



Minimize Risk – Maximize Performance

**ARCHITECT & ENGINEERS (A/E)
GOOD & BAD
CONTRACT PROVISIONS**

CONTRACT – The following Contract Provisions along with the Client/ARCHITECT agreement constitutes the full and complete Agreement between the parties. Changes, amendments, add to, superseded, or waived only can only occur if both parties specifically agree in writing to such amendments. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.

CLIENT STANDARD OF CARE – CONSULTANT and its employees, subsidiaries, independent professional associates, sub-consultants, and subcontractors will shall have exceptional skills consistent with this project type and shall exercise great care in providing their services. CONSULTANT warrants services provided will be rendered consistent with all the client requests and expectations. CONSULTANT shall exercise the utmost professional care to comply with any and all codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement and during the course of the project.

STANDARD OF CARE – CONSULTANT and its employees, subsidiaries, independent professional associates, sub-consultants, and subcontractors will exercise the degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied. CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

CLIENT LIABILITY – CONSULTANT and CONSULTANTS officers, directors, employees, agents, and consultants shall not limit liability in any way to Client for any injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related directly or indirectly to CONSULTANTS services.

LIABILITY – To the fullest extent permitted by law, the total liability, in the

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

SmartRisk
626-665-8150
www.smartrisk.biz

aggregate, of CONSULTANT and officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to CONSULTANTS services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total amount of insurance available at the time of the claim.

CLIENT INDEMNITY - To the full extent permitted by law, the CONSULTANT agrees to indemnify and hold the Client harmless from and against any and all liabilities, damages and costs (including all attorney's fees) related in whole or in part by the CONSULTANT in performance of services, including the responsibilities of Client and Clients consultants under this Agreement. The CONSULTANT shall have a duty to defend any and all claims, causes of action, demands, costs or lawsuits in connection with or arising out of this Project even if damages were not caused by the negligence of the CONSULTANT in performance of services.

INDEMNITY - To the full extent permitted by law, the CONSULTANT agrees to indemnify and hold the Client harmless from and against any liabilities, damages and costs (including reasonable attorney's fees) to the extent caused by the negligence of the CONSULTANT in performance of services under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations.

The parties expressly agree in no event shall the indemnification obligation of the CONSULTANT include a duty to defend any claims, causes of action, demands, costs or lawsuits in connection with or arising out of this Project if damages were NOT caused by the negligence of the CONSULTANT in performance of services under this Agreement.

CLIENTS INSTRUMENTS OF SERVICE – Client may use the CONSULTANTS reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT defined collectively as Instruments of Service for the purpose of the construction, maintenance of the project, and any other project including modifications. The CONSULTANTS Instruments of Service shall remain the Clients property. CONSULTANT shall be liable for all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from the use of CONSULTANT instruments of service.

INSTRUMENTS OF SERVICE – Client may use the CONSULTANTS reports,

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by CONSULTANT defined collectively as Instruments of Service for the purpose of the construction and maintenance of the project under this agreement once the Client has paid the CONSULTANT in full for services rendered. The CONSULTANTS Instruments of Service shall remain the CONSULTANTS property. The Client agrees not to use CONSULTANTS generated documents for projects other than the project for which the documents were prepared by CONSULTANT, or for future modifications to this project, without the CONSULTANTS express written permission. Any misuse, reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

CLIENT RELIANCE - CONSULTANT shall be required to verify and shall not rely, without liability, on the accuracy and completeness of any and all information and services provided by Client, Client's consultants and contractors, and information from public records.

RELIANCE - CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information and services provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

CLIENT CONSEQUENTIAL DAMAGES - CONSULTANT shall be liable to the Client for claims for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

CONSEQUENTIAL DAMAGES - Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

CLIENT CHANGES OR DELAYS – Proposed fees constitute CONSULTANTS estimate to perform the services to complete the Project. Any changes in the Agreement impacting costs and schedule shall be the responsibility of the ARCHITECT, including delays caused by the Client's failure to provide specified facilities, direction, or information.

CHANGES OR DELAYS – Proposed fees constitute CONSULTANT estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made. Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if CONSULTANTS failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the fee structure.

CLIENTS SUSPENSION OF WORK – The Client may, at any time, without notice to the CONSULTANT, suspend further work and shall not be liable for payment to the CONSULTANT for services rendered to the date of suspension of services until work is resumed. CONSULTANT shall not suspend services and agrees to indemnify and hold Client harmless from any claim or liability resulting from such delays and suspension.

SUSPENSION OF WORK – The Client may, at any time, with a fourteen (14) day written notice, suspend further work by CONSULTANT. The Client shall remain liable for, and shall promptly pay CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf. Client shall pay CONSULTANT pursuant to the rates and charges set forth in the agreement. CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold CONSULTANT harmless from any claim or liability resulting from such delays and suspension.

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

CLIENT CONSTRUCTION PHASE SERVICES – CONSULTANT shall perform services during the construction phase of the project. CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does guarantee the performance of the construction contract by the Contractor and shall assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

CONSTRUCTION PHASE SERVICES – If CONSULTANT performs any services during the construction phase of the project, CONSULTANT shall not supervise, direct, or have control over Contractor's work. CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

CLIENT COST ESTIMATES – When required as part of work, CONSULTANT will furnish opinions on cost and shall guarantee the accuracy of such estimates and shall be held liable for any inaccuracies. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANTS exceptional experience and extensive qualifications and will represent CONSULTANTS judgment as an experienced and qualified design professional for this project type. Users of the cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.

COST ESTIMATES – When required as part of work, CONSULTANT will furnish opinions of probable cost, however does not guarantee the accuracy of such estimates and shall be held harmless and not liable for any inaccuracies. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by CONSULTANT hereunder will be made on the basis of CONSULTANT experience and qualifications and will represent CONSULTANT judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment,

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.

CLIENT DISPUTE RESOLUTION: The Client and CONSULTANT agree that if a dispute arises, CONSULTANT shall be responsible for any and all upfront costs regarding resolving the dispute. The parties agree that claims arising out of this Agreement shall use non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

MEDIATION: The Client and CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

CLIENT WARRANTY AND GUARANTEES – CONSULTANT warrants and guarantees that all services rendered including the performance of the Contractor of the construction contract and the Contractor's ability to furnish and perform its work shall be in accordance with the Design and Construction Contract Documents. When requested, CONSULTANT shall be required to sign documents certifying the existence of project conditions.

WARRANTY AND GUARANTEES – Client agrees that services provided by the CONSULTANT will be rendered without any warranty, and/or guarantees, expressed or implied including the performance of the Contractor of the construction contract and the Contractor's ability to furnish and perform its work in accordance with the Contract Documents. CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in CONSULTANTS having to certify, guaranty, or warrant the existence of conditions that CONSULTANTS cannot ascertain.

CLIENT THIRD PARTY - Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANT'S services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANTS performance of services hereunder. However, if a third part claim is brought against the Client, the CONSULTANT shall have the responsibility and duty to

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

defend the Client from such claims.

THIRD PARTY - Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or CONSULTANT. CONSULTANTS services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against CONSULTANT because of this Agreement or CONSULTANTS performance of services hereunder.

UNENFORCEABLE - In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

This should not be relied upon as a complete list or as legal advice. Firms should discuss their specific circumstances with an industry professional.

SmartRisk
626-665-8150
www.smartrisk.biz