrence" vs. "Claims-Made" policy forms 6

Primary Insurance language 6

Section 2 7

The Risk Matrix 7

Table 1: Determining Risk Levels 7

Table 2: Determining Limits 8

Section 3 9

Insurance Language Templates for Risk Categories 1-3 9

Category 1 "Low Risk" 9

Insurance Requirements 9

Category 2 "Intermediate Risk" 10

Insurance Requirements 10

Category 3 "High Risk" 12

Insurance Requirements 12

Section 4 14

Ancillary Coverage Requirements 14

Ancillary Insurance Requirements Sample Language 15

Section 5 17

Indemnity Language Samples 17

Indemnity Language – Standard 17

Indemnity Language – Professional Services 17

Indemnity for Professional Liability 17

Indemnity for Other Than Professional Liability 17

Indemnity Language – Construction Contracts 18
Indemnity Language – Facility Use 18
Section 6 19
Core Insurance Coverages Defined 19
Commercial General Liability 19
Auto Liability 19
Professional Liability (Errors & Omissions) 19
Workers' Compensation 19
Contact Information 21

Purpose

This document provides indemnity language and insurance requirements samples for our members to use when drawing up contracts and agreements, while also providing definitions and descriptions of general risk transfer fundamentals. It is meant to be used as a guide and to encourage SIA members to assess a project's **level of risk** when determining insurance and indemnity requirements, as opposed to the project's cost and/or size of the project.

These recommendations follow generally accepted risk transfer principles and can be used in conjunction with larger, more comprehensive risk transfer manuals. Please contact Risk Manager Joe Costamagna at jcostamagna@sia-jpa.org with any questions or to evaluate the risk level of a specific project. We will continue to update this manual as conditions change and as member input dictates.

(This document is not to be construed as legal advice. Please have all indemnity language approved by legal counsel.)

Section 1
Contractual Risk Transfer: Overview and Miscellaneous Definitions

Contractual Risk Transfer

When entering into a contract or agreement with another party, the responsibility for liability claims arising from the project should be assumed by the party in control of the work or service. In most cases, this will mean suppliers, contractors, consultants, tenants, and users of district facilities will agree to indemnify the district and provide liability insurance coverage to the district for most claims that arise from the project.

> ***IN SHORT: Contractual Risk Transfer is assigning the liability of a project or activity to another party via contract.***

Two Key Elements of Risk Transfer

1. Indemnity – a legally binding promise from one party to defend and hold harmless another party in case of a claim or legal action. (See Appendix A for sample indemnity clauses)

2. Insurance – provides the indemnitor financial and legal resources to support their indemnity obligations

Indemnity

Indemnity is a contractual obligation and is in force as soon as the contract is signed. It is also enforceable separately from the insurance requirements. Meaning, if the indemnitor's insurance does not respond to a claim, the indemnitor still has a legal duty to indemnify. *An indemnity agreement's obligations can be significantly altered by the addition or deletion of just a few words. Be sure to have an attorney and/or risk manager review any indemnity agreement before agreeing to it.*

> ***DEFINED: An INDEMNITOR is providing indemnity to another party. An INDEMNITEE is the party being indemnified.***

Insurance

Terms and limits are required in the contract and evidenced via *certificates of insurance* and *endorsements*.

Certificate of Insurance – an insurance form which serves as proof of the vendor's/contractor's financial ability (via an insurance policy) to respond to a claim. This form is not an insurance contract and is for information purposes only. The certificate does not amend, extend or alter the coverage afforded by any policies listed and merely serves as evidence that the third party (contractor, vendor, user of facility, etc.) has a policy of insurance at the time the certificate is issued.

Additional Insured Endorsement – The indemnified party (the indemnitee) will require it be added to the liability policy of the indemnitor. To confirm that liability coverage is being provided by the indemnitor, an Additional Insured endorsement must be provided. The certificate alone does not carry the authority to change or alter coverage, thus the need for an endorsement.

