



6. CONTRACT AGREEMENTS EXCEPTIONS

1. CONTRACT EXCEPTIONS

After reviewing the contract, we would appreciate the opportunity to discuss the following changes to the sample agreement. Additions are in **red** text and deletions are in ~~strikethrough~~. Notes are in italic text.

5.5.4 Wasting Policies

Our Professional Liability Policy has wasting limits, so we would not be able to agree to this.

No policy required by this Section 5, **other than professional liability**, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

8.1 Termination

We request ample notice of termination.

City may cancel this Agreement at any time and without cause upon **14 days** written notification to Consultant.

Consultant may cancel this Agreement upon days' written notice to City and shall include in such notice the reasons for cancellation.

8.2 Extension

Requiring mutual written agreement for changes ensures that both parties are aware of and agree to any modifications, including impacts on budget and schedule. This prevents disputes and ensures that changes are properly documented and enforceable.

City may, **upon mutual agreement of Consultant** in its sole and exclusive discretion, extend the end date of this

Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. **unless the Parties mutually agree, in a written amendment or change order, to additional compensation and, if applicable, an increase to the maximum compensation amount to account for services required during the extension period.** Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

10.1 Attorneys' Fees

Fee-shifting clauses can be a double-edged sword: while they may deter frivolous claims, they also expose each contractual party to paying the other's legal costs even if only partially at fault. Having each party bear its own fees is fair and aligns with the default rule in most jurisdictions.

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

Indemnification

Our obligation to indemnify should only extend to those parties whom we are in direct contractual privity to and should not include outside parties such as agents or volunteers as this can be a huge financial exposure to the company.

Extreme phrasing, such as "of every kind, nature and description," serves to broaden liability and may render the clause uninsurable.

A. Consultant shall, to the extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, indemnify, hold harmless with counsel acceptable to City, and assume the defense of, in any actions at law or in equity, the City, its employees, ~~agents, volunteers,~~ and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability **to the extent** ~~of every kind, nature and description,~~ arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.

B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, ~~and employees, and volunteers~~) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the City.

D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, **and** employees, ~~volunteers, or agents~~ use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.