

SIMPLE TOOLS FOR MANAGING RISKY CONTRACTS

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RISKY BUSINESS

1. Indemnification Clauses
 - a. History
 - b. Different California *Civil Code* sections
2. Defense Clauses
 - a. Crawford
3. Insurance Clauses
 - a. Various types
 - b. Endorsements/certificates
4. Termination Provisions and Various remedies
5. Mandatory Clauses
6. Matching front end documents with desired results

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INDEMNIFICATION CLAUSES

A history.....

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INDEMNIFICATION CLAUSES

California law traditionally provides for three types of indemnity ...

Equitable Indemnity
Implied Indemnity
Express Indemnity

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INDEMNIFICATION CLAUSES

As between multiple defendants who were concurrent tortfeasors a tortfeasor who was without *active* fault and who was only *secondarily liable* could completely shift liability to a concurrent tortfeasor who was *primarily liable*.

This is also referred to as the 'joint and several liability' doctrine where each tortfeasor whose negligence is a proximate cause of an indivisible injury remains individually liable for all compensable damages attributable to that injury." (*American Motorcycle Association v. The Superior Court*, (1978) 20 Cal.3d 578)

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INDEMNIFICATION CLAUSES

Subsequent cases established that under the principles articulated in *American Motorcycle* a defendant may pursue a comparative equitable indemnity claim against other tortfeasors either:

(1) by filing a cross-complaint in the original tort action OR

(2) by filing a separate indemnity action after paying more than its proportionate share of the damages through the satisfaction of a judgment or through a payment in settlement.

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INDEMNIFICATION CLAUSES

The joint and several liability doctrine produced some situations in which defendants who bore only a small share of fault for an accident could be left with the obligation to pay all or a large share of the plaintiff's damages if other more culpable tortfeasors were insolvent. To ameliorate this inequity and injustice at least in part, in 1986 the California electorate passed Proposition 51.

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INDEMNIFICATION CLAUSES

Proposition 51 and codified as *Civil Code* section 1431.2 states:

A joint tortfeasor is jointly liable for economic damages and severally liable for non-economic damages.

Economic damages include medical expenses, loss of earnings, burial costs, loss of use of property, etc.

Non-economic damages include pain and suffering, loss of consortium, injury to reputation, etc.

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INDEMNIFICATION CLAUSES

So why do we enter contracts and include indemnification clauses???

To attempt to save your public entity from the legal consequence of the conduct of another party, your public entity's conduct, or the conduct of another person.

Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

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INDEMNIFICATION CLAUSES

- What are the rules of indemnity?
 - The terms of the contract prevail. Civil Code § 2778.

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INDEMNIFICATION CLAUSES

Types of Clauses:

Type I. "The Indemnitor will indemnify, defend and hold harmless the Indemnitee for any and all claims, lawsuits, actions, or demands that refer or relate in any way to the project, except for the sole negligence or willful misconduct of the Indemnitee."

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INDEMNIFICATION CLAUSES

- What are the real world applications of a Type I clause?
 - Active Negligence
 - Passive Negligence
 - Express Language

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INDEMNIFICATION CLAUSES

Type II. "The Indemnitor will indemnify, defend and hold harmless the Indemnitee for any and all claims, lawsuits, actions, or demands that refer or relate in any way to the project, except for the active negligence, sole negligence, or willful misconduct of the Indemnitee."

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INDEMNIFICATION CLAUSES

Examples of Type II in the real world.

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INDEMNIFICATION CLAUSES

Type III. "The Indemnitor will indemnify, defend, and hold harmless the Indemnitee for any and all claims, lawsuits, actions, or demands that refer or relate to the negligence of the Indemnitor."

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INDEMNIFICATION CLAUSES

- What are the effects of a Type III clause?

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INDEMNIFICATION CLAUSES

- Do these type I, II, and III clauses rule the day?

