

Date: July 22, 2009

To: All Pastors, Principals, and Business Managers

From: John A. Smith, Director of Risk Management

Subject: Independent Contractors

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The attached letter will be going out to all independent contractors that we have listed in our database that work on a regular basis in our schools and parishes. You will still need to provide this letter to ANY independent contractor working in your parish / school to ensure that we include everyone in this change and to ensure the requirements are communicated. This change in procedure is similar to what we have done with the Non-Parish Based Organizations.

### **FAQ**

#### **Which independent contractors does this change affect?**

The independent contractors we are addressing with this change include food service, maintenance, janitorial contractors, and other similar contractors. These are contractors that work in your parishes or schools on a daily or weekly basis. This change does not address construction contractors. We will address this issue and these contractors separately and at a later date.

#### **Why the change in procedures?**

Like our Non-Parish Based Organizations, we want our independent contractors to accept the responsibility and liability for their own operations.

#### **What are the basic changes?**

- We now require them to have their own written safe environment program that meets the Diocese minimum standards.
- We now require them to conduct their own background checks and make the determination as to whether their employees meet the Diocese minimum Safe Environment requirements as to criminal history.
- We now require them to conduct their own safe environment training.
- We now require them to maintain certain levels of insurance and provide you with a certificate of insurance that evidences this coverage.

### **What records do we need to keep?**

1. A copy of their written safe environment program
2. A listing of cleared / trained employees
3. A Certificate of insurance with the Diocese and Parish / School listed as “additional insured”
4. Background checks done by the parish / school on all employees working in the school / parish

### **Why do we have to do an additional background check if the independent contractor does one?**

The independent contractor is being required to perform their own background check to accept the responsibility for providing a safe environment and determine the fitness for employment of their own employees. Our background checks are a “double check” to ensure our schools and parishes are a safe environment. This new procedure places more responsibility on the independent contractor and our background checks are no longer the sole basis for determining whether one of their employees may or may not work or be employed.

### **If an employee of the independent contractor is not on our listing of cleared / trained employees and we have not done a background check, can they work in our school / parish?**

No. No employees of the independent contractor may work in your school / parish until the independent contractor has added them to the listing of cleared / trained employees and you have completed your own background check.

### **We have a small “mom and pop” cleaning crew. Are they subject to the same requirements?**

If you have small contractors like this, please call the Office of Risk Management for assistance.

### **We have a landscaping company that does mowing and other related tasks. Should they be included in these new requirements?**

With respect to Safe Environment, if the landscaping crew works around children and / or vulnerable adults and are not supervised by a parish / school employee at all times, they will need to meet this requirement as well. Regardless, they will need to meet the insurance requirements.

### **We do not currently have a contract with our independent contractor(s). Do we need to put one in place?**

Yes. We need to have a contract with all independent contractors working in your parish / school. We can assist you with a contract form if they do not already have one.

### **What do we need to include or amend to any contracts we already have with our independent contractors?**

Please see the Contract Addendum included with this memo.

## Contract Addendum

The contract between \_\_\_\_\_ (independent contractor) and \_\_\_\_\_ (parish / school) is hereby amended as follows:

### A.1 Safe Environment Program

#### A.1.1

Independent Contractor warrants that it has obtained and reviewed a minimum of ten years criminal background history on all employees of Independent Contractor whenever work is being performed on property where students, children, or minors are or may be present. No person shall be allowed by the Independent Contractor to Work on property where students, children, vulnerable adults, or minors are present who have charges pending, or who have been convicted, received probation or deferred adjudication for the following:

1. Any felony or misdemeanor offense against a person, family, or child or that involves an offense against a person, family, or child;
2. Any felony or misdemeanor sex offense;
3. Any felony or misdemeanor classified as an offense against public order, safety or indecency;
4. Any felony or misdemeanor crimes against persons involving weapon or violence;
5. Any felony violation of any law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substance Act;
6. Any felony offense against property; or
7. Any other offense that the Parish / School believe might compromise the safety of students, staff or property.

