

BEST PRACTICES FOR LEASE AND SERVICE AGREEMENTS

Connecticut public entities enter into both Lease and Service Agreements on a regular basis to deliver value and resources to its constituents. These agreements sustain operations and deliver vital services to both the public entity and the public; however, if mismanaged, they can pose significant legal and financial risks, leaving a public entity vulnerable to costly litigation.

Common Types of Lease and Service Agreements

Facility Use Agreement and Field Use Agreement - Commonly, municipalities and school districts may allow members of the public or other organizations to use space under the public entity's control. Events may include birthday parties, weddings, or those held by outside entities, such as the Parent-Teacher Organization (PTO). Language should be included within the agreement that the public entity is responsible for the safe maintenance of the location it owns, while the third-party is responsible for the operations and use of the facility during the designated term.

Professional Services Agreement - When a public entity lacks staffing or resources to provide a valuable service to the community, it will contract with a third-party provider to sustain essential operations. When this occurs, the third-party should be required to follow all applicable federal and state laws, as well as be responsible for damages, liabilities, claims, penalties, and expenses incurred as a result of the third-party's actions, inactions, negligence, or mismanagement. Mutual hold-harmless and indemnification language can help protect the public entity financially against the actions or inactions of the third-party.

IT Service Agreements and Software-as-a-Service (SaaS) Agreement - Similar to Professional Services Agreements, many municipalities may lack the in-house staff needed to maintain critical IT infrastructure. Include mutual indemnification language stating that each party will be responsible for claims and damages caused by its own negligence, and review this language with the public entity's legal counsel before signing.

Mutual Aid Agreement and Ambulance Service Agreement - These agreements are formal, written arrangements between two or more municipalities to help assistance one another when additional resources are needed to respond to an emergency or special situation. They typically outline the scope of assistance, command and control, use of personnel and equipment, liability and indemnification, duration, and costs.

Equipment Service Agreement and Equipment Lease Agreement - To avoid large capital expenditures, these agreements address short-term operational needs. It is important to emphasize maintenance responsibilities, damage provisions, insurance requirements, and indemnification clauses.

Independent Contractor Agreement - Most commonly entered into within Parks and Recreation Departments. Similar to Facility Use Agreements, the language should include language highlighting that the public entity is responsible for the safe maintenance of the location it owns, while the Independent Contractor is responsible for operations during the event or class. Furthermore, the Agreement should clearly define the Independent Contractor's worker classification – outlining that the individual is not an employee of the municipality and, thus, is not eligible for workers' compensation under the public entity's policy – as well as the Contractor's proof of insurance and appropriate hold-harmless and indemnification language.

Recommendations

- **Designate a Point Person** - Develop a procedure to ensure that each agreement is signed off and approved by a designated executive team member. The chosen executive should have the authority to enter into contracts on the entity's behalf and insight into the entity's financials. Oftentimes, this individual can be the Chief Elected Official, Executive Director, Superintendent of Schools, Town Manager, Town Administrator, Finance Director, or School Business Official.
- **Avoid Verbal Agreements** - Always put agreements in writing and get signatures from both parties, clearly defining each person's roles and responsibilities.
- **Maintain Centralized Records** - As each department within the public entity is likely to require Agreements for various ventures, it is imperative that all agreements are maintained in a centralized location that notes the

effective date(s) and end date(s) to ensure that agreements are actively in force and do not unexpectedly lapse.

- **Ensure Proper Coverage** - It is a best practice to require in writing that the third-party provide proof of applicable insurance coverage. The types of insurance required will depend on the work being done, but may include Workers' Compensation, General Liability, Special Event Coverage, and Automobile Liability. The third-party should be required to endorse its insurance policy to name the municipality as an Additional Insured.¹
- **Review All Contracts** - A thorough, collaborative review by a team comprising executive leadership, legal counsel, and an insurance professional should be conducted prior to entering into any agreement. The review should align the public entity's needs with its financial capacity, legal responsibilities, and risk appetite.

Supporting Resources Offered by CIRMA

- **Best Practices Guides*:**

- Independent Contractors
- Risk Transfer

**Note: Please contact your CIRMA Risk Management Consultant to access CIRMA's Best Practices Guides.*

- **Lessons Learned:**

- Managing Independent Contractor Liability
- Third-Party Cyber Vendors
- Waivers of Subrogation

- **Bulletin:**

- Read Before You Sign

- **School Announcement:**

- Waivers of Subrogation – Roof Replacement Project

- **Whitepaper:**

- Managing Large-Scale Outdoor Events

- **CIRMA Contract Review Program**

- For a review of any pending agreement from a risk management and insurance perspective, CIRMA Members are encouraged to forward the document to CIRMAContractReview@ccm-ct.org.²

¹ Note, the endorsement requirement does not apply to Workers' Compensation Insurance. The municipality should still request proof that the third-party has Workers' Compensation Insurance through a Certificate of Insurance (COI).

² CIRMA cannot review documents that are signed or in force.