IN SHORT: As an "Additional Insured", the District is entitled to coverage from the other party's General Liability insurance policy. The Additional Insured Endorsement is very important to secure and confirm that it is in place for all projects where this is a requirement.

Endorsement Forms

Most endorsements the district will receive are standard industry forms issued by the Insurance Services Office (ISO) and will carry specific numbers depending on the type of coverage it is addressing and the function the endorsement is performing. For example, a common ISO endorsement form number is CG 20 10 04 13. It is a liability form, and the "CG" stands for "Commercial General". The last four digits represent the revision date of that particular form (April 2013, in this case). Insurance carriers will often develop their own endorsement forms and give them custom numbers. These custom forms are typically acceptable but should be reviewed by an experienced risk manager to confirm the appropriate coverage is being provided.

Limits of Insurance

A policy's limit is the most that policy will pay out for a given occurrence (event). An aggregate limit is the most that a policy will pay out in total over the policy year. If it is determined that a project presents higher risk to the district, the district should require higher limits from the vendor/contractor. Please refer to the matrix for guidance on appropriate limits to require for each risk level.

Limitations of Liability clauses

This clause may appear in a contract prepared by another party and will state the other party's liability – regardless of what limits are agreed upon in the insurance section of that contract – shall be limited to the cost of the project. Meaning, if the project cost is $60,000, the vendor/contractor will only provide liability coverage up to $60,000 for any claim, even if the insurance section stated $2,000,000 per occurrence as the agreed-upon limit. These Limitations of Liability can be deleted or negotiated; consult with your attorney or risk manager.

"Occurrence" vs. "Claims-Made" policy forms

"Occurrence" forms are the most common and desired forms for general liability and auto liability policies. Occurrence forms state that the policy that was in force when a given claim occurred will address that claim. With a "claims-made" form, the policy that is in force at the time the claim is made is the policy that will respond to the claim. Virtually all professional liability policies use a claims-made form, so it is recommended to include a requirement for proof of continuous coverage for several years (typically 3 years or 5 years), or to commit providing "tail coverage" if that claims-made policy is cancelled or non-renewed.

Primary Insurance language

When a contract calls for another party's coverage to be "primary and non-contributory", it simply means that when a claim occurs the other party's insurance will be triggered first (primary) and be responsible for the claim costs, not seeking contribution (non-contributory) from the party that is to be covered. SIA prefers to have this language present in contracts where risk is being transferred to another party.

Section 2
The Risk Matrix

INSTRUCTIONS: Risk Categories are determined by evaluating all factors that could increase the district's liability for each project. Once the Risk Category is determined, utilize Exhibit 2 to select insurance terms.

Table 1:
Determining Risk Levels

Risk Category	Risk Level	Examples*
1	Low	• Vending machine providers & maintenance • Facilities use (ex: use of field or blacktop) • Special events • Most professional service providers • General handywork contracts
2	Intermediate	• Construction contracts • Technology consultants • Facilities use (ex: heavily trafficked indoor events) • Special events
3	High	• Major construction contracts • Garbage haulers • Fireworks providers
Other	Undefined	• The risk is unique • Custom insurance requirements needed

*** Please be aware of all activities that are excluded in the Memorandum of Liability Coverage (MOLC)!**

Table 2:
Determining Limits

Risk Category	Workers' Compensation	General Liability	Auto Liability
1	Statutory Employer's Liability $1,000,000	$2,000,000 per occurrence Aggregate minimum limit = 2x the "per occurrence" limit of primary layer	$2,000,000 per accident
2	Statutory Employer's Liability $1,000,000	$3,000,000 - $5,000,000 per occurrence Aggregate minimum limit = 2x the "per occurrence" limit of primary layer	$3,000,000 - $5,000,000 per accident (match the GL "per occurrence" limit)
3	Statutory Employer's Liability $1,000,000	$5,000,000+ per occurrence Aggregate minimum limit = 2x the "per occurrence" limit of primary layer	$5,000,000+ per accident (match the GL "per occurrence" limit)
Other	Consult with Risk Management Professionals	Consult with Risk Management Professionals	Consult with Risk Management Professionals

