

# DIOCESE OF MEMPHIS CONTRACT REVIEW POLICY

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**PURPOSE:** The purpose of this policy is to insure that all of the various entities that are part of the Diocese of Memphis are following the same procedures when making agreements with outside contractors.

In addition, to insure that the liability under the contract is assumed by the proper party and in particular that the Diocese does not agree to any unnecessary hold harmless provisions.

**PROCEDURES:** The following procedures will be followed by all Diocesan entities:

1. All contracts for \$25,000 or more will be reviewed by the Building Commission and approved by the Bishop.
2. All long-term lease agreements must be reviewed by the Chancery. The Addendum to Lease should be attached to all long-term lease agreements or the wording should be incorporated into the lease.
3. All contractors and service people are required to carry three types of insurance (regardless of the size of the contract) and provide proof to you that they have each type. The three types of insurance are:
  - a. General liability
  - b. Workers' Compensation
  - c. Automobile Liability
4. Certificates of Insurance **MUST** be obtained verifying all three of the above types of insurance and naming the parish/institution and the Diocese as an additional insured.
5. A standard contract **AGREEMENT BETWEEN OWNER AND CONTRACTOR** is to be used for small construction jobs including, renovations, small additions, etc. This avoids using different contracts for each contractor.
6. Professional service contracts should be used when contracting for the services of architects and engineers. Contracts should require professional liability insurance to be provided to the parish/institution. Professional service contracts must be reviewed even if their compensation is going to be less than \$10,000.00.
7. The attached contract (Exhibit A) may be used on jobs that involve less than \$10,000.00. If the contractor does not want to use this contract, the contract will have to be reviewed as stated in (1) above.
8. Small routine maintenance jobs do not require the use of contracts.
9. All contracts must be maintained in a central file specifically for certificates of insurance to monitor that the certificates are up to date.
10. All contracts must include a performance bond.

“DRAFT”

AGREEMENT BETWEEN OWNER AND CONTRACTOR

\_\_\_\_\_, hereinafter called the Owner, agrees to pay

Parish/Institution (understood to include the Diocese of \_\_\_\_\_)

\_\_\_\_\_, hereafter called the Contractor, the sum of

\$ \_\_\_\_\_ ( \_\_\_\_\_ ) dollars for the following work:

Partial payment requests will be considered based on a maximum of 95% of materials on the job or in place and labor already accomplished.

The work shall be completed by \_\_\_\_\_, and the Contractor shall provide the following warranties or other documents prior to payment:

The Contractor shall begin the work within seven (7) days of the date of this contract unless other provisions have been made. He shall carry the work forward expeditiously with adequate, qualified workers and shall achieve substantial completion within the contract time.

Neither the final certificate of payment, nor any provisions in the contract, nor partial or entire use of the project by the Owner shall constitute an acceptance thereof if not in accordance with the contract or relieve the Contractor of liability in respect to any express warranties or faulty workmanship/materials within a period of one year.

The Contractor shall indemnify and hold harmless the Owner, its agents, and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the work, which is caused in whole or in part by the negligent act or omission of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them. In case any action is brought therefore against the Owner or any of its agents, employees or Subcontractors, the Contractor shall assume full responsibility for the defense thereof; upon Contractor's failure to do so on proper notice, the Owner reserves the right to defend such action and to charge all costs thereof to the Contractor. The carrying of the insurance required herein shall not relieve the Contractor of the duty of indemnity in the event that such insurance shall be inadequate, for any reason, to protect the Owner in full.

The Contractor shall at all times carry the following insurance coverage:

- A. Workers' Compensation insurance on all his/her employees; he/she will also require all the Subcontractors to carry Worker's Compensation on all their employees. Contractor will indemnify the Owner against any claims made by any employees, Subcontractors, or anyone employed directly or indirectly by any of them. This indemnification is not limited to compensation paid under any Worker's Compensation policy.
- B. General liability insurance in an amount of not less than \$2,000,000 per occurrence. Such insurance shall include the Owner, all Subcontractors, and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Said general liability insurance shall include claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees, claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor or by any other person, and claims for damages, other than to work itself, because of injury to or destruction of tangible property, including loss of use resulting there from.
- C. Automobile liability insurance, covering any and all kinds of motor vehicles, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall include any and all claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of a motor vehicle.

Each of the above listed policies will contain a requirement that, in the event of change or cancellation, ten (10) days' prior written notice will be sent by mail to the Owner.

The contractor shall provide Owner with bonds covering faithful performance of the contract and payment of obligations arising thereunder. The amount of each bond shall be equal to 100% of the contract sum.

