



TECHNICAL UPDATE

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CONTRACTS IN COUNTY OPERATIONS: UNDERSTANDING INDEMNIFICATION

Indemnification clauses allocate financial responsibility for losses in contracts, shifting liability from one party to another. For example, if a county leases a park shelter, the lessee may be required to cover injuries during the event, protecting the county from lawsuits. This clause mitigates risk and provides financial protection.

THE IMPORTANCE OF INDEMNIFICATION

Indemnification clauses protect public entities such as counties, municipalities, and other governmental bodies. Common in contracts for construction projects, service agreements, leases, and permits, these clauses shift liability to the other party, safeguarding public assets and employees. When public entities hold bargaining power, they can require indemnification to cover damages from negligence or improper actions, ensuring permit holders or contractors assume responsibility for associated risks.

WHAT TO DO WHEN ASKED TO INDEMNIFY

Public entities may also find themselves asked to indemnify private or governmental entities. This is common in intergovernmental agreements, state grants, or utility easements. Before agreeing, public officials must carefully weigh the potential benefits of the contract against the risks associated with indemnification. For example, mutual indemnification clauses may be appropriate for agreements that benefit both parties, such as shared emergency services or infrastructure projects.

Negotiation is key in these scenarios. While indemnification clauses may seem non-negotiable, most contract terms can be revised through careful negotiation. Public officials should evaluate “what-if” scenarios to understand the practical implications of indemnification. Whenever possible, include provisions to limit liability, such as capping financial exposure or excluding gross negligence or willful misconduct.

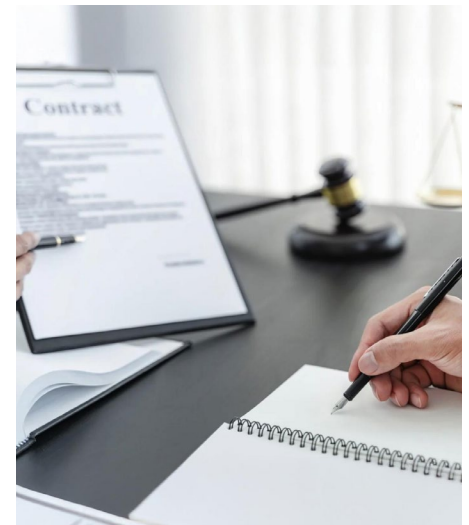
LEGAL CONSIDERATIONS FOR PUBLIC ENTITIES

Article XI, Sections 1 and 2 of the Colorado Constitution limit public entities’ ability to indemnify private parties. These provisions prohibit counties, cities, and other public entities from lending or pledging credit to private entities. However, exceptions exist when the agreement serves a clear public purpose. For instance, indemnifying a cell tower provider may be permissible if the tower supports emergency communication services that benefit the public.

Counties must exercise caution when entering contracts that involve indemnification. Legal review is essential to ensure compliance with constitutional requirements and to mitigate risks. Engaging a county attorney early in the contract negotiation process is critical for identifying potential pitfalls and crafting language that protects the public entity’s interests.

Best Practices for Managing Indemnification

- **Consult Legal Counsel:** Engage your county attorney to ensure indemnification clauses comply with legal standards and reduce liability risks.
- **Negotiate Terms:** Don’t hesitate to push for balanced terms, including mutual indemnification or capped liabilities.
- **Run “What-If” Scenarios:** Assess the clause’s practical implications in different scenarios to understand potential exposures.
- **Document Exceptions:** Clearly outline any limitations or exceptions to indemnification to avoid future disputes.



WHAT THIS MEANS FOR COUNTIES

Indemnification is a powerful tool for managing contract risk but must be approached thoughtfully and strategically. By understanding the nuances of indemnification clauses and adhering to legal and practical guidelines, counties can protect their interests while fostering beneficial agreements. For further assistance or specific questions about indemnification clauses, contact CTSI at (303) 861-0507.