Section 3
Insurance Language Templates for Risk Categories 1-3

Category 1 "Low Risk"

Insurance Requirements

I. Commercial General Liability

a. Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office (ISO) form CG 00 01, in an amount not less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Vendor's general liability policies shall be primary and shall not seek contribution from the District's coverage and be endorsed with a form at least as broad as ISO form CG 20 10 or CG 20 26 to provide that District and its officers, officials, employees, and volunteers shall be additional insureds under such policies. For remodeling and new construction projects, an endorsement providing completed operations coverage for the additional insured, at least as broad as ISO CG 20 37, is also required.

II. Business Automobile Liability

a. Vendor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than two million dollars ($2,000,000) per accident.

III. Workers' Compensation and Employers' Liability

a. Vendor shall maintain Workers' Compensation Insurance with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Vendor shall submit to District, along with the certificate of insurance, a waiver of subrogation endorsement in favor of District.

IV. All Coverages

a. Each insurance policy required by the agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the District, except that ten (10)

days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

b. All self-insured retentions and deductibles above $100,000 must be declared to and approved by the District.

c. Evidence of Insurance - Prior to commencement of work, the Vendor shall furnish the District with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Vendor must agree to provide complete, certified copies of all required insurance policies if requested by the District.

d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

e. Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. However, insurance requirements may be determined on a "per subcontractor" basis, considering the particular work to be done by the subcontractor.

Category 2 "Intermediate Risk"

Insurance Requirements

I. Commercial General Liability

a. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office (ISO) form CG 00 01, in an amount not less than three million dollars ($3,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Contractor's general liability policies shall be primary and shall not seek contribution from the District's coverage and be endorsed with a form at least as broad as ISO form CG 20 10 or CG 20 26 to provide that District and its officers, officials, employees, and volunteers shall be additional insureds under such policies. For remodeling and new construction projects, an endorsement providing completed operations coverage for the additional insured, at least as broad as ISO CG 20 37, is also required.

b. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided to the District.

c. Coverage shall contain a waiver of subrogation in favor of the District.

II. Business Automobile Liability

a. Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than three million dollars ($3,000,000) per accident.

III. Workers' Compensation and Employers' Liability

a. Contractor shall maintain Workers' Compensation Insurance with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Contractor shall submit to District, along with the certificate of insurance, a waiver of subrogation endorsement in favor of District.

IV. All Coverages

a. Each insurance policy required by the agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the District, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

b. All self-insured retentions and deductibles above $100,000 must be declared to and approved by the District.

c. Evidence of Insurance - Prior to commencement of work, the Contractor shall furnish the District with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Contractor must agree to provide complete, certified copies of all required insurance policies if requested by the District.

d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

e. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. However, insurance requirements may be determined on a "per subcontractor" basis, considering the particular work to be done by the subcontractor.

Category 3 "High Risk"

Insurance Requirements

I. Commercial General Liability

a. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office (ISO) form CG 00 01, in an amount not less than five million dollars ($5,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Contractor's general liability policies shall be primary and shall not seek contribution from the District's coverage and be endorsed with a form at least as broad as ISO form CG 20 10 or CG 20 26 to provide that District and its officers, officials, employees, and volunteers shall be additional insureds under such policies. For remodeling and new construction projects, an endorsement providing completed operations coverage for the additional insured, at least as broad as ISO CG 20 37, is also required.

b. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided to the District.

c. Coverage shall contain a waiver of subrogation in favor of the District.

II. Business Automobile Liability

a. Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than five million dollars ($5,000,000) per accident.

III. Workers' Compensation and Employers' Liability

a. Contractor shall maintain Workers' Compensation Insurance with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. Contractor shall submit to District, along with the certificate of insurance, a waiver of subrogation endorsement in favor of District.