Said bond must be executed by a company authorized to do business in the State of TN. The bond will be given to the Owner prior to any work being started.

The contractor will present a list of all the Subcontractors prior to beginning construction. At the conclusion of the job, the Contractor will provide lien waivers from his/her company and from each of the Subcontractors. If any Subcontractor refuses to sign the lien waiver, then the Contractor will provide an invoice from the Subcontractor. This invoice must show that it is the total balance owed on the job and be signed by both the Contractor and the Subcontractor. The Owner will then issue a check payable jointly to the Contractor and the Subcontractor and deduct the amount from the balance owed to the Contractor.

The Contractor shall be responsible for initiating, maintaining, planning, and supervising all safety precautions and programs in connection with the work.

The Contractor will not discriminate against any employee, applicant for employment, or Subcontractor because of race, creed, color, sex, handicap, or national origin.

If the Contractor:

- is adjudged a bankrupt;
- makes a general assignment for the benefit of his creditors;
- has a receiver appointed on account of his insolvency;
- persistently or repeatedly refuses or fails, except in cases for which extension of time is provided to supply enough properly skilled workers or proper materials;
- fails to make prompt payment to Subcontractors or for materials or labor,
- persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction;
- or otherwise is guilty of a substantial violation of a provision of the Contract documents,

then the Owner may, without prejudice to any right or remedy, and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and the contract will be deemed null and void.

Miscellaneous Provisions:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

## ADDENDUM TO CONSTRUCTION CONTRACT

When to use:

- When a parish/institution enters into a construction, renovation, or remodeling contract in excess of \$25,000 with a contractor or architect. For small contractor jobs that are under \$10,000, it is not a requirement for a parish/institution to utilize the Addendum to Construction Contract. However, the parish/institution must still verify that these contractors have liability insurance covering their construction operations at the parish/institution.
- When a contractor is performing an unusual or dangerous construction procedure at a parish/institution. An example of this could be a job involving the use of scaffolding or a job that involves handling hazardous materials.

Purpose:

By attaching the Addendum to Construction Contract to the contract or incorporating its wording into a contract, your parish/institution will satisfy insurance requirements. If the Addendum to Contract is not attached to the contract with a contractor, the wording of the addendum must be incorporated into the contract developed by the parish/institution and the contractor. The parish/institution should always verify that the contractor has named the parish/institution and the Diocese as an additional insured on their general liability insurance policy. It is not adequate for the parish/institution to obtain a certificate of insurance that names the parish/institution as a "certificate holder."

Parishes/institutions often obtain a certificate of insurance, which names the parish/institution as a "certificate holder." It is not adequate to be named as a "certificate holder." As a "certificate holder," the parish/institution has no legal rights under a contractor's insurance policy.

The insurance certificate furnished to the parish/institution by the contractor must indicate in writing that the parish/institution and the Diocese are named as an **additional insured**. When a parish/institution and the Diocese have been named as an additional insured, the insurance policy of the contractor must defend the parish/institution against claims, which resulted from the contractor operations at the parish/institution.

Since a contractor will have to make a specific request to their insurance company to get the parish/institution and Diocese named as an **additional insured**, it is important to inform them of this requirement well in advance.

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## ADDENDUM TO CONSTRUCTION CONTRACT

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**Builder's Risk Insurance:** Builder's Risk and Boiler and Machinery Coverage will be obtained by OWNER to cover the project. Any payment under Builder's Risk or Boiler and Machinery Coverages will be made jointly to OWNER and CONTRACTOR. Further, OWNER and CONTRACTOR agree that any payment under Builder's Risk or Boiler and Machinery Coverages will be placed into a joint account until such funds are reinvested in the construction project.

**General Liability Insurance:** While CONTRACTOR is performing operations at PARISH/INSTITUTION, CONTRACTOR shall maintain general liability insurance in the amount of not less than two million dollars (\$2,000,000.00) per occurrence. It is further agreed that the CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the PARISH against and from any claim or cause of action arising out of or from any negligence or other actionable fault of the CONTRACTOR, or its employees, agents, members, or officers.

**Automobile Liability Insurance:** CONTRACTOR shall maintain automobile liability insurance for any owned autos, hired autos or non-owned autos used in connection with the contractor's business. Automobile liability coverage should be maintained by the CONTRACTOR in the minimum amount of two million dollars (\$2,000,000) combined single limit.

