

# What's the deal?

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Any time a Member agrees to engage with another party in activities including but not limited to sharing resources and/or activities, hiring an independent contractor to perform work, leasing property or pursuing ongoing services, a written agreement should be created. Regardless of how many verbal discussions have occurred between the parties, a properly written contract or interlocal agreement will define the responsibilities and expectations of all parties involved and provide recourse for the parties in the event particular terms and conditions of the agreement have not been met. Of note, a memorandum of understanding and other agreements referred to as "Chiefs' Agreements" are not contracts and may not be legally binding and enforceable. Also, keep in mind that with most contracts for municipalities the contracts must go through council/board approval. Be aware of any dollar thresholds below, which allow for delegations of contracts to be entered into by a mayor, city manager or executive director without council or board approval.

The following are critical elements that should be present in all written agreements:

1. **Identify parties involved:** Each party who has an interest to a contract should be identified as a named party in order to enforce the conditions of a contract against the person or entity. The named party must have binding legal authority to enter into a contract. For instance, a contract involving a specific city department should name the city (the legal entity), as the contracting party, not the individual department.
2. **Purpose of the agreement:** This section provides an overview of the reasons or facts surrounding why the agreement is being developed.
3. **Term of the agreement:** The term of the agreement should be established to provide information of when the activity is to begin and its anticipated duration. This is valuable when a Member needs work done within a certain time frame since it binds the party performing the activity to that time frame.
4. **Payment Terms:** This section should describe how the parties will pay/be paid during the term of the agreement.
5. **Responsibilities or obligations:** This section documents each party's responsibilities and obligations and should specifically identify what each party is required to do in order to complete the obligations under the contract. It would be appropriate to reference any schedules, exhibits or attachments in this portion of the agreement. For example, if the extent of the activity or work to be performed is complex or lengthy, a separate "Scope of Work" should be attached as an exhibit and referred to in this section.
6. **Hold harmless, defense and indemnification:** The hold harmless, defense and indemnification section is an important part of a contract. In particular, an indemnification provision is a means of shifting risk between parties to an agreement and is a contractual

obligation by one party to pay or compensate for the losses, damages or liabilities incurred by another party to the contract or to a third party. There are several ways to approach indemnification language depending on the proposed activity, and the role each party plays in performing the activity. An indemnification clause is only as effective as the capacity of the indemnifying party's ability to honor its financial commitment. For this reason, outlining insurance requirements is not only important, but also necessary.

7. **Insurance:** Insurance needs for a project or activity should be assessed for each individual project depending on the risk exposures involved. Some activities may be very low in risk and require minimal or no insurance coverage while others may expose the Member to a variety of potential risks or losses.
8. **Dispute resolution:** If a conflict or dispute arises between the named parties, the contract should outline agreed upon steps required to address conflict resolution. This could include an agreement to enter into mediation, arbitration or resolve the dispute in court. It would also be appropriate to address the agreed upon process to be followed in order to terminate the contract. This may include how much advance notice will be required, who can terminate the agreement and if there are any consequences or penalties for doing so.
9. **Authorized signatures:** The end of the contract should contain signature lines for each named party. Signatories to an agreement must be authorized to sign the agreement on behalf of their agency, organization or business. Authorization may at times correlate to a dollar threshold by which a contract may be signed by the Mayor, City Manager, Town Manager or Executive Director in lieu of council or board approval.

[ADM.21](#) of the WCIA Liability Resource Manual provides sample hold harmless, defense and indemnification language, in addition to information on the types of and minimum insurance limits that should be considered when drafting or entering into a written agreement. WCIA Risk Management Representatives are also available to assist members on these issues.