

READ BEFORE YOU SIGN: HOW TO ENTER AGREEMENTS WITH CONFIDENCE

Third-party contracts can expose you to several inherent risks. Municipalities, school districts, and local public agencies enter into various contracts to enhance capital, acquire specialized services, or deepen their collaboration with their communities. These agreements offer valuable expertise and resources that the public entity may not have in-house. However, with these benefits come potential risks, including legal, financial, and operational liabilities.

Before signing a contract, consider the following questions:

- Who are the parties involved? What events or activities are taking place?
- What are the risks, potential injuries, and opportunities for risk transfer?
- Is the public entity signing a waiver of subrogation? Does the contract include a hold-harmless/indemnification clause? Have certificates of insurance been obtained?
- Do the third party's insurance limits meet or exceed the municipality's insurance limits?
- Has the municipality consulted legal counsel before signing a contract?

Key Definitions

- **Subrogation** – the process by which an insurer recovers payment from a liable third party who has caused a property or liability loss that the insurer has paid to, or on behalf of, an insured.
- **Waiver of Subrogation** – a special type of waiver that is a pre-loss voluntary relinquishment of a right to seek reimbursement of payment for damages that were caused by a party other than the insured. Waivers of subrogation are commonly found in standard American Institute of Architects (AIA) construction contracts and can prevent CIRMA from recovering damages resulting from the negligence of a third party.
- **Hold-Harmless Agreement** – a contract under which one party agrees to assume the liability of a second party.
- **Indemnification Agreement** – defines a contractual relationship where the second party agrees to reimburse the first party for damages, including settlements and/or expenses, including attorney fees, court and expert witness fees, etc., regardless of which party is at fault.

Recommendations:

- Consider consulting legal counsel and insurance professionals before signing contracts to ensure terms, coverage and limits do not expose the municipality to unnecessary risks.
- It is not recommended for a municipality or school district to sign a waiver of subrogation agreement. Architecture and construction-related contracts that utilize standard AIA language should be thoroughly reviewed to ensure this language is omitted.
- Clearly define hold-harmless and indemnification clauses to protect the public entity from liability for claims arising from third-party activities. The language should be clear and specific to define the responsibilities and obligations of all parties involved. These clauses should be written to take effect immediately upon contract execution and be designed to protect the municipality, officers, employees, agents, servants, and volunteers.
- Consider establishing formal policies and procedures for reviewing and authorizing contracts entered into on the municipality's behalf by clearly defining roles and responsibilities among staff for negotiating, reviewing, and signing contracts and agreements.

- Consider utilizing [CIRMA's Contract Review Team](#), which is available to assist members by reviewing contractual provisions. While this value-added service is not a substitute for legal counsel, the CIRMA Contract Review Team provides timely and tailored analysis of:
 - Waivers of subrogation
 - Hold-harmless and indemnification language
 - Insurance requirements
- Review CIRMA's *Risk Transfer Best Practices Guide* for a comprehensive overview of effective methods to transfer risk. This resource provides valuable insights and practical strategies to help municipalities manage and mitigate potential liabilities through proper risk transfer techniques.

DISCLAIMER: The Connecticut Interlocal Risk Management Agency ("CIRMA") is not a law firm and cannot provide legal advice or legal representation. As a service to our members, we offer non-legal commentary and review of proposed contracts under consideration, but such a service is not a substitute for having a town or city's attorney review and approve the form of any proposed contract. Any commentary received from CIRMA, its employees or agents, in connection with any review is for informational purposes only and such review does not create an attorney-client relationship.