**Worker's Compensation Insurance:** CONTRACTOR shall maintain worker's compensation insurance as required by law.

**Additional Insured:** CONTRACTOR agrees to provide a certificate of insurance to the PARISH/INSTITUTION which will name the PARISH/INSTITUTION as an additional insured on CONTRACTOR'S liability policy for claims arising out of CONTRACTORS, subcontractors or sub-subcontractors operations or made by CONTRACTORS, subcontractors or sub-subcontractors employees, agents, guests, customers, invitees or subcontractors. CONTRACTOR must verify its liability insurance policy is primary in the event of a covered claim or cause of action against PARISH/INSTITUTION

**Subcontractors:** CONTRACTOR shall be required to verify that all subcontractors maintain general liability insurance, worker's compensation insurance and automobile liability insurance. Furthermore, CONTRACTOR agrees to indemnify and defend the PARISH/INSTITUTION for any claim or cause of action, whatsoever which was caused by the negligence, or other actionable fault of an uninsured subcontractor.

**No Waiver of Subrogation:** OWNER does not waive any rights of recovery against the CONTRACTOR, subcontractor or sub-subcontractor for damages. OWNER and CONTRACTOR, subcontractor, and sub-subcontractor do waive the right of recovery against each other for any damages covered under Property, Builder's Risk or Boiler and Machinery coverage for which either party is responsible if that party does not have liability insurance to cover such damages and liability insurance has been maintained as required by this document.

**Contract Override and Severability Provision:** CONTRACTOR and PARISH agree that this addendum overrides any and all portions of previous agreements between CONTRACTOR and PARISH that contain language in contradiction with this contract. If any portion of this Addendum to Construction Contract is deemed or is determined to be in conflict with local or state or national statutes, both CONTRACTOR and PARISH agree that the portion of the Addendum to Construction Contract which is in conflict with the statute will be stricken from the Addendum to Construction Contract with the remainder of the Addendum of Construction Contract remaining binding for both parties.

**CONTRACTOR:**

**PARISH/INSTITUTION:**

(PARISH/INSTITUTION is understood to include the Diocese of \_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
Name Date

BY: \_\_\_\_\_  
Name Date

START DATE OF CONTRACT (Understood to be dated signed if left blank): \_\_\_\_\_

Instruction to parish/institution: This Addendum to Construction Contract stands on its own as a legal contract between PARISH/INSTITUTION and CONTRACTOR should this addendum not be incorporated or attached to a contract.

## **AIA DOCUMENTS**

### **Necessary deletions to various construction contracts:**

What they are:

When parishes/Institutions enter into a contract for a major renovation or remodeling project of parish/institution facilities or for the construction of a new building, a contract is signed with the general contractor. In most instances, the contract required is a standard contract prepared by the American Institute of Architects, (AIA). Two of the most common standard contracts are the AIA Document A201 and the AIA Document A107. There are many other AIA contracts.

From an insurance and indemnification standpoint, the standard documents are written in favor of the contractor and/or sub-contractor. Fortunately, the contracts can be altered to make them more equitable for parishes/institutions.

Attached is a contract that allows for changes to be made to various AIA contracts. Please note the changes are only intended to address insurance and indemnification concerns. Other areas of the contract should be reviewed on behalf of the parish/institution by a qualified attorney and the Diocesan Building Commission.

**Please check the box next to the document which is being utilized. Checked boxes will denote the deletion and/or modification of the corresponding AIA or AGC contract as shown below.**

## **ADDENDUM/CHANGES TO AIA or AGC CONTRACT**

Owner and Contractor agree that the deletions and/or changes outlined below will be binding and alter the corresponding AIA or AGC contract that is referenced. Both Owner and Contractor agree the Addendum will supersede any other contractual language.

- AIA Document A201 – 1987 edition  
General Conditions of the Contract for Construction
  - 10.1.4 Delete second from last sentence (beginning with “regardless of whether or not...”)
  - 11.3.1 Delete second half of first sentence (beginning after semicolon with “This insurance shall...”)
  - 11.3.2 Delete entire paragraph
  - 11.3.3 Delete entire paragraph
  - 11.3.5 Delete entire paragraph
  - 11.3.7 Delete entire paragraph
  
- AIA Document A201 – 1997 edition  
General Conditions of the Contract for Construction
  - 10.3.3 Delete the word “sole” from the last sentence
  - 11.3.3 Delete entire paragraph
  - 11.4.1 Delete last sentence only (beginning with “This insurance shall...”)
  - 11.4.2 Delete second half of first sentence (beginning after semicolon with “This insurance shall...”)
  - 11.4.3 Delete entire paragraph
  - 11.4.5 Delete entire paragraph
  - 11.4.7 Delete entire paragraph
  
- AIA DOCUMENT A201-2007 edition  
General Conditions of the Contract for Construction
  - 11.3.1 Add sentence to end “While the interests of all parties are covered, only the Owner will be named as an insured”
  - 11.3.2 Delete second half of last sentence “and the Owner and Contractor shall be named insureds”. Add sentence to end of paragraph “Owner and Contractor agree only the Owner will be an insured on the policy”
  - 11.3.3 & 11.3.5 Add sentence to end of each “This paragraph does not apply to the extent Owner, Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner or Contractor.”



