

Hello Marjorie,

If the school district elects not to assume control of the parade but to pay for a police detail, it would benefit the school district to have an agreement in place with the organization sponsoring the event which clearly outlines that the school district is not assuming responsibility for the event. It would also be prudent that the organization sponsoring the event agrees to indemnify and hold harmless the school district should an incident happen that results in bodily injury or property damage. It would also benefit the school district to request the organization holding the event has its own general liability insurance as well and to provide proof of coverage.

By the school district providing a police detail, it could be argued the school district was exercising control over the event. A plaintiff attorney will likely look to hold any parties responsible to allow for multiple sources of recovery so this may increase the chance of the school district being brought into litigation should an incident arise that results in bodily injury or property damage.

I would encourage the school district to review this proposal with local counsel as well.

I have also attached the Primex Sample Insurance and Indemnification Language as an additional resource.

Insurance and Indemnification – Sample Contract Language

Insurance

The Contractor agrees that it will carry any and all insurance which will protect it, the [Member] and their officials, agents, volunteers and employees from any and all claims and demands, costs, damages, loss of service or consortium, expenses, compensation and attorneys' fees including but not limited to any and all claims for personal injury and/or death, workers' compensation injuries, and property damages which may, in any way, arise from or out of the operations of the Contractor whether such operations be performed by the Contractor itself, anyone directly or indirectly employed by it or any other persons or company retained in any way to carry on all or portion of the operations, activities or work required by or related to the Contract. The Contractor further agrees that the [Member] and its officials, agents, volunteers and employees shall be named as an additional insured in any and all such liability insurance policies required by the [Member].

Prior to commencing work, the Contractor shall demonstrate that it carries a general liability policy with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, as well as completed operations coverage, applicable to the work performed under this Contract and all liabilities as set forth above. The general liability policy must also contain contractual liability coverage applicable to the contractual indemnification obligation set forth below. *[Note: These are generalized recommendations. Members are free to lower the insurance limits in their discretion if they feel a project or service does not warrant significant limits. Conversely, a member may request higher limits, and/or umbrella liability coverage].*

The Contractor shall provide proof of automobile insurance coverage in an amount deemed satisfactory to the [Member].

The Contractor will furnish to the [Member] a Certificate of Insurance and an endorsement prior to executing the Contract or commencing work demonstrating that the [Member] and its officials, agents, volunteers and employees are named as an additional insured on the general liability and automobile liability insurance coverage on a primary and noncontributory basis.

The Contractor shall provide proof of workers compensation insurance meeting State of New Hampshire required limits and providing employer's liability coverage.

Contractor shall carry and provide proof of builder's risk insurance covering the project at its full value, and shall name the [Member] as loss payee. *[Note: Primex can provide builder's risk coverage to members upon inquiry and application].*

To the extent Contractor utilizes the services of an architect, engineer, surveyor or any other industry professional, all such professionals, in addition to the general and automobile liability coverages described above, shall carry professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such professionals shall name the [Member] and its officials, agents, volunteers and employees as an additional insured on the general and automobile liability coverages by certificate and amendatory endorsement.

The [Member] shall not be required to insure the Contractor, any subcontractor or any professional service provider.

Indemnification – Option A (generally applicable to all contractor relationships)

To the fullest extent permitted by law, Contractor shall protect, indemnify, save, defend and hold harmless the [Member], including its officials, agents, volunteers and employees (“Indemnified Parties”), from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, interest and expenses, including but not limited to reasonable attorney and paralegal fees, which Indemnified Parties may become obligated or suffer by reason of any accident, bodily injury, personal injury, death of person, economic injury or loss of or damage to property, arising indirectly or directly under, out of, in connection with, or as a result of this Contract or the activities of Contractor or its agents, employees, contractors or subcontractors, and even if caused in part by any negligent act or omission of Indemnified Parties.

In addition, and regardless of respective fault, Contractor shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising out of a claim, charge or determination that Contractor’s officers, employees, contractors, subcontractors or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages or taxes brought in connection with laws governing workers compensation, unemployment compensation, social security, medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship.

The Contractor’s obligations to defend, indemnify and hold harmless the Indemnified Parties hereunder shall survive the term of this Contract.

The [Member] shall not be required to defend or indemnify the Contractor, any subcontractor or any professional service provider.

Indemnification - Option B (applicable to construction contracts)

The Contractor releases the [Member] from, agrees that the [Member] shall not be liable for and indemnifies the [Member] against, all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the [Member] arising, directly or indirectly in whole or in part, out of the negligence or willful act or omission of the Contractor, its agents or anyone who is directly employed in connection with (i) this Agreement or (ii) the project, including the construction of the project and the maintenance, repair and replacement of any improvements which the Contractor is required to undertake pursuant to this Agreement or any permit or approval, provided that, such release or indemnification shall not apply to any actions or claims brought as a result of any material breach of this Agreement, willful misconduct or fraudulent action of the [Member].

In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the [Member] in respect of which indemnity may be sought hereunder, the person seeking indemnity promptly shall give notice of that action or proceeding to the Contractor, and the Contractor upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding.

In addition, and regardless of respective fault, Contractor shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising out of a claim, charge or determination that Contractor’s officers, employees, contractors, subcontractors or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties,

withholdings, damages or taxes brought in connection with laws governing workers compensation, unemployment compensation, social security, medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship.

The Contractor's obligations to defend, indemnify and hold harmless the Indemnified Parties hereunder shall survive the term of this Contract.

The [Member] shall not be required to defend or indemnify the Contractor, any subcontractor or any professional service provider.

RFP Considerations

It is a good practice to include indemnification and insurance language, such as the above provisions for example, in an RFP so that the bidders have been made aware of the requirements. It is important for the member to state that it shall not be required to insure or indemnify any contractor or subcontractor.

Additional Insured Certificate Checklist

- _____ Additional insured status explicitly required in contract
- _____ Coverages and limits on certificate match specs in contract
- _____ Effective dates of policies listed on certificate include project
- _____ Additional insured box is checked for liability coverages
- _____ Narrative box confirms additional insured status, describes event, and makes Town/City "primary and noncontributory" on the policy
- _____ Proof of endorsement (amendment to policy or existing policy section)
- _____ Additional insured documents saved with contract for future reference

Consult Your Legal Counsel

Contracts, in most cases, should contain insurance and indemnification clauses in order to properly transfer risk and protect a member's interests. When drafted by contractors, these clauses are often prejudicial to members' interests and can negatively impact Primex coverage provisions.

The sample language set forth in this document is for review and discussion with your local legal counsel. It is offered as a starting point for discussion, and to familiarize you with contract language that is relatively more protective of a property owner than language which is typically proposed by contractors in their standard form agreements. Your local legal counsel may recommend changes to this sample language for a number of reasons, which may include the scope and scale of the project, the capacity of the contractor, special risk factors, changes in law, negotiations with the contractor, and/or differing professional opinions.

Public sector construction contracts must require a payment bond if the project value is \$125,000 or greater. RSA 447:16. Performance and bid bonds may also be recommended by your legal counsel.