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BIDDING AND CONTRACT LANGUAGE

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Denver, Colorado

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Purposes of a Contract/Agreement

1. Assumptions/Expectations/Goals:
Is Everyone on the same page?





- a. Meeting to discuss
- b. Document your understandings on paper/there it is in black and white?
- c. Follow-up
- d. Ask questions (dumb questions are rare ask before commitment)



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Purposes of a Contract/Agreement

The youngest son, the 20-year old, how old his he?





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Purposes of a Contract/Agreement

2. Define Scope of Work

- a. Parties—Who is responsible for what
- b. What work is included and what work is not included—the details
- c. How will a change in circumstances and scope of work be addressed
- d. Revisit and update a continuing services agreement—nothing more constant than change




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Purposes of a Contract/Agreement

3. Standard by which work will be performed

- a. Degree and care ordinarily exercised by installers, pumpers, O&M providers, engineers, under similar circumstances at the time of the project.
- b. No heightened or exceptional level of care




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Purposes of a Contract/Agreement

4. Define Compensation

- a. What compensation applies to the scope of the work—contingencies?
- b. What compensation applies if change in circumstances and scope of work?

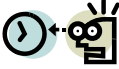


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Purposes of a Contract/Agreement

5. Define Deadlines for Work

- a. When does the work have to be completed?
- b. Is time of the essence?
- c. What about Acts of God?
- d. What about deadlines if changes in scope of work?



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Purposes of a Contract/Agreement

6. Define Remedies for Breach of the Contract/Agreement

- a. If I don't get paid---what means do I have to secure my fees/costs?
- b. If I make a mistake---what is the extent of my monetary exposure?
- c. How will a mistake be defined?
- d. How will a dispute be resolved---meeting/mediation/arbitration/trial
- e. What law governs a dispute?
- f. Who is paying for resolution of the dispute?


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Important Contract Terms to Limit Risk

1. Limitation of Liability

Given the relative risks and rewards of the project, Client agrees to limit Service Provider's liability for all services provided to \$X amount of dollars or its fee, whichever is greater.



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Important Contract Terms to Limit Risk

2. Waiver of Consequential Damages

Client agrees that Service Provider shall not be liable for any consequential damages of whatever kind or type. (e.g., delay damages, lack of use, financing costs, loss of profit, etc.)

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Important Contract Terms to Limit Risk

3. Time Bar

The Parties agree that no cause of action, of whatever kind, may be filed by one Party against the other Party, more than ___ year(s) after:

- a. the date of the contract;
- b. the substantial completion of the project;
- c. the date of inspection (or some other triggered date).

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Important Contract Terms to Limit Risk

4. Alternative Dispute Resolution

The Parties agree that they must first negotiate any dispute in good faith with a neutral mediator, before filing any action in arbitration or state or federal court. If the parties are unable to resolve their dispute in mediation, they must submit the dispute to binding arbitration unless either party timely objects to arbitration.



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Important Contract Terms to Limit Risk

4. Alternative Dispute Resolution (cont.)

Regardless of whether the dispute is submitted to mediation, arbitration or a court of appropriate jurisdiction, the Parties agree that each shall be responsible for its own attorney's fees, unless such attorney's fees are expressly provided for in an applicable statute. Any court action shall be filed in the county in which:

- a. the service provider's office is located;
- b. the client's office located;
- c. the project is located;
- d. ABC County



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Important Contract Terms to Limit Risk

5. No Third-Party Beneficiaries

The Parties agree that this agreement is not intended to inure to the benefit of any third-parties, and expressly disclaim any third-party rights hereunder.



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Important Contract Terms to Limit Risk

6. No Assignment

The Parties agree that this agreement may not be assigned without the other's express written consent to such assignment.





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Important Contract Terms to Limit Risk

7. Hazardous Waste

- a. disclaim responsibility for detection, handling, or responsibility associated with hazardous waste on property;
- b. property owner assume all responsibility for presence of hazardous waste on property.



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Important Contract Terms to Limit Risk

8. Termination

- a. Timing;
- b. Notice;
- c. Continuing obligations;
- d. Payment up to time of termination



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Important Contract Terms to Limit Risk

9. Jobsite Safety

Responsible for own safety, but nobody else's safety.




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**Important Contract Terms
to Limit Risk**

10. Indemnity

Only for own proven liability (negligence and causation) and not for defense/attorneys fees.

C.R.S. §13-21-111.5 (VII)---limits indemnity provisions in construction contracts

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For More Information

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