11.3.7 Add sentence to end “This paragraph does not apply to the extent Owner, Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner or Contractor.”

15.1.6 Delete entire paragraph

- AIA DOCUMENT A107 – 1987 edition  
Abbreviated Form of Agreement Between Owner and Contractor  
for Construction Projects of Limited Scope
  - 17.2 Delete last sentence only (beginning with “The Contractor shall...”)
  - 17.3 Delete last sentence only (beginning with “This insurance shall...”)
  - 17.6 Delete entire paragraph
  
- AIA Document A107 – 1997 edition  
Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction  
Projects of Limited Scope
  - 15.2.2 Delete the word “sole” from the last sentence
  - 16.3.3 Delete entire paragraph
  - 16.4.1 Delete last sentence only (beginning with “this insurance shall...”)
  - 16.5.1 Delete entire paragraph
  
- AIA Document A107 – 2007 edition  
Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope
  - 17.3.1 Replace last sentence with “While the interests of all parties are covered, only the Owner will be named as an insured”
  - 17.3.3 Add sentence to end of paragraph “This paragraph does not apply to the extent Contractor, subcontractor, sub-subcontractor, architect, architects consultants, or an agent of any of the above has liability insurance to cover damages sustained by Owner”
  
- AIA Document A201/CMA – 1992 edition  
Standard Form of Agreement Between Owner and Architect where the Construction Manager is  
NOT a Constructor
  - 10.1.4 Delete the phrase “in whole or in part” in the second line from the bottom of paragraph
  - 11.3.1 Delete last sentence only
  - 11.3.2 Delete “this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work and the Owner and Contractor shall be named insureds” beginning in the fifth line of the paragraph
  - 11.3.5 Delete entire paragraph
  - 11.3.7 Delete entire paragraph
  - 11.3.8 Delete entire paragraph
  - 11.3.9 Delete entire paragraph
  - 11.3.10 Delete entire paragraph

- AGC Document 410 – 1993 edition  
Standard Form of Design – Build Agreement and General Conditions  
Between Owner and Contractor
  - 11.5.1 Delete second sentence only (beginning with “This insurance shall...”)
  - 11.5.3 Delete entire paragraph
  - 11.5.4 Delete entire paragraph
  - 11.6.1 Delete entire paragraph
  - 11.7.1 Delete entire paragraph
  - 11.7.2 Delete entire paragraph
  
- AGC Document 415 – 1993 edition  
Standard Form of Design – Build Agreement and General Conditions  
Between Owner and Contractor
  - 10.1.2 Delete entire paragraph
  - 10.5.1 Delete Contractor, Architect/Engineer, Subcontractors and Subsubcontractors from the second sentence in lines two and three
  - 10.5.4 Delete Contractor, Architect/Engineer, Subcontractors and Subsubcontractors from the first sentence in lines one and two and the entire last sentence (beginning with “Exposures of the...”)
  - 10.5.5 Delete last sentence only (beginning with “If the Contractor...”)
  - 10.7.1 Delete entire paragraph
  - 10.7.2 Delete entire paragraph
  
- AIA Document A191 – Electronic Format – 1996 edition  
Standard Form of Agreements Between Owner and Design/Builder
  - 7.2.1 Delete last sentence only (beginning with “The Design/Builder shall...”)
  - 7.3.1 Delete last sentence only (beginning with “This insurance shall...”)
  - 7.3.3 Delete entire paragraph
  - 7.3.4 Delete last two sentences (beginning with “This insurance shall...”)
  - 7.3.8 Delete entire paragraph
  - 7.4.1 Delete entire paragraph
  
- AIA Document B101 – 2007 edition  
Standard Form of Agreement Between Owner and Architect
  - 8.1.2 Delete entire paragraph
  - 8.1.3 Delete entire paragraph
  - 8.2.4 Add the following: Both parties agree the method of binding dispute resolution will be “Litigation in a court of competent jurisdiction.”
  
- AIA Document B141 – 1987 edition  
Standard Form of Agreement between Owner and Architect
  - 9.4 Delete entire paragraph
  
- AIA Document B141 — 1997 edition  
Standard Form of Agreement between Owner and Architect with  
Standard Form of Architects Services
  - 1.3.6 Delete entire paragraph
  - 1.3.7.4 Delete entire paragraph
  - 1.4.2.1 Add at end of paragraph. “This paragraph does not apply to the extent Architect or any sub-consultants have liability insurance to cover negligence errors or omissions.”
  
