

My Top 12 Contract Tips

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#1 Attorney Review

- ▶ Get your legal representation involved from the start!

#2 Get the WHOLE Deal in Writing

- ▶ Oral contracts are sometimes enforceable, but why take the chance?

#3 Think About What Could Go Wrong

- ▶ People are in the honeymoon stage when they sign a contract, but the contract needs to be written like they are in the middle of a nasty divorce.

#4 Document Retention

- ▶ A contract only does you any good if you can find it to refer to when needed.

#5 Indemnification Considerations

- ▶ Indemnification is a common contract provision that basically says the party at fault pays if the non-fault party gets sued related to the contract.
- ▶ This issue is county government specific.
- ▶ Article VII, Sect. 1 of the Iowa Constitution, forbids the state (which includes political subdivisions) from pledging its credit or assuming the debts and liabilities of an individual, association or corporation.
- ▶ Perhaps can add “to the extent permitted by law.”
- ▶ Talk to your county attorney.

#6 Understand the Boilerplate language

- ▶ Boilerplate language are provisions that you see in almost every contract. Examples include the “entire agreement” provision discussed above, choice of law provisions, assignment provisions, etc.
- ▶ Every contract doesn't need every boilerplate provision in it, and there may be specific facts that cause a need to modify or exclude certain boilerplate provisions.
- ▶ Force majeure clauses during COVID.

#7 Never Be Afraid to Ask for a Change

- ▶ Be prepared to explain your reasoning.
- ▶ Think about what issues are actually a deal breaker.

#8 Review all Associated Documents

- ▶ Exhibits, cross-referenced terms and conditions, related agreements, amendments, etc.
- ▶ Also understand the hierarchy of associated documents - if there's a conflict, what provisions control?

#9 Compliance Education

- ▶ Make sure the person handling the project or using the equipment, paying the invoices, etc., understand the contract.
- ▶ Good compliance education will mean problems or potential breaches get noticed and addressed more quickly.
- ▶ Have a way to track renewal terms and notice required to terminate.

#10 Changes and Enforcement Should also be in Writing

- ▶ Make sure such amendments are in writing, signed and stored in the same manner as the original contract.
- ▶ Contracts will often require breach notices to be in writing, but even if that's not the case, written notice formally establishes your enforcement actions.

#11 Who Approves Contracts?

- ▶ Don't forget - horizontal leadership!
- ▶ 1984 Iowa Op. Atty. Gen. 167 (Iowa A.G.), 1984 WL 60030
 - ▶ BOS needs the sheriff's consent to enter into a 28E agreement covering law enforcement activities that are within the sheriff's statutory authority.

#12 Special Rules for 28E Agreements

➤ 28E.5 Specifications:

- ▶ 1. Its duration.
- ▶ 2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 12B.10 and 12B.10A through 12B.10C and other applicable law.

▶ 28E.6 Additional Provisions

- ▶ 1. If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall also include:
 - ▶ a. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.
 - ▶ b. The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

- ▶ Must be filed with the Secretary of State.

Questions?

- ▶ Thank you for your time.
- ▶ Please contact me at kharshbarger@iowacounties.org