

MISSOULA COUNTY INDEPENDENT CONTRACTOR AGREEMENTS

PROCEDURAL GUIDE

TO: ALL MISSOULA COUNTY DEPARTMENTS
FROM: County Attorney's Office and County Auditor's Office
DATE: March 2011
RE: Establishing a contract with an Independent Contractor

An Independent Contractor Agreement may only be used with an independent contractor who holds a valid Independent Contractor Exemption Certificate issued by the State of Montana Department of Labor and Industry. An IC Exemption Certificate is available to a person who is a sole proprietor, a working member of a partnership, a working member of a limited liability partnership or a working member of a member-managed limited liability company. If the prospective contractor is none of these and does not hold an IC Exemption Certificate, use the template for the Professional Services Agreement.

The Montana Department of Labor and Industry maintains a searchable website for independent contractors at: <http://erd.dli.mt.gov/workers-comp-regulations/montana-contractor/independent-contractor-central-unit.html>.

1. The required review and approval process described below must be completed **before** the Independent Contractor Agreement is submitted to the Board of County Commissioners for action.
2. All Independent Contractor Agreements must use the approved template developed by the County Attorney's Office. **As the IC agreement is subject to revision without notice, use the most current version of the template available on the County Auditor page of the county website: <http://www.co.missoula.mt.us/auditor/forms.htm>.**
3. Provide all information on the IC template as required. Instructions are printed in **blue**, and sections that require a selection are printed in **red**. In addition, be attentive to the following:
 - a. Section 3 – “Required Work or Product”: Provide the specific tasks, work products, or services on Exhibit A. Be sure nothing on Exhibit A conflicts with the terms of the IC Agreement itself.
 - b. Section 9 – “Insurance”: Consult the Risk Manager, Hal Luttschwager, about the insurance requirements for the agreement. Based on the Risk Manager's assessment, Indicate “will” or “will not” for general liability and professional liability insurance and retain or delete the requirement for automobile insurance. If insurance is required, obtain a certificate of insurance from the contractor and forward a copy to the Risk Manager. Retain a copy and file it with other contract documentation.
 - c. Section 14 – “Termination”: Select either the provision for mutual or unilateral termination of the agreement. Delete the unused paragraph. Consult the County Attorney's Office, if unsure which termination provision to use.
 - d. Provide a project description or the parties to the contract at the top of the signature page in case it becomes detached from the body of the contract.

- e. Delete all instructions shown in blue, and change formatting of any items in bold red to normal black.
4. Human Resources must review all independent contractor agreements. Allow a turn around time of one business day.
5. County Attorney review of independent contractor agreements is required if:
 - a. The contract is a public works contract. A public works contract is any contract for more than \$25,000 for construction or non-construction services (see definitions provided below); or,
 - b. Changes have been made to the language of the template paragraphs, exclusive of the information required to “fill in the blanks.” The proposed changes to the template must be identified using the “track changes” edit feature in Word so they can be identified by the reviewing attorney. Allow a 3 business day turn around time for County Attorney review.
6. After the reviews in 4 and or 5 have been completed, obtain the contractor’s signature. (This will permit the contract to be recorded and copied immediately after BCC signature in Step 7. It will also prevent delays in any future contract payments.)
7. To schedule the contract for BCC signature, submit an electronic Request for Commissioner Action to Patty Rector no later than 3PM the day before the administrative meeting when the contract will be signed. Deliver the hard copy contract to the Commissioners’ Office as soon as possible thereafter. Attend the meeting, or send a representative, to answer any questions the Commissioners may have.

Please note the following:

8. Financial Services will ask the contractor to provide a social security number or an employer identification number on IRS Form W-9.
9. No payments to an independent contractor will be approved unless a fully executed agreement is in place.

Definitions:

Construction services: Work performed by an individual in building construction, heavy construction, highway construction, and remodeling work.

Non Construction Services: Work performed by an individual, not including management, office, or clerical work, for: the maintenance of publicly owned buildings and facilities; grounds maintenance for publicly owned property; the operation of public drinking water supply, waste collection, and waste disposal systems; nursing, nurse’s aid service, and medical laboratory technician services; material and mail handling; food service and cooking; motor vehicle and construction equipment repair and servicing; and appliance and office machine repair and servicing. See [MCA 18-2-401](#) for a complete listing of non construction services.