NO

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INDEMNIFICATION CLAUSES

Civil Code § 2782. Construction contracts; void and unenforceable indemnification provisions; agreements between subcontractors, builders, or general contractors

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INDEMNIFICATION CLAUSES

(a) agreements ... affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors ... or for defects in design furnished by those persons, are against public policy and are void and unenforceable...

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INDEMNIFICATION CLAUSES

(b) agreements ... affecting any construction contract with a public agency that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

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INDEMNIFICATION CLAUSES

The Contractor shall indemnify and hold harmless the Public Agency and Public Agency's Agents from and against any and all liability, demands, damages, claims, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), arising from or connected with Contractor's acts, errors, and/or omissions arising from and/or relating to this Contract. Contractor shall not be required to indemnify and hold harmless the Public Agency and Public Agency's Agents from any Liabilities that arise from the active negligence, sole negligence or willful misconduct of the Public Agency, Public Agency's agents, servants, or independent contractors who are directly responsible to the Public Agency.

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INDEMNIFICATION CLAUSES

What are some exceptions to 2872?

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INDEMNIFICATION CLAUSES

Civil Code section 2782.1 which states:

Nothing contained in Section 2782 shall prevent a contractor ... from indemnifying fully a[n] ... agency for whose account the construction contract is not being performed but who, as an accommodation, enters into an agreement with the contractor permitting such contractor to enter upon or adjacent to its property for the purpose of performing such construction contract for others.

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INDEMNIFICATION CLAUSES

The Contractor shall indemnify and hold harmless the Public Agency and Public Agency's Agents from and against any and all liability, demands, damages, claims, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), arising out of, pertaining to, or in connection with the Permit granted herein or Contractor's, their sub-contractor's, agent's and representative's presence on or about the Permitted Area, provided that Contractor shall not be required to indemnify and hold the Public Agency harmless from Liabilities caused by the sole negligence or willful misconduct of the Public Agency.

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INDEMNIFICATION CLAUSES

Civil Code § 2782.8 (aka AB 573) Public agency contracts for design professional services; indemnification provisions

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INDEMNIFICATION CLAUSES

(a) For all contracts, and amendments thereto, entered into on or after January 1, 2007, with a public agency for design professional services, all ... agreements contained in ... such contract ... that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. This section shall not be waived or modified by contractual agreement, act, or omission of the parties.

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INDEMNIFICATION CLAUSES

(c) This section shall only apply to a professional service contract, or any amendment thereto, entered into on or after January 1, 2007.

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INDEMNIFICATION CLAUSES

The intent of this new law is to prohibit indemnity agreements, except to the extent the problem was caused by the design professional.

But it also provides other benefits to the design professional. Indemnity agreements that obligate them to indemnify for a "breach of this contract" (meaning the engineering contract) are prohibited because they are not necessarily tied to the design professional's negligence.

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INDEMNIFICATION CLAUSES

Also, the "cost of defense" is changed. Now, the design professional may only have to pay for the defense to the extent it is directly related to your negligence.

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INDEMNIFICATION CLAUSES

Who are design professionals?

- Architects
- Electrical Engineers
- Structural Engineers
- Plumbing Engineers
- Civil Engineers
- Mechanical Engineers
- Landscape Architects
- Land Surveyors

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INDEMNIFICATION CLAUSES

To the fullest extent permitted by law CONSULTANT shall indemnify, defend, and hold harmless the CITY and its officers, elected and appointed officials, employees and volunteers ("CITY entities") from and against all claims, damages, injuries, losses and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of CONSULTANT, and subconsultant, anyone employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the sole negligence, active negligence or willful misconduct of the CITY. Negligence, recklessness or willful misconduct of any subcontractor employed by CONSULTANT shall be conclusively deemed to be the negligence, recklessness or willful misconduct of CONSULTANT unless adequately corrected by CONSULTANT.

INDEMNIFICATION CLAUSES

What's wrong with that?