**It is not the responsibility of the parish or school to conduct background screenings or training for the independent contractor. The Independent Contractor must perform their own background checks, determine compliance with this section, and conduct training for all employees prior to assignment or allowing them to work in the Parish or School.**

It shall be the responsibility of the Independent Contractor to ensure compliance with this provision at all times. Independent Contractor shall fully indemnify, defend, and hold harmless the Parish / School for any claims which arise as a result of Independent Contractor's failure to comply with this obligation.

#### A 1.2

Independent Contractor must have its own formal written safe environment program that meets the Diocese of Dallas minimum standards regarding background checks and safe environment training. A copy of the Independent Contractor's safe environment program must be on file with the parish / school prior to beginning any work under this agreement.

#### A.1.3

Independent contractor must complete a Safe Environment Program Verification Form upon execution of this contract.

#### A.1.4

The Independent contractor must provide a listing of cleared / trained employees to the parish / school. Anytime a new employee is hired or added, the listing must be updated. All background checks and training done by the independent contractor must be completed prior to assigning an employee to work in the parish or school.

#### A.1.5

The independent contractor must participate in the regular internal Diocesan audit process for Safe Environment in order to ensure compliance with these standards.

A.1.6

The independent contractor and all employees are subject to additional background screening performed by the school and/or parish.

**A.2 Insurance**

A.2.1

The Independent Contractor shall maintain, in amounts satisfactory to, and with companies approved by Parish / School such insurance as will protect the Parish / School from claims under worker's compensation acts and from any other claims for damages, for personal injury including death, which may arise from operations under this contract, whether such operations by the Independent Contractor or anyone directly or indirectly employed by Independent Contractor.

A.2.2

Before Independent Contractor does any work or prepares or delivers material to the Parish / School, the Independent Contractor shall provide to Parish / School Certificates of Insurance, evidencing coverage acceptable to Parish / School in amounts as follows:

A.2.2.1

Workers' Compensation:

- I. Statutory Limits covering all employees
- II. Employers' Liability
  - \$500,000 per Accident
  - \$500,000 Disease, Policy Limit
  - \$500,000 Disease, Each Employee

A.2.2.2

Commercial General Liability (including Contractual liability, Products and Completed Operation, with the following limits:

- I. \$1,000,000 per occurrence
- II. Products-Comp/Operations Aggregate - \$1,000,000

A.2.2.3

Business Auto Liability (including owned, non-owned, and hired) with the following limits:

- I. Bodily Injury
  - \$1,000,000.00 each person
  - \$1,000,000.00 each occurrence
- II. Property Damage
  - \$1,000,000.00 each occurrence

A.2.3

The Independent Contractors insurance shall include The Roman Catholic Diocese of Dallas and the Parish / School as "Additional Insured" with the following clause added: "The insurance afforded to the "Additional Insured" is primary insurance. If the "Additional Insured" have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy cannot be reduced by the existence of such other insurance."

A.2.4

The Certificate evidencing the above required coverage shall not be cancelled or reduced in coverage except by written notice to Parish / School at least thirty (30) days prior to the effective date of such cancellation or reduction in coverage. New or renewal Certificates shall evidence all of the above required coverage.

**A.3 Sub-Contracting**

Independent Contractor shall not sub-contract any portion of this agreement without prior written consent of the Parish / School and full compliance with all of the requirements contained in this addendum.

**A.4 Independent Contractor remains exclusively responsible for all safety issues regarding the work contracted for, including but not limited to the work site, training and supervision of employees. Independent Contractor will comply with all state federal and local laws concerning workplace safety.**

**A.5 INDEMNIFICATION**

INDEPENDENT CONTRACTOR AGREES TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE DIOCESE, PARISH, SCHOOL AND ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING INDEPENDENT CONTRACTOR'S OR ANY SUBCONTRACTORS' EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH OR IN THE COURSE OF OR INCIDENTAL TO, ANY OF INDEPENDENT CONTRACTOR'S WORK OR OPERATIONS UNDER THIS CONTRACT IN CONNECTION HERewith, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF PARISH / SCHOOL, ITS OFFICERS, AGENTS OR EMPLOYEES

All other terms and conditions of any contract or agreement between independent contractor and parish / school continue to apply.

\_\_\_\_\_  
Independent Contractor Name

\_\_\_\_\_  
Parish / School Representative Name

\_\_\_\_\_  
Independent Contractor Signature

\_\_\_\_\_  
Parish / School Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date