

Indemnification Clauses in Arizona Public Contracts

A Survey by ACEC of Arizona//April 2008

ACEC of Arizona monitors and works with various city, county and state agencies throughout Arizona regarding their indemnification clauses. We recently asked for member help to determine which contracts members sign and which ones they avoid and/or never submit a proposal.

ACEC of Arizona is in the process of reviewing the current state indemnification law and formulating new language for further clarification. These responses will help us focus on the most egregious terms, help us debate the issue and urgent need for change with elected officials, and demonstrate which owners have fair and reasonable indemnity language.

We included 20 indemnity contract clauses for comment. Each indemnification clause was rated using the following scale:

- 5 = Excellent Indemnity Language // Always Sign
- 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

Additional comments were welcome. Thirty-nine firms engaged in public work contracts responded. The following list (*in alphabetical order*) shows how firms responded to the indemnity language:

Arizona Department of Administration

Professional Services Contracts. Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as 'Indemnitee') from and against any and all claims, actions liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claim processing, investigation and litigation) (hereinafter referred to as 'Claims') for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property causes, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights, subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

- 5% ... 5 = Excellent Indemnity Language // Always Sign
- 14% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 56% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 17% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 8% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Arizona Department of Transportation

2.6.2.1 Contractor/Vendor Indemnification (Not Public Agency): The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

- 31% ... 5 = Excellent Indemnity Language // Always Sign
- 45% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 20% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 2% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 2% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Avondale, City of

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

- 12% ... 5 = Excellent Indemnity Language // Always Sign
- 55% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 25% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 5% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 3% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Buckeye, City of

To the fullest extent permitted by law, the Consultant, its successors, assigns and guarantors, shall indemnify and hold harmless Town of Buckeye, its agents, representatives, officers, directors, officials and employees for, from and against all damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, to the extent caused by or resulting from any negligent act or omission of Consultant in work or services performed under this Contract, including but not limited to, the negligent acts or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable including any injury or damages by any of the Consultant's or Subcontractor's employees.

59% ... 5 = Excellent Indemnity Language // Always Sign

30% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

11% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

0% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Chandler, City of

To the fullest extent permitted by law, Design Consultant shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter COC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by Design Consultant, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions Design Consultant may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of COC (other than Design Consultant, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of the Contract.

11% ... 5 = Excellent Indemnity Language // Always Sign

38% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

35% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

14% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

2% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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El Mirage, City of

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the consultant is legally liable.

- 67% ... 5 = Excellent Indemnity Language // Always Sign
- 33% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 0% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 0% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Flagstaff, City of

5. Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation law or arising out of the failure of such Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Consultant shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Consultant for the City.

- 5% ... 5 = Excellent Indemnity Language // Always Sign
- 14% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 56% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 23% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 2% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Gilbert, Town of

5. Indemnification. To the fullest extent permitted by law, the A/E, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the town, its agents, officers, officials and employees from and against all demands, claims, proceedings, suits, damages, losses or expenses (including but not limited to attorney fees, court costs and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, Services caused in whole or in part by the A/E, its agents, employees or any tier of A/E’s subcontractors related to the Services in the performance of this Agreement. A/E’s duty to defend, hold harmless and indemnify the town, its agents, officer, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused in whole or in part by A/E’s acts, errors, mistakes, omissions, Services in the performance of this Agreement including any employee of the A/E, any tier of A/E’s subcontractor

or any other person for whose acts, errors, mistakes, omissions, Services the A/E may be legally liable including the Town. Such indemnity does not extend to the Town's negligence.