- AIA Document B151-1997 edition  
Abbreviated Standard Form of Agreement Between Owner and Architect
  - 9.4 Delete entire paragraph

- AGC Document 250 – 2000 edition  
Standard Form of Agreement and General Conditions Between Owner and Contractor
  - 11.1.1 Delete the phrase “other than to the work itself and other property insured under Subparagraph 11.4” from the first sentence (beginning in the third line)
  - 11.1.2 Owner will not be responsible to indemnify for any act or omission of an Architect/Engineers or Others
  - 11.2 Delete entire paragraph
  - 11.4.1 Delete the second sentence (beginning with “This insurance shall also name...”) and delete the fourth sentence (beginning with “This policy shall provide for a waiver...”)
  - 11.4.3 Delete entire paragraph up to the word “more” in the eighth line. The rest of the paragraph (beginning with “the Contractor shall indemnify”) remains intact

CONTRACTOR:

PARISH:

\_\_\_\_\_

\_\_\_\_\_ (PARISH is understood to include the Arch/Diocese of \_\_\_\_\_)

BY:

BY:

\_\_\_\_\_

\_\_\_\_\_

NAME

NAME

\_\_\_\_\_

\_\_\_\_\_

DATE

DATE

(Revised 06/13)

## **ADDENDUM TO LEASE**

The Addendum to Lease has been designed to fulfill the insurance requirements for both tenants and the parish/institution when parish/institution property is leased. Therefore, even if a written lease is not used, the Addendum to Lease must still be completed to ensure that insurance requirements have been met.

When your parish/institution enters into an agreement with a tenant for long term usage of parish/institution facilities, a written lease should be drafted. The Addendum to Lease should be attached to the parish/institution written lease or the wording of the addendum incorporated into the lease. Please remember that your parish/institution and the Diocese must be named as an additional insured on the Lessee's general liability insurance policy. It is not adequate for a Lessee to simply provide the parish/institution proof of insurance where the parish/institution is named as a "certificate holder."

Examples of situations where the parish/institution should use the Addendum to Lease are as follows:

- 1) The convent is rented as a residence belonging to a religious order.
- 2) Space is rented in the school to be used as a non-parish/school operated daycare or learning center.
- 3) Office space is being rented in the parish rectory to a non-Arch/Diocesan organization.
- 4) The Addendum should not be used when the parish/institution leases apartments or flats as private residences.

# ADDENDUM TO LEASE

**GENERAL LIABILITY INSURANCE:** LESSEE shall maintain general liability insurance in the amount of not less than two million dollars (\$2,000,000) per occurrence for the duration in which LESSEE rents or uses PARISH/INSTITUTION property and name PARISH/INSTITUTION as an additional insured on such policy of insurance. It is further agreed that LESSEE agrees to protect, indemnify, defend and hold harmless the PARISH/INSTITUTION against and from any claim or cause of action arising out of or from any negligence or other actionable fault caused by LESSEE or its employees, agents, members or officers.

**FIRE DAMAGE INSURANCE:** LESSEE shall maintain fire damage insurance (fire legal liability) for the term of this lease. LESSEE agrees to maintain fire damage coverage in the minimum amount of two million dollars (\$2,000,000).

**WORKER'S COMPENSATION INSURANCE:** LESSEE shall maintain worker's compensation insurance as required by law.

**ADDITIONAL INSURED:** LESSEE will name the PARISH/INSTITUTION as an additional insured on its general liability insurance policy for the duration of LESSEE'S renting or using PARISH/INSTITUTION property for claims arising out of LESSEE'S operations or made by LESSEE'S employees, agents, students, guests, customers or invitees. LESSEE must verify that its insurance policy is primary in the event of a covered claim or cause of action against PARISH/INSTITUTION. LESSEE will provide proof to PARISH/INSTITUTION that the insurance requirements have been met as outlined in this contract. If and only if LESSEE fails to fulfill the insurance requirements contained in this addendum, then LESSEE agrees to defend, hold harmless and indemnify the PARISH/INSTITUTION against and from any claim or cause of action arising out of LESSEE'S operations or any claim or cause of action which is brought against PARISH/INSTITUTION by LESSEE, its employees, agents, students, guests, customers, invitees which is alleged against the PARISH/INSTITUTION, even if such claim or cause of action arose from the negligence of PARISH/INSTITUTION, its employees or volunteers, or the negligence of any other individual or organization.

**INSPECTION BY THE PARISH/INSTITUTION:** PARISH/INSTITUTION may at any and all reasonable times enter premises leased to LESSEE for inspection purposes.

