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Vermont Local
Governments*

To: PACIF Members
From: Joe Damiata
Manager, Underwriting
Date: September 6, 2016
Subject: Documenting Subcontractors and Sole Proprietors for Workers' Comp Audits

This letter summarizes all of the materials that PACIF workers' compensation auditors will be looking for when they review your 1099s for payments to 2016 subcontractors during your spring 2017 payroll audit. In an effort to make this documentation process more clear and easier for all of you, we have posted the necessary files on VLCT's Workers' Compensation webpage, www.vlct.org/rms/pacif/workers-compensation/.

For each contractor or sole proprietor, please assemble and keep on file the packet of documents described below. The auditors need the information described here to be fully executed for each contractor starting on June 1, 2016 and for every year from now on. For complete 2016 records, they will still also need to see any contracts or Non-Employee Work Agreements that you have on file prior to June 1, 2016.

1. **"VLCT PACIF Workers' Compensation Payroll Audit Checklist of Independent Contractor Documentation"** should be the top page of every contractor's packet. The name of the subcontractor or sole proprietor and the date should be filled in at the top of the sheet, and all of the check boxes should be checked to verify that you have added each of the required items.
2. Next should be the **Contract for Services** between the municipality and the contractor or sole proprietor. We encourage you to use the model contract that PACIF has developed for your municipality to customize and use for service contracts of less than \$100,000 annually to help you comply with 21 V.S.A. 601 (14)(F). The file, labeled **"Model Contract for Limited Services,"** is posted on our website in two formats: Word (to customize) and PDF (to refer to). Our goal is to help you practice good risk management while not making the contract as restrictive as a typical construction contract. If you choose to customize this contract with anything other than inserting your information in place of the bracketed prompts, please have your municipal attorney check your edits. If you have any contracts for more than \$100,000 (for example: hiring a contractor to run your highway department), please contact Underwriting and we will provide you with a model contract that is suitable for that situation.
3. The third item in each packet should be our new **Non-Employee Work Agreement (NEWA)**, which is also on our website in both Word and PDF formats. This NEWA has been updated to include the statutory requirements listed in 21 V.S.A. 601(14)(F), and it needs to be fully filled in to show that the subcontractor or sole proprietor meets those statutory requirements. Both an authorized representative of your municipality and the subcontractor or sole proprietor must sign it. Please understand that our auditors may not always accept the NEWA as proof that an indi-

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vidual is not a municipal employee, but they will explain to you why a subcontractor does not meet the requirements. For example, the Department of Labor may have given us specific guidance on why a particular work position does not qualify for a NEWA. But for the most part, we will accept NEWAs as long as they are filled in correctly. The second page of the same Word of PDF file is the **Liability Hold Harmless Agreement**, which should only be used for sole proprietors that do not have liability coverage. This form should only be needed for limited situations (for example with recreation coaches and referees).

4. As the fourth item in the packet, please provide the subcontractor or sole proprietor's **Certificate of Insurance (COI)** with appropriate coverages and limits. Our Workers' Compensation webpage has an example of a COI with circles showing all the sections that you should verify. Here are the main points to adhere to:
 - Refer to our sample COI so you know what to look for when you ask subcontractors to prove that they carry their own Liability and Workers' Compensation insurance.
 - Always ask to be named as an Additional Insured (circled and shown by an "X" on the sample) on all Liability policies.
 - It is pretty easy to alter these certificates fraudulently, so you should always ask the subcontractor or sole proprietor to have their insurance agent send the COI directly to you.
 - Also be sure to have any sole proprietor that does not have Liability coverage fill in and sign the Liability Hold Harmless Agreement (page 2 of the NEWA file). Although sole proprietors by statute do not have to carry workers' compensation on themselves, you should make sure that they have liability insurance. There will be limited situations where this will apply.
5. Please also include a copy of some kind of marketing material, such as a business card or brochure, that shows proof that the subcontractor or sole proprietor markets his or her services to others.

Be sure to obtain all of the documentation listed above, as one packet, for every subcontractor and sole proprietor who performs work for your municipality. File this information so it is handy when we conduct your Workers' Compensation 2016 payroll audit in the spring of 2017. Again, our goal is to help you practice good risk management and also provide clarity on the workers' compensation payroll audit process.

Feel free to reach out any of the Underwriters or me if you have any questions about this process.

Thanks,

Joe

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