- 2% ... 5 = Excellent Indemnity Language // Always Sign
- 5% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 47% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 36% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 8% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Glendale, City of

A. For Professional Liability: Consultant shall be responsible for the completeness and accuracy of Consultant's (which shall include work performed on behalf of Consultant by Consultant's employees, subcontractors and subconsultants) work, work product, supporting data and special provisions prepared or compiled by its, or under its supervision for this Project. Consultant agrees that it shall be liable and responsible for all negligent errors and omissions relative to its (and its employees, subcontractors and subconsultants) services, and agrees that it shall be liable and responsible for all additional or increased construction or other cost of the Project caused by such negligent errors or omissions. Consultant agrees to indemnify, defend and hold harmless the City against all damages, losses, claims or expenses incurred by the Contractor for the Project to the extent caused by, arising out of, or alleged to arise out of, the negligent errors or omissions in the plans, specifications or other work product provided by Consultant. It is the intent of the parties to this contract that the City shall be indemnified, defended and held harmless by consultant even if the city reviewed, accepted or approved the Consultant's work or work product and failed to discover or detect, for any reason, a negligent act, omission or error by Consultant in such work or work product. It is further the intent of the parties that Glendale will not be indemnified, defended or held harmless by Consultant if Glendale directed the Consultant to include in the plans, specifications or work product the element(s) which is the basis for any such suit, action or claim and the Consultant recommended, in writing, that such element(s) not be included in the plans, specifications or work product.

- 5% ... 5 = Excellent Indemnity Language // Always Sign
- 27% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 51% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 11% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 6% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Lake Havasu, City of

Section VIII: Indemnification. To the fullest extent permitted by law, Consultant shall, indemnify and hold harmless City, its officers, officials, agents, directors, and employees, from and against all claims, damages, losses and expenses (including but not limited to reasonable attorney fees, court costs, and the cost of appellate proceeds) to the extent, arising out of, Consultant's negligent acts, errors, or omissions relating to professionals work or services in the performance of this Agreement. Consultant's duty to hold harmless, and indemnify City, its officers, officials, agents, directors, and employees shall arise in connection with any claim, damages, loss or expense that is attributable to bodily injury, sickness, disease, or death, or injury to, impairment of, or destruction of property,

including loss of use resulting therefrom, to the extent caused by any negligent acts, errors, mistakes or omissions related to professional services in the performance of this Agreement including any person for whose negligent acts, errors, mistakes or omissions Consultant may be held legally responsible and liable for under the law.

47% ... 5 = Excellent Indemnity Language // Always Sign

42% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

11% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

0% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Maricopa, City of

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representative, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney fees, court cost, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of the resultant Contract. Contractor's duty to defend, hold harmless, and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim damage, loss or expense, that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from caused by any acts, errors, mistakes, omissions, work or services in the performance of the resultant including any employee of the Contractor or any tier of subcontractor or any other person whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth will in no way be construed as limiting the scope of the indemnity in this paragraph.

3% ... 5 = Excellent Indemnity Language // Always Sign

19% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

44% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

31% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

3% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Maricopa County Department of Transportation

To the fullest extent permitted by law, the Consultant shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating the performance of this Contract. Consultant's duty to defend, indemnify and hold harmless the County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any

negligent acts, errors, omissions or mistakes, in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Consultant may be legally liable.

- 14% ... 5 = Excellent Indemnity Language // Always Sign
- 40% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 40% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 3% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 3% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Mesa, City of

Section IX – Indemnification – A. For professional liability: To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultants negligent acts, errors, mistakes or omissions relating to professional services in the performance of this contract. The Consultant’s duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease, death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to professional services in the performance of this contract including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable.

- 11% ... 5 = Excellent Indemnity Language // Always Sign
- 57% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 32% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 0% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Phoenix, City of

The Engineer hereby agrees to defend, indemnify and hold harmless the City, and any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including reasonable Attorney’s fees) arising out of or resulting in any way from the performance of professional services for the City in the engineer’s capacity as an engineer, and caused by any willful or negligent error, omission, or act of the Engineer or any person employed by it or anyone for whose acts the Engineer is legally liable. In consideration of the award of this contract, the engineer agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the engineer for the City.

