

South Dakota Public Assurance Alliance

Facilities Use Agreement Recommendations

When a local government facility is made available to an outside group, it is imperative that a Facilities Use Agreement containing adequate indemnification and other provisions is entered into **prior to allowing an outside group use of facilities**. Failure to enter into such an agreement exposes the public entity to losses for damages for which the entity may not and should not be liable.

SDPAA strongly encourages local government entities to have their attorney prepare a Facilities Use Agreement to be utilized by the entity.

Facilities Use Agreements should specify the facility, parties involved, dates/times of use, for what the facility is being used, whether supervision is required, and whether alcohol is going to be allowed or served.

At a minimum, the Agreement should contain an indemnification and hold harmless clause.

For users of your facilities engaging in activities presenting a moderately high or high level risk of injuries or damages, the user should be required to carry and show proof of adequate liability insurance and the entity should be named an additional insured on the users policy.

For users of your facilities where the activity undertaken in the facility necessitates supervision be provided, the Agreement should contain a clause requiring such.

High risk activities in your facilities sometimes warrant the use of participant waivers. ([Click here for more information.](#))

Unfortunately, with the wide variety of facilities, activities, events across local government, there is no way to establish a standard policy to specifically address all cases.

Below is sample language provided by SDPAA to aid you and your attorney in drafting Facilities Use Agreements.

FACILITIES USE AGREEMENT INDEMNIFICATION CLAUSE

User agrees to indemnify and hold the (Name of Entity), and its officers, agents and employees harmless from any and all liability, damages, actions, claims, demands, expenses, judgments, fees and costs of whatever kind or character, arising from, by reason of, or in connection with the use of facilities described herein. It is the intention of the parties that the (Name of Entity), and its officers, agents and employees shall not be liable or in any way responsible for injury, damage, liability, loss or expense resulting to the user and those it brings onto the premises due to accidents, mishaps, misconduct, negligence or injuries either in person or property.

User expressly assumes full responsibility for any and all damages or injuries which may result to any person or property by reason of or in connection with the use of the facilities pursuant to this

Agreement, and agrees to pay the (Name of Entity) for all damages caused to the facilities resulting from user's activities hereunder.

INSURANCE REQUIREMENTS CLAUSE

User shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to the Agreement or be no less than two times the occurrence limit.

If the entity is allowing the use of alcohol at the event, add language that the user must be required to carry liquor liability coverage.

User shall furnish the (Name of Entity) with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement, name the (Name of Entity) as an Additional Insured, and provide that such insurance shall not be canceled, except on 30 days' prior written notice to the (Name of Entity).

SUPERVISION REQUIREMENT CLAUSE

User represents that its activities, pursuant to this Agreement, will be supervised by adequately trained personnel, and that user will observe, and cause the participants in the activity to observe all safety rules for the facility and the activity. User acknowledges that the (Name of Entity) has no duty to and will not provide supervision of the activity.