

Contract Drafting Boot Camp

Contract – Elements

1. Offer
2. Acceptance
3. Consideration (something of value)

Void Provisions

Indemnity – monetary limitation (*F.S. 725.06*)

Advance waiver of lien rights (*F.S. 713.06*)

Venue outside of Florida (*F.S. 47.025*)

Usury interest rate above 18% (*F.S. 687.02*)

Design Professionals

Limited Liability (*F.S. 558.0035*)

See also *F.S. 725.08*

Rule of Construction

Ambiguities in a contract construed against drafter.

Structure of Contract

- Identification of parties
- Background / recitals
- Recital of consideration
- Contract Terms
- Signature Block

Identification of the Parties

- Proper name of parties www.sunbiz.org
- Signature authority
- Can define a term “Contractor” or “Owner”

Background / Recitals

- Describe nature of contract in short concise terms to orientate a judge what the contract is about.
- Not considered part of the contract.
- Can include defined terms.
- Old form – “RECITALS” and each sentence begins with “WHEREAS, ...”
- Modern form – “Background”

Recital of Consideration

- “NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree:”
- If the contract lacks consideration, some courts will interpret this as sufficient consideration

Contract Terms

- Be clear in your terms - ambiguities are construed against the drafter
- “Time is of the essence.”

Signature Block

- Representative: “By: _____, President”

- “Signed as an agent of the Company, not as an individual”

Some Consideration

- Identification of Parties
- Scope of Work; Exclusions from Scope
- Price
- Price for Out of Scope Work
- Cost for other party’s delays
- Claim Process
- Indemnify, Defend, Hold harmless
- Flow down provision
- Venue for disputes
- Termination of contract
- Paid When Paid
- Limitation on damages
- Waiver of consequential damages
- Limitation on total damages
- Liquidated damages
- Assignment of work to subcontractors
- Dispute resolution (Litigation or Arbitration)
- Severance provision
- Late Payments & Interest
- If attachments with conflicting terms, order in which they govern
- Entirety of agreement (Merger clause)
- Attorney Fees
- Miscellaneous
- Time is of the essence
- No third-party beneficiaries
- Period of acceptance

Arbitration Best Practices

- Contract requires the arbitrator(s) be impartial
- Use a large ADR organization to administer – ensure arbitrator is impartial
- All parties have arbitration, so that all parties can be joined
- A convenient venue for witnesses

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[SAMPLE]

This Agreement is made as of ___/___/2020 by and between the ABC Luxury Development, LLC. of _____ [address] ("Owner") and Quality Contractor, LLC of _____ [address] ("Contractor"), each a "Party" and collectively the "Parties."

BACKGROUND

Owner desires to construct roads in a planned luxury residential housing subdivision located at 123 Main St, West Palm Beach, FL 33333 in Palm Beach County, Florida ("Subdivision").

Owner hired Ace Ventura Designers, LLC ("Designer") to design the subdivision.

Owner desires to hire Contractor to build the roads in the Subdivision, including soil compaction, rock base, and two lifts of asphalt pavement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree:

- Recitals:** The Parties agree that the recitals in the Background are true and correct and are incorporated by reference.
- Scope of Work:** Contractor shall perform the following work and all incidental work necessary to complete it according to the Plans (the "Work"), including Contractor's equipment moves, job supervision, and erosion control:

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
Mobilization	1	LS	\$25,000.00	\$25,000.00
Roads, Phase 1	1	LS	\$350,000.00	\$350,000.00
Roads, Phase 2	1	LS	\$250,000.00	\$250,000.00
			TOTAL	\$625,000.00

3. **Specifications:** Contractor will construct the Work according to the Plans and the FDOT's Specifications. If the Plans conflict with the FDOT Specifications (except as to amounts of reinforcement for the large loads), the FDOT specifications will govern. The FDOT quality control testing for low bid public construction is not required.

4. **Miscellaneous:** Time is of the essence of this agreement. There are no third-party beneficiaries to this agreement. This agreement may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this agreement. This agreement may not be assigned or delegated by either party without the prior written consent of the other party. The Parties have either consulted with an attorney or had the opportunity to consult with an attorney and chose not to consult with an attorney.

This agreement is effective as of the first date written above.

By: _____
Title: Richie Luxor, President
"Owner"

By: _____
Title: Miguel Quality, President
"Contractor"

Note: The article is designed to provide information regarding the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.