... except to the extent caused by the sole negligence, active negligence or willful misconduct of the CITY. Negligence, recklessness or willful misconduct of any subcontractor employed by CONSULTANT shall be conclusively deemed to be the negligence, recklessness or willful misconduct of CONSULTANT unless adequately corrected by CONSULTANT.

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INDEMNIFICATION CLAUSES

The Consultant agrees to indemnify, defend and hold harmless the Public Agencies and their Agents from and against any and all liability, demands, damages, claims, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses, including, but not limited to, claims for bodily injury, property damage, and death (hereinafter collectively referred to as "Liabilities"), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant. Such indemnification language, in favor of Public Agencies and their Agents, shall also be incorporated in Consultant's contracts with any and all entities, which are providing professional services, with which it contracts.

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DEFENSE CLAUSES

Defense clauses are typically included in the indemnification clause, as was seen before ...

“To the fullest extent permitted by law CONSULTANT shall indemnify, **defend**, and hold harmless the CITY and its officers, elected and appointed officials, employees and volunteers ...”

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DEFENSE CLAUSES

- Can have duty to defend:
 - Statutory OR
 - Contractual

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DEFENSE CLAUSES

Group of homeowners in housing development brought construction defect action against developer and window subcontractor.

Developer cross-complained against subcontractor for attorney fees incurred in defending suit and indemnification.

After jury trial and bench trial, the court entered judgment for no liability on part of subcontractor to homeowners, no liability on part of subcontractor to developer for developer's causes of action for breach of contract and express indemnity, but held the developer was entitled to be defended by subcontractor pursuant to their contract.

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DEFENSE CLAUSES

Contractor does agree to indemnify and save Owner harmless against all claims for damages to persons or to property and claims for loss, damage and/or theft of homeowner's personal property growing out of the execution of the work, **and at his own expense to defend any suit or action brought against Owner** founded upon the claim of such damage or loss or theft; to procure and maintain, during the entire progress of the work, full and unlimited Workman's Compensation and Employers' Liability Insurance, Public Liability and Property Damage Insurance including without limitation automobile and products liability covering in amounts and with a carrier or carriers satisfactory to Owner; to furnish Owner with certificates of said insurance before commencing work hereunder which certificates shall provide that the policy shall not be canceled or reduced in coverage until ten (10) days after written notice shall be given to Owner of such cancellation or reduction in coverage; to insure his interest from loss to the premises resulting from fire, earth settlement, earthquake, theft, embezzlement, riot or any other cause whatsoever and Owner shall not, under any circumstances, be liable or accountable to the Contractor for such loss.

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DEFENSE CLAUSES

What do you think should happen?

What did the court do?

The court required the window subcontractor to pay all of the Developer's attorneys fees and costs! *Crawford v. Weather Shield Mfg.*

Why??

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DEFENSE CLAUSES

Do you want to use these clauses? Does this seem rhetorical?

- Protect Entity vs. Pushing away qualified applicants

What does this do to the quality of entities that are trying to contract with you?

How can you accomplish the same result without putting your contracting entities at risk?

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INSURANCE CLAUSES/BONDS

Some of the Major Types of Protection:

- Commercial General Liability
- Automobile/Motor Vehicle Coverage
- Workers' Compensation
- Professional Liability/Errors and Omissions
- Property
- Crime Coverage/Fidelity Bond

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INSURANCE CLAUSES/BONDS

- Commercial General Liability
 - What does this cover?
 - Depends on the language of the policy but general it is a promise by the insurance company to pay, on the behalf of the insured, for things the insured becomes legally obligated to pay on account of personal injury or property damage caused by an accident or occurrence

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INSURANCE CLAUSES/BONDS

- Commercial General Liability
 - How do CGL policies work?
 - These policies are occurrence policies. Meaning the CGL policy that applies is the one in effect at the time the occurrence happened.
 - For example, if a contractor improperly piles up dirt against a building, which then causes dry rot, every policy that exist during the time the dirt is against the building would potentially apply.