- 14% ... 5 = Excellent Indemnity Language // Always Sign
- 54% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 29% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 3% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Pinal County

14. Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend, save and hold harmless Pinal, its agents, representatives, officers, directors, officials, and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages of every kind and description, and expenses, including but not limited to reasonable attorneys' fees, arbitration expenses, court costs, and the cost of appellate proceedings, which may be brought or made against or incurred by Pinal on account of bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property to the extent arising out of or resulting from the negligent acts, professional errors, fault, mistakes or negligent omissions, of Consultant, its employees, agents, representatives, its subcontractors and their employees, agents or representatives, and including any party for whose negligent acts, errors, mistakes or negligent omissions Consultant may be legally liable in connection with or incident to the performance of this Contract, and arising out of workers' compensation claims, unemployment compensation claims, unemployment disability compensation claims or employee's liability claims of Consultant's employees and its subcontractors' employees, and claims under similar such laws or obligations. The amount and type of insurance coverage requirements set forth in this Contract or remuneration of any insurance coverage herein provided shall in no way be construed as limiting the scope of the indemnity in this paragraph. Such indemnity shall be required by Consultant from its subcontractors on behalf of Pinal. To the fullest extent permitted by law, Consultant shall be responsible for its own negligent acts, omissions and mistakes, and that of its employees, agents and sub-consultants. Every obligation of this indemnification paragraph shall survive the completion of the services hereunder and the termination of this Contract.

11% ... 5 = Excellent Indemnity Language // Always Sign

49% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

37% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

3% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

0% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Oro Valley, Town of

The Contractor agrees to indemnify, defend, and save harmless the Town, its Mayor and Council, the Town Engineer, appointed boards and commissions, officials, officers, employees and the Town's insurance carriers, individually and collectively from all losses, claims, suits, demands, expenses, subrogations, attorney's fees, or actions of any kind and nature resulting in the Contractor or any subcontractor employed by the Contractor (including bodily injury and death) or damages to any property or any other losses, claims, suits, demands, and/or expenses, arising or alleged to have arisen out of the work to be performed, except any injury or damages arising out of the sole negligence of the Town, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in Section VIII will in no way be construed as limiting the scope of indemnity in this paragraph.

0% ... 5 = Excellent Indemnity Language // Always Sign

3% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign

42% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign

47% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract

8% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Queen Creek, Town of

Article 9. Indemnification. To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the Town and any of its agents, officials, officers or employees (collectively the “Indemnitee”) from and against all damages, claims losses, liabilities or expenses (including, but not limited to, attorneys’ fees, court costs, and the cost of appellate proceedings) relating to, arising out of or alleged to have resulted from the performance of services pursuant to this Contract. Consultant’s duty to defend, hold harmless and indemnify the Indemnitee pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable.

- 3% ... 5 = Excellent Indemnity Language // Always Sign
- 14% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 42% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
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- 8% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Scottsdale, City of

3.26 Indemnification. To the fullest extent permitted by law, Engineer, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or willful actions, acts, errors, mistakes or omissions to the extent caused by Engineer performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Engineer’s and Subcontractor’s employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

- 11% ... 5 = Excellent Indemnity Language // Always Sign
- 47% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
- 36% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
- 0% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
- 6% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Tucson, City of

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subconsultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subconsultant's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

3% ... 5 = Excellent Indemnity Language // Always Sign
20% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
43% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
23% ... 2 = Unacceptable Indemnity Language // Little or No Negotiation // Walk From the Contract
11% ... 1 = Indemnity Language Unacceptable // Firm Rarely, *if ever*, Submits on Their Work

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Yuma, City of

Provider must indemnify and defend the City and its employees against all claims, damages, losses, and expenses to the extent arising from the Provider's or its subconsultant's intentional or negligent acts, errors, or omissions in the performance of this agreement. The Provider shall not be required to defend or indemnify the Provider and its employees against claims, damages, losses, and expenses arising from the acts of third parties for who the Provider is not legally responsible, or arising from the sole negligence of the City. Although Provider shall defend City in the event of a final determination of joint negligence or other breach of duty between the Provider and the City, Provider's total indemnity liability to the City shall be the percentage determined to be the Provider's share of liability.

The amount and types of insurance coverage required above does not limit the scope of indemnity in this paragraph.

14% ... 5 = Excellent Indemnity Language // Always Sign
47% ... 4 = Acceptable Indemnity Language // Often Negotiate Changes, Then Sign
25% ... 3 = Poor Indemnity Language // Must Weigh the Project Risk // May Sign
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