**NO WAIVER OF SUBROGATION:** PARISH/INSTITUTION does not waive any rights of recovery against the LESSEE for damages that are covered by the PARISH/INSTITUTION property insurance coverage. LESSEE and PARISH/INSTITUTION agree that this addendum overrides any and all portions of previous agreements between LESSEE and PARISH/INSTITUTION that contain language in contradiction with this contract.

**SEVERABILITY PROVISION:** If any paragraph of this Addendum to Lease is deemed or is determined to be in conflict with local or state or national statutes, both LESSEE and PARISH/INSTITUTION agree that the portion of the Addendum to Lease which is in conflict with the statute will be stricken from the Addendum to Lease with the remainder of the Addendum to Lease remaining binding for both parties.

**LESSEE:**

**PARISH/INSTITUTION:**

\_\_\_\_\_

\_\_\_\_\_  
(PARISH/INSTITUTION is understood to include the  
Diocese of \_\_\_\_\_)

**BY:**

**BY:**

\_\_\_\_\_

\_\_\_\_\_

NAME

NAME

\_\_\_\_\_

\_\_\_\_\_

DATE

DATE

START DATE OF LEASE (Understood to be date signed if left blank): \_\_\_\_\_

Instruction to PARISH/INSTITUTION (PARISH/INSTITUTION Use Only): This Addendum to Lease stands on its own as a legal contract between PARISH/INSTITUTION and LESSEE should this addendum not be incorporated or attached to a lease.

# DIOCESAN FACILITY USAGE POLICY

Parishes/schools frequently allow groups to use their property for non parish sponsored events. All groups that are not sponsored by a Diocesan parish must utilize the Diocesan Facility Usage Policy. Examples of these groups are:

- Girl Scouts, Knights of Columbus, American Legion, home school groups, or other similar organizations that use parish facilities for meetings or fundraisers;
- AAU sport teams or sport classes/clinics not sponsored by the parish.
- Parishioner and non-parishioner families that rent or use parish facilities for wedding receptions, family reunions, anniversary parties, or other similar activities.
- Any other organization, municipality, or county organization that uses parish facilities for a meeting or function that is non-parish sponsored.

To use any Diocesan facility, individuals or organizations that are not sponsored by a diocesan parish must provide the parish with a certificate of insurance documenting general liability coverage in the amount of \$1,000,000 per occurrence. **This certificate must name the parish and the Diocese as an “additional insured”.** (It is not adequate to obtain a certificate of insurance that names the parish and the Diocese as “certificate holders”).

To assist in determining if an organization is parish sponsored or affiliated, the following five questions must be answered in the affirmative.

1. Did the parish have full control over the group or function?
2. Did any costs or fees associated with the function flow through parish accounts?
3. Was the function or group open to all parish members?
4. Was the purpose of the function or group to facilitate learning, raise revenue for the parish or provide a social service on behalf of the parish?
5. Was the teacher or leader of the group a parish volunteer or employee?

When it is determined that an activity is non-parish sponsored, there are three options:

## **OPTION 1**

Have the facility user complete a FACILITY USAGE/INDEMNITY AGREEMENT and provide the parish with a certificate of insurance evidencing one million (\$1,000,000) general liability coverage per occurrence and also naming the parish and the Diocese as an “additional insured”.

## **OPTION 2**

In the event that a \$1,000,000 general liability policy cannot be obtained privately, THIRD PARTY SPECIAL EVENTS coverage can be purchased. This coverage is explained later in this policy.

## **OPTION 3**

Special provisions may apply for individual facility users and some small groups. Please see the ADULT HOLD HARMLESS/INDEMNITY AGREEMENT section of this policy for further explanation.

Your diligence in following this policy will benefit the Diocese and your parish by minimizing exposure to loss.

# **FACILITY USAGE/INDEMNITY AGREEMENT**

PARISH/INSTITUTION: \_\_\_\_\_

(PARISH/INSTITUTION is understood to include the Diocese of \_\_\_\_\_)

FACILITY USER: \_\_\_\_\_

DATES OF FACILITY USAGE: \_\_\_\_\_

TYPE OF FACILITY USAGE: \_\_\_\_\_

The above named FACILITY USER agrees to defend, protect, indemnify and hold harmless the above named PARISH/INSTITUTION against and from all claims arising from the negligence or fault of the above named FACILITY USER or any of its agents, family members, officers, volunteers, helpers, partners, organizational members or associates which arise out of the above identified FACILITY USAGE at the above named PARISH/INSTITUTION.