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INSURANCE CLAUSES/BONDS

GENERAL LIABILITY INSURANCE (written on ISO policy form CG 20 10 85 or it's equivalent) including coverage for personal injury, death, property damage and contractual liability with limits of not less than the following:

- General Aggregate \$2,000,000
- Products/ Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

The Public Entity and each of their elected and appointed officers, officials, representatives, employees, and agents (hereinafter collectively referred to as the "Covered Entities"), shall be covered as additional insureds on such policy. Contractor shall require that the aforementioned General liability insurance coverage language be incorporated into its contract with any other entity with which it contracts for professional services.

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INSURANCE CLAUSES/BONDS

• Automobile/Motor Vehicle Coverage

– What does this cover?

- Motor Vehicle liability policies are for owners of commercial passenger vehicles and noncommercial vehicles
- Automobile liability policies are for owners of noncommercial passenger vehicles

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INSURANCE CLAUSES/BONDS

AUTOMOBILE/MOTOR LIABILITY INSURANCE with a limit of liability of not less than one million dollars (\$1,000,000) for each incident. Such insurance shall include coverage of all "owned", "hired", and "non-owned" vehicles, or coverage for "any auto." The Covered Entities shall be covered as additional insureds on such policy.

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INSURANCE CLAUSES/BONDS

- Professional Liability
 - What does this cover?
 - Depends on the language of the policy but general it is a promise by the insurance company to pay, on the behalf of the insured, for claims made during the policy period “by reason of any act, error or omission in professional services rendered.”

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INSURANCE CLAUSES/BONDS

- Professional Liability
 - How do E&O policies work?
 - These policies are claims-made policies. Meaning the policy that applies is the one that was in effect at the time the claim is made.
 - For example, if you are suing an architect in 2009 for a services provided two years ago the only professional liability policy that applies is the 2009 policy.

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INSURANCE CLAUSES/BONDS

PROFESSIONAL LIABILITY INSURANCE, including coverage for personal injury, death, and property damage in an amount not less than One Million Dollars (\$1,000,000) for each occurrence (Two Million Dollars (\$2,000,000) general aggregate). Said insurance shall be maintained for the statutory period during which the professional maybe exposed to liability. If Contractor is not providing professional services, then it is the responsibility of Contractor to obtain separate written approval from Public Entity to eliminate this professional liability insurance requirement. Contractor shall require that the aforementioned professional liability insurance coverage language be incorporated into its contract with any other entity with which it contracts for professional services.

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INSURANCE CLAUSES/BONDS

WORKERS' COMPENSATION and EMPLOYER'S LIABILITY insurance providing workers' compensation benefits, as required by the Labor Code of the State of California. In all cases, the above insurance shall include Employer's Liability coverage with limits of not less than the following:

Each Accident	\$1,000,000
Disease-Policy Limit	\$1,000,000
Disease-Each Employee	\$1,000,000

Why is this language necessary?

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INSURANCE CLAUSES/BONDS

PROPERTY INSURANCE. Based upon the specifics of the project that is the subject of this Contract, the CDC has the right to require Contractor to obtain either "Basic Form" or "Special Form" property insurance as follows:

"Basic Form" insurance coverage shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, vandalism, malicious mischief and extended coverage, collapse, earth movement (excluding earthquake), flood (if the property is located in a Special Flood Hazard Area). The amount of the property coverage shall at all times exceed the actual cash value (ACV) of all existing structures, improvements and fixtures on the property. Said insurance shall be maintained for the duration of this agreement. The Covered Entities shall be covered as additional insureds on such policy.

"Special Form" property insurance coverage shall include, without limitation, builders risk insurance and insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The amount of the property coverage shall at all times exceed the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the property. There shall not be a "co-insurance" clause. If a coinsurance waiver is not commercially available at reasonable rates, Public Entity may waive this requirement. Said insurance shall be maintained for the duration of this Contract. The Covered Entities shall be covered as additional insureds on such policy.

