RISK TRANSFER SEMINAR SERIES

Fundamentals of Risk Transfer

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What is a Risk Transfer?

Transfers the responsibility to pay for claims to another entity (Responsible Party)

- The contracted party pays for claims arising from services rendered or facility use – not the district or the district's insurer
- Without a risk transfer, the district or its insurer would be responsible

How are risk transfers completed?

- Through indemnification/hold harmless agreements and insurance certificates

Risk Transfers - Why Bother?

ADVANTAGES	CHALLENGES
➢ Reduce the cost of claims ➢ Stabilize Premiums ➢ Forces the controlling party to bear the cost of claims ➢ Follow Industry Practice	➢ Time Consuming ➢ Learning Curve ➢ Disruptions From Third-Party Non-Compliance ➢ Political Risks

Successful Risk Transfers

- Insurance Procurement Requirements
- Properly executed agreements/contracts
- Proper Indemnification Language
- Properly completed certificates of insurance that contain:
  - Accurate information
  - Correct Terms/Conditions
  - Additional Insured Language
  - All supporting documentation

Certificate of Insurance

What They Do	What they Don't Do
➢ Document Coverage ➢ Document Limits ➢ Determine Compliance with Insurance Requirements ➢ Indicate Additional Insurance Status ➢ Indicate other Conditions and Terms ➢ Provide effective and expiration dates	➢ Prove Coverage is in Effect ➢ Prove the District/ BOCES has Additional Insured Status ➢ Guarantee Coverage ➢ Amend Policy Terms

NYSIR'S ROLE

- Review contracts/agreements and insurance specifications for compliance
- Review District's certificates of insurance for proper coverages and endorsements
- Contact carriers and/or insureds to get corrections made (Facility Use and Transportation)
- Return corrected certificates to District/BOCES and advise that they meet the District requirements.

Insurance Certificates Common Deficiencies

Problem	Reason
Required coverages are missing; insufficient limits	Contractor/vendor/user may not be able to obtain coverages or limits; broker forgot to include coverages
Insurers are not licensed in NY	Hard market conditions - Contractor/vendor/user may not be able to renew with existing insurer
No additional insured status	Broker forgot to include
Wrong or missing endorsement	Broker error or insurer unwilling to provide required endorsement

Insurance Certificates Common Deficiencies

Problem	Reason
Wrong certificate holder (building named instead of the district/ BOCES)	Typo or misunderstanding
Expired policies	Renewal policies not received
Unacceptable exclusions or conditions listed on the certificate	Contractor/vendor/user has restricted or unacceptable coverage
Certificate is unsigned	Mistake

Sample Indemnification Agreements

USE OF FACILITIES

(NAME OF FACILITY USER) does covenant and agree to defend, indemnify and hold harmless the (NAME OF DISTRICT) from and against any and all liability, loss, damages, claims or actions (including costs and attorney's fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in any way connected with the actual or proposed use of (NAME OF DISTRICT) property, facilities and/or services, including but not limited to bodily injury to any employee, invitee, guest, contractor or subcontractor of (FACILITY USER).

(FACILITY USER) understands and agrees that its use of (NAME OF DISTRICT's) property and facilities includes, but is not limited to, all areas identified in the application and/or permit, and sidewalks, walkways, parking lots, entrances, stairs, and all other areas incidental to and/or connected with the use of the premises (hereinafter referred to as "incidental areas"). (FACILITY USER) agrees that its indemnity and insurance obligations extend to the areas identified in the application and/or permit and any and all incidental areas.

Sample Indemnification Agreements

CONTRACTOR/TRANSPORTATION COMPANIES

To the fullest extent permitted by law, **(Contractor's Name/Transportation Company)** agrees to defend, indemnify and hold harmless the **(District/BOCES)**, as well as any other parties which the contractor is required under the contract documents to defend, indemnify and hold harmless, their agents, servants and employees, from and against any claim, cost, expense or liability (including costs and attorneys' fees incurred in enforcing this indemnity), attributed to bodily injury, sickness, disease or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising our of, resulting from or occurring in connection with the performance of the work by the contractor, its subcontractors and suppliers or their agents, servants and employees whether or not caused in part by the active or passive negligence, partial negligence or other fault of the party indemnified hereunder; provided, however, the contractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage or destruction is caused by the sole negligence of the party indemnified hereunder. The contractor's obligation shall not be limited by the provisions of any Workers' Compensation Law or similar Act.

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