


Contracts and Risk Management

Yosemite Community College District
Fiscal Services
www.yosemite.edu/fiscalservices/



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- A contract is an agreement between two or more competent parties enforceable by law.
 - Other terms for contract include:
 - Agreement
 - Memorandum of Understanding (MOU)


What is a Contract?

- The essential elements necessary to form a binding, legal contract are usually described as:
 - Offer
 - Acceptance of the offer
 - Legal purpose of the offer (Objective of the contract)
 - Consideration exchanged between parties (Both parties get something from the contract. The consideration does not need to be monetary.)
 - Mutuality of obligation (Both parties understand the terms of the contract and agree to perform their obligations.)
 - Competent parties (Signers must be authorized to sign contracts on behalf of the contracting parties.)

What is a Contract?

- Since a contract, once fully executed, obligates both parties to the designated terms, make sure of the following:
 - Start Date: Make sure you have a reasonable start date.
 - End Date: Make sure there is an end date. Contract terminations can be anywhere from a couple of days to five years from the start date. For longer contracts, a 30-day notice of cancellation from either party is a good practice.
 - Facilities: If facilities or technology are required, make sure the college is able to provide it. Check with the appropriate department.
 - Indemnification Clause: Make sure it is reciprocal and not one-sided (in the other agency's favor). Contact Risk Management if you have any questions.
- Templates are available on the Risk Management website.

What is a Contract?


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- Risk is the potential for an activity or event to result in an injury or loss.
 - Risk Management is the process of identifying, assessing, and analyzing hazards and recommending methods to reduce or eliminate those hazards.

By managing risk effectively, it is expected that we will have fewer losses, pay for less liability, and therefore lower insurance premiums.

What is Risk?

- Best way to manage risk is avoidance, controlling, or transferring through means of contracts and/or insurance.
- Additionally, requiring contractors to carry sufficient insurance to cover losses and to name the Yosemite CCD as an Additional Insured may lower the cost of claims to District's insurance.


Managing Risk

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- A Certificate of Insurance provides proof that the Contractor has sufficient insurance coverage to handle any losses associated with their services.
 - The Yosemite Community College District would be named Certificate Holder. *This alone does not afford YCCD sufficient protection against claims.*
 - Additional Insured is an endorsement that would add YCCD to the Contractor's insurance policy. *This provides us with adequate protection against claims.*


Certificate of Insurance, Additional Insured

- An indemnification/hold harmless clause is a contractual agreement where one party assumes the liability of another.
- For instance, if a contract that contains a hold harmless clause is signed and a case goes to trial or is settled, the party who agreed to indemnify another may be held responsible for the other party's defense costs, as well as the entire settlement or judgment against that other party.

Indemnification/ Hold Harmless Clause

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- YCCD prefers to have a “Reciprocal” indemnification/hold harmless clause.
 - This holds each party responsible for their own costs of liability.
 - YCCD has a Standard Indemnification Clause that we prefer to be used in contracts.

Indemnification/ Hold Harmless Clause



“Each of the parties hereto shall be solely liable for actively negligent or wrongful acts or omissions of its representatives and employees occurring in the performance of this Agreement, and if either party becomes liable for damages caused by its representatives and employees, it shall pay such damages without contribution by the other party. Each party hereto agrees to indemnify, defend, and save harmless the other party, its officers, agents, and employees from any and all claims and losses proximately caused by the party’s active negligent or wrongful acts or omissions.”

Standard Indemnification Clause in YCCD Contracts

- Insurance should be sufficient to cover any potential losses that may occur during the course of the contract.
- YCCD's minimum requirement is as follows:
 - \$1 million each occurrence
 - \$2 million aggregate
 - \$1 million automobile liability (if the contractor plans to have a vehicle on District property)
- Certain activities/events may have higher risks, so the insurance limits will be higher. Check with Risk Management.

Insurance Requirements

- Subrogation is a legal right that is reserved by most insurance carriers.
- It is the right for an insurer to pursue a third party that caused an insurance loss/claim to the insured.
- This is done as a means of recovering the amount of the claim paid to the insured for the loss.


Subrogation

- A Waiver of Subrogation clause is often inserted into contracts in order to prevent one insurance company from claiming restitution from another.
- It is most commonly used with respect to workers' compensation.
- ASCIP's Memorandum of Coverage with the VIPJPA directs that we not sign agreements waiving their right to subrogation.