IV. All Coverages

a. Each insurance policy required by the agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the District, except that ten (10)

days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

b. All self-insured retentions and deductibles above $100,000 must be declared to and approved by the District.

c. Evidence of Insurance - Prior to commencement of work, the Contractor shall furnish the District with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Contractor must agree to provide complete, certified copies of all required insurance policies if requested by the District.

d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

e. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. However, insurance requirements may be determined on a "per subcontractor" basis, considering the particular work to be done by the subcontractor.

Section 4
Ancillary Coverage Requirements

Contract Activity Involving:	Sexual Abuse-Molestation (SAM) $3M-$5M	Cyber Liability $1M-$2M	Professional Liability $2M	Pollution Liability $2M	Builders Risk
Student Interaction – Projects involving hired/volunteer adults working with students in school activities, therapy, recreational programs, athletics, studies, or any activities involving the custodial care of children.	X				
Professional Services - Services from an accountant, architect, attorney, claims administration firm, consultant, insurance broker, engineer, financial advisor, medical professional, or other person who maintains a professional license.		X	X		
Technology Vendors		X	X		
Construction or Remodeling Projects				X	X
Hazardous or Waste Materials - Removal of asbestos or lead-based paint; or the use, application, transport, removal, cleanup, or disposal of hazardous material				X	

Ancillary Insurance Requirements
Sample Language

Following are suggested insurance language samples if Ancillary Coverages are recommended. Please consult with your risk manager for customized limits and language for specific circumstances.

I. Sexual Abuse and Molestation Insurance

a. Sexual Abuse and Molestation Insurance is required with a maximum limit of five million dollars ($5,000,000) per occurrence. This insurance shall cover potential claims of sexual abuse or molestation.

Requirements for 1-on-1 Student Interaction
Sexual Abuse Molestation (SAM): $3M - $5M limits

Requirements for Large Groups Student Interaction
Sexual Abuse Molestation (SAM): $1M - $3M limits

IMPORTANT:

- Each contract/agreement must be clear that contractors working with students must have background checks, be fingerprinted, and supervised by staff while on campus.
- One-on-one interaction with students is prohibited unless supervised by staff.
- Limitations on where the contractors are allowed to travel on campus must be clarified in the agreements, as well.

b. The Sexual Abuse and Molestation coverage must either be included under a General Liability policy or obtained in a separate policy. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Contractor agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

II. Cyber Liability Insurance -- *(NOTE: Districts should ensure any technology agreements which include student personal identifiable information also have appropriate Student Data Privacy Agreement [SDPA] language in place. This is separate from Cyber Liability Insurance.)*

a. Cyber Liability Insurance is required with limits not less than two million dollars ($2,000,000) per claim.

b. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

III. Professional Liability Insurance

a. Contractor shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars ($2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Contractor agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

IV. Builders Risk Insurance

a. Contractor shall obtain and maintain Builders Risk/Course of Construction insurance. Policy shall be provided for replacement value on an "all-risk" basis, including earthquake and flood. The District shall be named as Loss Payee on the policy and there shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the project; (2) “Installation Floater” coverage with limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site. Such insurance shall be on a form acceptable to District to ensure adequacy of terms and limits. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to District.

b. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

V. Pollution Liability Insurance

a. Pollution Coverage shall be provided for liability arising out of sudden, accidental and/or gradual pollution and remediation. The policy limit shall be no less than two million dollars ($2,000,000) per claim. All activities contemplated in this agreement shall be specifically scheduled on the policy as “covered operations.” The policy shall also provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

b. The policy shall be endorsed to include the District, its officers, employees, and volunteers as insureds.

Section 5
Indemnity Language Samples

(Please note that these are examples only. Indemnity language can and should be customized to fit the specific risks and commitments of a project. The following examples represent common scenarios and language that could fit those scenarios.)