FACILITY USER agrees to provide a certificate of insurance to the PARISH/INSTITUTION, which provides evidence of general liability coverage of not less than one million dollars (\$1,000,000) per occurrence. FACILITY USER also agrees to have the PARISH/INSTITUTION named as an "Additional Insured" on its general liability policy for the DATE(S) OF FACILITY USAGE in relationship to the TYPE OF FACILITY USAGE for claims which arise out of FACILITY USER'S operations or are brought against the PARISH/INSTITUTION by FACILITY USERS' employees, agents, partners, family members, students, customers, function attendees, guests, invitees, organizational members or associates. FACILITY USER also agrees to ensure that its liability insurance policy will be primary in the event of a covered claim or cause of action against PARISH/INSTITUTION.

If and only if FACILITY USER fails to comply with the above (second) paragraph, then the above named FACILITY USER agrees to protect, defend, hold harmless and fully indemnify the above named PARISH/INSTITUTION for any claim or cause of action whatsoever arising out of or related to the usage which takes place during the above identified DATE(S) OF FACILITY USAGE that is brought against the PARISH/INSTITUTION by the above named FACILITY USER or its employees, agents, partners, family members, students, customers, function attendees, guests, invitees, organizational members or associates, even if such claim arises from the alleged negligence of the PARISH/INSTITUTION, its employees or agents, or the negligence of any other individual or organization. If any sentence or paragraph of this agreement is held invalid, it is agreed that the balance thereof, shall continue in full legal force and effect.

SIGNED BY: \_\_\_\_\_

(Must be an official agent of FACILITY USER)

NAME (Please print): \_\_\_\_\_

DATE: \_\_\_\_\_

## THIRD PARTY SPECIAL EVENTS COVERAGE

Third Party Special Events Coverage is a mechanism that allows the diocese to extend liability coverage to an individual or organization using parish/school facilities for a non-parish sponsored event for which they are unable to obtain a \$1,000,000 general liability policy privately.

For each event, the Third Party Special Events Coverage provides \$1,000,000 in liability coverage to a non-parish sponsored facility user, as well as extending coverage to the parish and the diocese.

The cost of the coverage is established annually. Please contact the Chancery to obtain the current application fee.

### SPECIAL EVENTS COVERAGE – FREQUENTLY ASKED QUESTIONS

#### Who is Eligible?

Many individuals need this coverage for events such as private wedding receptions or family reunions. Non-profit organizations such as a charity organization may need the coverage for a pancake breakfast. A for-profit organization such as a local business may need the coverage for an employee Christmas party held at parish facilities.

#### Who is Covered?

Below is a brief explanation of what is covered by Third Party Special Events Coverage along with some items that are excluded. Please note that the actual coverage form must be examined for an exhaustive explanation of what is covered and excluded.

- Most non-parish sponsored activities are covered by Special Events Coverage. Common examples are wedding receptions, family reunions, award banquets, and fund-raisers.
- \$1,000,000 in liability coverage for bodily injury and property damage is provided for the special event user, parish, and the diocese. Please note that the \$1,000,000 limit is shared by the covered parties and is “per-event” coverage.
- Liquor liability coverage is provided.
- Some types of events are not covered.
  - Any event lasting longer than 72 hours
  - Fireworks
  - Events involving more than 1,000 people
  - Events where admission is charged unless all proceeds go to charity
  - Events where guests bring their alcohol (“BYOB”)
  - Events involving amusement devices or trampolines
  - Carnivals
  - Any event organized or run by a professional promoter
  - Sporting events including camps and tournaments
  - Events involving pool or lake activities
  - Events involving recreational vehicles
  - Events indicated as BYOB (bring your own bottle)
  - Political Rallies



## HOW TO COMPLETE THE APPLICATION FORM

The application form should be completed in full and must include the following information:

1. Name of Parish/Institution – Please include the name and address of the facility where the event will be held.
2. Lessee Information (additional insured) – Please include the name of the individual(s) or organization holding the non-parish sponsored event.
3. Lessee (additional insured) Contact Person – Please indicate the name, address, and telephone number of the person primarily responsible for the activity/event.
4. Type of Activity/Event – Please provide a brief description of the activity/event including the date, time, approximate number of participants, whether or not food and/or liquor is being served.

## PROCESSING THE COMPLETED APPLICATION

One copy of the application should be given to the lessee, another retained for your records, and a third submitted to the Chancery Office. The original application should be submitted at least 15 business days prior to an event. The copy mailed to the Chancery Office should be accompanied by the application fee made payable to the Diocese. **THIS CHECK SHOULD NOT BE MADE PAYABLE TO CATHOLIC MUTUAL.**

Any questions regarding the completion or processing of the application should be directed to the Chancery Office or Catholic Mutual Group.

