INDEMNITY CLAUSES IN LOCAL GOVERNMENT CONTRACTS

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Practical reasons to reject indemnification language

✓ The likelihood that this contractual obligation is not covered by the local government’s insurance policy or self-insurance pool coverage.
✓ The fact that such clauses do not typically expire upon termination of the contract with the result that they are virtually perpetual.
✓ The inherent inequity of such provisions since they are typically unilateral rather than reciprocal.
✓ The unpredictability of indemnity obligations since they are open-ended and unlimited in scope and amount.

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✓ Since indemnity clauses are contractual obligations and not tort claims per se they are probably NOT subject to the liability limits, notice requirements or substantive immunities of the Colorado Governmental Immunity Act. C.R.S. § 24-10-101 et seq.
Practical reasons to reject indemnification language

"the almost UNIVERSAL CONSENSUS among lawyers who have carefully considered the issues is that local governments in Colorado are LEGALLY PROHIBITED from entering into these types of arrangements"

Local Government Budget Law of Colorado
C.R.S. § 29-1-110

Expenditure Appropition

Colorado Constitution Article XI
Section 1 and 2

Section 1: Pledging credit of state, county, city, town or school district is forbidden.
Section 2: No aid to corporations – no joint ownership by state, county, city, town, or school district.

C.R.S. § 24-91-103.6(1)
Construction contracts with public entities

"TO THE EXTENT ALLOWED BY LAW"
and other legal weasel words
Conclusion

Local governments are **LEGALLY PROHIBITED**
from entering into open-ended indemnification
clauses.
The local government lawyer should **REJECT**
**THESE CLAUSES**, reciting the authorities set
forth in this outline.

Thank you!