Indemnity Language – Standard

Vendor shall indemnify, defend, and hold harmless the District, its officers, employees, agents and volunteers, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, arising out of the Vendor's performance of its obligations under this agreement or out of the operations conducted by Vendor, except for such loss or damage arising from the sole negligence or willful misconduct of the District. In the event the District is made a party to any action, lawsuit, or other adversarial proceeding arising from Vendor's performance of this agreement, the Vendor shall provide a defense to the District, or at the District's option, reimburse the District for its costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

Indemnity Language – Professional Services

(Include both paragraphs in the Indemnity section of the contract)

Indemnity for Professional Liability:
When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless District and any and all of its officials, employees and volunteers from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant is responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant and the District in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:
Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless District, and any and all of its employees, officials and volunteers from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or District for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the District.

Indemnity Language – Construction Contracts

(Note: Indemnity language in construction contracts is prohibited by California Civil Code 2782 to require the contractor to indemnify for the project owner's active negligence, thus "active negligence" must be listed as an exception as shown below. If this civil code is violated, the entire indemnity agreement may be deemed null and void. Please contact Joe Costamagna with any questions.)

Contractor shall indemnify, defend, and hold harmless the District, its officers, employees, agents and volunteers, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, arising out of the Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the District. In the event the District is made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor shall provide a defense to the District, or at the District's option, reimburse the District its costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

Indemnity Language – Facility Use

Permitee shall indemnify, defend, and hold harmless the District, its officers, employees, agents and volunteers, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Permitee's performance of its obligations under this agreement or out of the operations conducted by Permitee, except for such loss or damage arising from the sole negligence or willful misconduct of the District. In the event the District is made a party to any action, lawsuit, or other adversarial proceeding arising from Permitee's performance of this agreement, the Permitee shall provide a defense to the District, or at the District's option, reimburse the District for its costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

Section 6
Core Insurance Coverages Defined

Commercial General Liability

- Covers the policyholder's liability for:
  - bodily injury
  - personal injury
  - property damage
- Should be a requirement in virtually all District contracts and agreements.
- The District should also require it be named as an **"Additional Insured"** on the General Liability policies of its contractors, vendors and consultants.
- Standard minimum limits are $2M per occurrence/$4M aggregate. **Limits should be increased (or decreased) based on level of risk of project.**

Auto Liability

- Covers the policyholder's liability for bodily injury and property damage to other parties due to the operation of a vehicle.
- **General Liability EXCLUDES Auto Liability claims.**
- Auto Liability is a significant exposure and should be required in limits equal to that of General Liability, in most cases.

Professional Liability (Errors & Omissions)

- Covers the policyholder's liability for "financial loss" claims that are not typically covered by General Liability.
- Should be required for any consultant contracts, design/architectural work, software implementations and legal work that may result in financial loss to the District. Think of it as "Bad Advice" insurance.
- Beware of and reject **"Limitations of Liability"** contract language based on the cost of the project (common in Professional Service Agreements).
- The District does NOT ask for an Additional Insured endorsement for this coverage.
- Standard minimum limits required are $2M per claim, but $1M can be acceptable.

Workers' Compensation

- Covers the policyholder's statutory obligation to provide medical benefits and disability income for all employee (on-the-job) injuries and illnesses.
- Should be a requirement for all contracts, unless contractor can verify that they have no employees.
- The District does NOT ask for an Additional Insured endorsement for this coverage.

- **Waiver of Subrogation** should also be required whenever another party's employees are working on District premises.
    - "Subrogation" allows an insurance carrier to pursue recovering its claims costs from another party that may have contributed to the claim.
    - We require that the contractor's insurance carrier **forfeit this right to subrogate** (recover claims costs from us) by providing us with a Waiver of Subrogation.

Contact Information

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Please reach out anytime for clarifications, questions, content recommendations for this guide, or to discuss the risk factors of your next project. Thank you.