INSURANCE CLAUSES/BONDS

CRIME COVERAGE FOR EMPLOYEE THEFT; FIDELITY BOND. Contractor shall procure and maintain, at its sole cost and expense, a fidelity bond covering each employee of Contractor, whether or not they are compensated. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond written by an insurer licensed by the California Insurance Commissioner. Borrower shall provide thirty (30) days notice to the Public Entity prior to cancellation of the fidelity bond. The fidelity bond shall provide a minimum coverage equivalent to the amount of the grant being provided to Contractor in relation to this agreement. Contractor shall maintain the fidelity bond for the duration of this agreement. The fidelity bond may contain a provision for a deductible amount from any loss which, except for such deductible provision, would be recoverable from the insurer. A deductible provision shall not be in excess of ten percent (10%) of the required minimum bond coverage. Any deviation from this fidelity bond section, shall require specific written approval by the Public Entity.

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INSURANCE CLAUSES/BONDS

ISO Form CG 20 10 10 01

POLICY NUMBER: _____ COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

Name of Person or Organization: _____ SCHEDULE B

(If the entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section 1) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured or for you.

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TERMINATION PROVISIONS

- Why are we making a big deal about this?!?!

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TERMINATION PROVISIONS

2. [§511] Termination by the Commission

If Developer commits an Event of Default, then, in addition to any other remedies, the Commission may elect to terminate this Agreement by giving written notice of such election to Developer (without waiving any other rights under applicable law or in equity or under this Agreement, including without limitation, the right of reimbursement for any Administrative Costs incurred by the Commission).

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TERMINATION PROVISIONS

(i) Failure by the Developer to promptly pay to full any sum or sums due to the Commission or the County under any term of this Agreement;

(ii) Failure of the Developer to timely make any of the submissions or secure any of the approvals required under this Agreement including without limitation the Schedule of Performance (Attachment No. 5);

(iii) Failure or delay by the Developer in the design, progress and complete observance and performance of each and every condition, covenant or obligation imposed on the Developer by this Agreement and the Grand Deed, including without limitation the failure to commence or complete construction of the Project in accordance with and at the times set forth herein;

(iv) Filing of a petition in bankruptcy by or against the Developer, or appointment of a receiver or trustee of any property of the Developer, or an assignment by the Developer for the benefit of creditors, or adjudication that the Developer is insolvent, or a trust, or any of an assignment of assets against any substantial portion of the Developer's property, or against the site or any portion thereof, or any material adverse change in the financial condition of the Developer;

(v) The Developer is in default under any acquisition and/or construction loan encumbering the site or any portion thereof;

(vi) Failure by the Commission in the design, progress and complete observance and performance of each and every material condition, covenant or obligation material imposed on the Commission by this Agreement.

The party whose acts or omissions to act constitute a default hereunder shall be entitled to cure, correct, or remedy such default; if (a) such defaulting party commences and thereafter diligently prosecutes the curing of said default within thirty (30) days of receipt of a Notice of Default (as defined herein) and (b) such defaulting party fully completes such cure, correction or remedy within thirty (30) days after receipt of said Notice of Default, or, in the event that the default is not curable within said 30-day period, within such additional period as is reasonably necessary to cure said default, provided that

TERMINATION PROVISIONS

6. **Term** The term of this Contract shall be a period of two (2) years from the later of the date of approval by the Agency or the date the Development first becomes available for occupancy, unless terminated earlier in accordance with one of the following provisions:

a. The Contract may be terminated at any time by the mutual consent of the Principal Parties and the Agency.

b. This Contract may be terminated with or without cause by the Owner effective the end of any calendar month with not less than thirty (30) days written notice to the Agent. Such termination must be approved in writing by the Agency before the written termination notice is issued.