Waiver of Subrogation

- Board Policy and Procedures 6340
https://www.yosemite.edu/trustees/board_policy/6340%20Bids%20and%20Contracts.pdf
- Per Board Resolution, contract signing is delegated to:
 - Chancellor,
 - Executive Vice Chancellor, or
 - Vice Chancellor
- Original contracts are processed and filed in the Office of the Executive Vice Chancellor

Contract Processing at YCCD₁₄

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- The Board of Trustees designates certain administrators with certain authority. These designees are described in a Resolution approved by the Board in June.
 - No one other than these designated administrators have the Board's authority to obligate the District in any business transactions.

Authorization to Sign Resolution⁵

- Contracts refer to agreements between YCCD and outside agencies.
- Types include:
 - Construction Projects (Purchasing bid process)*
 - Grant Programs (Grants Office process)*
 - Facilities Usage Agreements (FUA) (College process)*
 - All other contracts, including Instructional Agreements (Contract Cover Sheet process)

**These contracts receive college approval through different processes, so they do not require the Contract Cover Sheet. Contact Purchasing, Grants, or College Facilities units for directions to complete their processes.*

Types of Contracts

- Any contract that is not a construction project, grant program, or FUA must follow the Contract Cover Sheet process.
- Why?
 - To provide a summary description of the purpose for the contract and identify it with college goals
 - To collect the appropriate college administrative approval before sending to District for the obligatory signatures
 - To simplify the cataloging and filing of the contract
 - Because it is part of District Procedure 3340

Contract Cover Sheet Process 17

Contract Cover Sheet is located at www.yosemite.edu/contracts/ContractForms.htm

Contractor is the name of the outside agency.

College administrative approvals are important to show that the college supports this contracted activity.

Risk Management checks for insurance and indemnification language.

CONTRACT/AGREEMENT COVER SHEET

Returned to:
Date returned:

Instructions: Complete and attach this cover sheet to all contracts, agreements, and memorandums of understanding (MOU) prior to submitting to Teresa Scott, Executive Vice Chancellor, YCCD Fiscal Services. Signed contracts will be returned by interschool mail to the Preparer within 3 to 5 business days unless other arrangements are made with Carrie Sampson, ext. 6531.

PROJECT TITLE: _____

CONTRACTOR/AGENCY: _____

CONTRACT DESCRIPTION/PURPOSE: _____

Contract Amount: _____

Beginning Date: _____ Ending Date: _____

Prepared by: _____ Title: _____ Ext. _____

College Approvals: (Obtain approval signatures before sending contract to the Executive Vice Chancellor's office.)

Project Director _____ Date _____ Division Dean _____ Date _____

Vice President _____ Date _____ President _____ Date _____

IT or Technology Services approval for software or network related contracts: _____ Initials _____

For Risk Management Use Only:

Contains Indemnification/Hold Harmless Clause: Yes No Contains Subrogation Clause: Yes No

Certificate of Insurance Required: Yes No

Comments: _____ Initials: _____

Complete a brief purpose for the contract.

Make sure you have the beginning and ending date of the contract.

Need IT approval to install anything that may affect our network.



Executive Vice Chancellor
Teresa Scott
(209) 575-6530

Executive Assistant
Jennifer Ahlsweide
(209) 575-6531

Risk Manager
Dorothy Pimentel
(209) 575-6963


YCCD Risk Management Services 19

YCCD is part of a self-insured pool called the VIPJPA, created in 1986, to provide insurance coverage for its member districts. Coverage includes workers comp, general liability, property, employment practices, and auto physical damage.

- Valley Insurance Program Joint Powers Agency (VIPJPA)
 - Merced CCD
 - State Center CCD
 - Yosemite CCD
- Administered by the Alliance of Schools for Cooperative Insurance Programs (ASCIP)




YCCD Insurance



ASCIP (Alliance of Schools for Cooperative Insurance Programs) is the administrator for the general and property liability, workers compensation, and automobile coverage for the VIPJPA. It is a nonprofit organization committed to providing risk control services to California public K-12 and community colleges. ASCIP's services include:

- Acquiring insurance coverage at a low premium cost
- Tracking regulations and advising members on compliance
- Providing technical support related to insurance/risk questions
- Providing online and onsite trainings on various topics
- And much more

YCCD Insurance



Member District	Board Member	Alternate Member
Merced CCD	Joanne Schultz, Vice President Trustee Carmen Ramirez	Paul Baxter
State Center CCD	Edwin Eng, President Trustee Eric Payne	Darren Cousineau
Yosemite CCD	Teresa Scott, Treasurer Trustee Abe Rojas	Dorothy Pimentel

VIPJPA Board of Directors

- Any Questions?
- Need a Certificate of Insurance?
- Need contract language reviewed?
- Need claims assistance?
- Contact:
 - Dorothy Pimentel, Risk Manager
(209) 575-6963
pimenteld@yosemite.edu

Need Help?