Risk Management Guidelines are available to assist you in allowing outside organizations to use your facilities. Information includes, but is not limited to, liquor liability control, security, and food handling. Please contact Catholic Mutual's Risk Management Department at (800) 228-6108 for further information. Information can also be found on Catholic Mutual's website [www.catholicmutual.org](http://www.catholicmutual.org).

## ADULT HOLD HARMLESS/INDEMNITY AGREEMENT

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Ideally, individuals utilizing parish premises for activities that are neither parish sponsored nor affiliated, should be providing the parish a certificate of insurance naming the parish and the Diocese as an additional insured. However, in certain instances when groups or individuals do not have insurance, the Adult Hold Harmless/Indemnity Agreement can be used. The Adult Hold Harmless/Indemnity Agreement has not been designed to be a replacement for insurance, but has been developed only for certain situations. Specifically, the Adult Hold Harmless/Indemnity Agreement must be utilized for the following situations that are often encountered by parishes:

1. **Adult Athletic Participation** - Adults who use or rent the parish/school gym for "non-parish sponsored" basketball or volleyball must sign the Adult Hold Harmless/Indemnity Agreement. It is not adequate to have one representative of a sports group sign an agreement. Each individual must sign an agreement for the contracts to be valid. Please note that a new agreement does not have to be obtained for each usage of the gym if the gym is being utilized on a seasonal basis. Instead, the parish/school may obtain one signed agreement per individual, per season.
2. **Craft Fairs** - Considering that a craft fair usually involves a large number of craft vendors, it is impossible to obtain a certificate of insurance from each vendor. Instead, an Adult Hold Harmless/Indemnity Agreement should be distributed with the craft vendors' registration material for the vendor to sign. A craft vendor who does not sign an Adult Hold Harmless/Indemnity Agreement should not be allowed to participate in your parish craft fair.
3. **Other Small Groups** - In rare instances, the Adult Hold Harmless/Indemnity Agreement can be used for very small groups that do not have liability insurance. Similar to the adult athletic participation, in these cases an Adult Hold Harmless/Indemnity Agreement must be obtained from each individual of each group who utilizes parish facilities. When dealing with large groups, it is not feasible to have each group member sign an agreement. Considering this, large groups must sign the Facility Usage/Indemnity Agreement, which requires insurance.

The Adult Hold Harmless/Indemnity Agreement is a legal contract between your parish and the individual who signs the agreement. The agreement will effectively bar the signer of the agreement from making a claim against the parish. Please note that the Adult Hold Harmless/Indemnity Agreement is only valid when the signer is at least 18 years of age. The parish should not alter the agreement in any way as an alteration could result in nullifying the legality of the agreement. Original copies of signed Adult Hold Harmless/Indemnity Agreements should be kept in parish files for at least two years. Injuries and accidents are often not promptly reported, necessitating the need for original copies to be maintained.

# ADULT HOLD HARMLESS/INDEMNITY AGREEMENT

PARISH/SCHOOL: \_\_\_\_\_  
(PARISH/SCHOOL is understood to include the Diocese of \_\_\_\_\_).

ACTIVITY PARTICIPANT OR FACILITY USER: \_\_\_\_\_

DATES OF ACTIVITY OR USAGE: \_\_\_\_\_

TYPE OF ACTIVITY OR USAGE: \_\_\_\_\_

The above named ACTIVITY PARTICIPANT OR FACILITY USER agrees to defend, protect, indemnify and hold harmless the above named PARISH/SCHOOL against and from all claims arising from the negligence or fault of the above named ACTIVITY PARTICIPANT OR FACILITY USER or any of their agents, family members, officers, volunteers, helpers, partners, organizational members or associates which arise out of the above named ACTIVITY OR USAGE at the above named PARISH/SCHOOL.

Additionally, the above named ACTIVITY PARTICIPANT OR FACILITY USER agrees to protect, defend, hold harmless and fully indemnify the above named PARISH/SCHOOL for any claim or cause of action whatsoever arising out of the above mentioned ACTIVITY OR USAGE which takes place during the above identified DATE(S) OF ACTIVITY OR USAGE that is brought against the PARISH/SCHOOL by the above named ACTIVITY PARTICIPANT OR FACILITY USER or their family members whether such claim arises from the alleged negligence of the PARISH/SCHOOL, its employees or agents or ACTIVITY PARTICIPANT or FACILITY USER'S negligence. If any portion of this agreement is held invalid, it is agreed that the balance thereof, shall continue in full legal force and effect.

SIGNED BY: \_\_\_\_\_

NAME (Please Print): \_\_\_\_\_

DATE: \_\_\_\_\_