c. This Contract may be terminated with or without cause by the Agent effective the end of any calendar month with not less than sixty (60) days written notice to the Owner.

d. In the event that a petition in bankruptcy is filed by or against one of the Principal Parties, or one of the Principal Parties seeks relief under any of the chapters of the Federal Bankruptcy Act, or in the event that one of the Principal Parties makes an assignment for the benefit of creditors (whether by common law assignment or pursuant to specific provisions of state or federal law), the other Principal Party may terminate this Contract without notice to the first Principal Party, provided that prompt written notice of such termination is given to the Agency.

e. It is expressly understood and agreed by and between the Principal Parties that the Agency shall have the right to require the Owner to terminate this Contract with or without cause, in its sole discretion, immediately upon the issuance of a written notice of cancellation to each of the Principal Parties.

f. Upon expiration of the term of this Contract, if not otherwise renewed, it shall be deemed to continue on a month-to-month basis until renewed.

ATTORNEY'S FEES

- All attorney's fees clauses are reciprocal no matter how they are drafted
- Example:

"In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including the cost of expert witnesses, staff time, court costs, attorneys' fees and all other related expenses in such litigation."

LIMITATION OF LIABILITY

What do you look for?

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LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of this Project to the parties, Public Entity agrees to limit Consultant's total liability to Public Entity, general contractors, subcontractors, other consultants, material suppliers, and any other third party, including without limitation, successors and assigns, from and against any and all claims, losses, damages, liabilities, costs, expenses, judgments, or obligations whatsoever, including but not limited to, reasonable attorneys' and experts' fees and costs, from any cause or causes, such that Consultants total liability to those named above shall not exceed the amount per claim limit, total aggregate liability limit is not to exceed the amount of One Million Dollars (\$1,000,000.00). This limitation of liability includes, but is not limited to, allegations or proof of negligence, indemnity, breach of contract, strict liability, or warranty or any other contract or tort claim plead.

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CONSEQUENTIAL DAMAGES

- **DAMAGE WAIVER.** Neither party shall, under any circumstances, be liable to any other party for consequential, exemplary, or economic loss damages arising out of or related to the transactions contemplated in this agreement.

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MANDATORY CLAUSES

- **INTERPRETATION.** No provision of this Contract is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Contract is to be construed as if drafted by both parties hereto.

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MANDATORY CLAUSES

- **SEVERABILITY.** In the event that any provision herein is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

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MANDATORY CLAUSES

- **AGE DISCRIMINATION ACT OF 1975 AND SECTION 504 OF THE REHABILITATION ACT OF 1973.** The Contractor shall comply with the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, which require that no person in the United States shall be excluded from participating in, denied the benefits of, or subject to discrimination under this Contract on the basis of age or with respect to an otherwise qualified disabled individual.

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MANDATORY CLAUSES

- **SAFETY STANDARDS AND ACCIDENT PREVENTION.** The Contractor shall comply with all applicable federal, state and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, as its own responsibility, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of this Contract.

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MANDATORY CLAUSES

- **DRUG-FREE WORKPLACE ACT OF THE STATE OF CALIFORNIA.** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990.

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MANDATORY CLAUSES

- **INDEPENDENT CONTRACTOR.** This Contract does not, is not intended to, nor shall it be construed to create the relationship of agent, employee or joint venture between the Housing Authority and the Contractor.

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MANDATORY CLAUSES

- **VENUE/CALIFORNIA LAW.** The parties hereby expressly agree that any dispute arising out of this contract or this Project shall be adjudicated in a Court of competent jurisdiction in Los Angeles County, California. Any dispute shall be litigated pursuant to and in accordance with the laws of the State of California.

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MANDATORY CLAUSES

- **WAIVER.** No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any breach of the same or any other provision hereof .

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MANDATORY CLAUSES

- **NO THIRD PARTY BENEFICIARIES.** This contract does not and is not intended to create any third party beneficiaries.

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FRONT END/BACK END

- What are we talking about?

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