

MERCERTRIGIANI

CONTRACT CONSIDERATIONS

A contract usually becomes scrutinized only when there are performance issues. For this reason, it is essential at the outset to establish clearly the obligations of both parties. The scope of the work should be fully and properly described in each contract. Each contract should articulate the work and services that the Association expects to be done and should protect the Association if issues arise in performing the work.

I. CONSIDERATIONS PRIOR TO CONTRACT

1. DO THE GOVERNING DOCUMENTS RESTRICT THE EXTENT OR COST OF THE WORK?
 - Is the work the responsibility of the Association or owner?
 - Is the work repair/replacement or addition/improvement?
 - ◇ Additions, alterations and improvements may require owner approval
2. HAS THE COMMUNITY BEEN FULLY INFORMED OF THE PROJECT AND GIVEN THE OPPORTUNITY FOR INPUT?
3. HOW WILL THE PROJECT IMPACT THE COMMUNITY?
 - Is access to properties or units necessary?
 - ◇ Who will be given access?
 - ◇ How will access be coordinated?
 - Closures or restricted use of roads, parking lots and other facilities
 - Coordination of work for minimal interruption
 - Work hours
 - Establish process for communication with owners and residents
4. HOW WILL THE PROJECT BE FUNDED?
 - Operating funds
 - Reserves
 - Borrowing (amount may be limited and require owner approval)
5. HAS THE *SCOPE OF WORK* BEEN ESTABLISHED?
 - Scope of Work may be prepared by:
 - ◇ Management
 - ◇ Contractor
 - ◇ Engineer



6. WHO WILL ADMINISTER THE CONTRACT?
 - Management
 - ◇ Does management have the time and expertise?
 - ◇ Consider the size and complexity of the work
 - Engineer
 - Construction Manager
 - Board of Directors
7. HAVE THE CONTRACTOR'S QUALIFICATIONS BEEN CONFIRMED?
 - Authority to transact business in jurisdiction
 - Professional licenses
 - References checked

II. CONSIDERATIONS FOR WRITTEN CONTRACT

1. FULL AND PROPER NAMES OF PARTIES SHOULD BE USED.
 - Include Inc., LLC, etc.
2. CONTRACTOR QUALIFICATIONS SHOULD BE SPECIFICALLY STATED.
 - Authority to transact business in jurisdiction
 - Professional license
3. CONTRACT TERM AND TIME FOR COMPLETION SHOULD BE CLEAR.
 - Automatic renewals not favored
4. CONTRACT AMOUNT SHOULD BE CLEARLY SPECIFIED.
 - Include process for changes to contract amount
5. PAYMENT PROCEDURES SHOULD BE CLEARLY SPECIFIED.
 - How amount of payment will be determined
 - When payment is due
 - Will retainage be held
6. ALL WARRANTIES SHOULD BE IDENTIFIED.
 - What entity is providing the warranty?
 - What is covered by the warranty?
 - What time period is covered by the warranty?
7. INDEMNIFICATION PROVISIONS SHOULD BE CLEAR.
 - Contractor indemnification of Association
 - ◇ What will the indemnification cover?
 - ◇ Is contractor indemnification backed by contractor insurance?



- Association indemnification of Contractor
 - ◇ What will the indemnification cover?
 - ◇ Association indemnification should be backed by Association insurance
 - ◇ Confirm insurance coverage with Association insurance carrier

- 8. INSURANCE REQUIREMENTS SHOULD BE CONFIRMED WITH ASSOCIATION INSURANCE CARRIER.
 - Confirm Association insurance for the project is adequate
 - ◇ Obtain additional coverage recommendations
 - ◇ Consider cost of additional insurance as a possible project cost
 - Confirm Contractor insurance for the project is adequate
 - Recommendations from Association insurance carrier should be in writing

- 9. REQUIREMENTS FOR BONDS MUST BE EXPRESS.
 - Payment Bond
 - Performance Bond

- 10. RESPONSIBILITY FOR PERMITS AND INSPECTIONS SHOULD BE CLEAR.
 - Responsibility to obtain
 - Responsibility for costs

- 11. PROCEDURES TO ADDRESS CLAIMS SHOULD BE ESTABLISHED.
 - Unforeseen conditions
 - Damage to property
 - Mechanic's lien waivers

- 12. MANNER AND BASIS FOR TERMINATION SHOULD BE CLEAR.
 - Termination for cause
 - Termination without cause
 - Termination for convenience
 - Notice
 - ◇ Must be consistent with notice requirements under Bonds

- 13. MANNER OF DISPUTE RESOLUTION SHOULD BE IDENTIFIED.
 - Mediation
 - Litigation (default)
 - Arbitration (not recommended)
 - Recovery of attorneys' fees must be expressly stated



14. EXECUTION

- Read and understand the contract
- Check governing documents
 - ◇ Two officer signatures may be required
- Board should approve contract in open meeting and
 - ◇ Identify source of funds
 - ◇ Specify officers authorized to sign
 - ◇ Management should not sign contracts
- Unanimous Written Consent in Lieu of Meeting in an emergency

III. CONSIDERATIONS FOR CONTRACT ADMINISTRATION

1. AN ASSOCIATION SHOULD MAINTAIN THE ORIGINAL AND COPIES OF FULLY SIGNED
 - Contracts
 - Modifications
 - Addenda
 - Change orders
 - Payment records
 - ◇ Applications for payment
 - ◇ Engineer recommendations and approvals
 - ◇ Mechanic's lien waivers
 - ◇ Canceled checks
 - Manufacturer's warranties
 - All other contract documents
2. PROGRESS MEETINGS
 - Set agenda
 - Discuss comments from Board, owners, and residents
 - Maintain notes from meetings
3. COMMUNICATION WITH OWNERS AND RESIDENTS
 - Report work hours
 - Share progress reports
 - Report impact on services
 - Coordinate access to units
4. CONTRACT CLOSEOUT
 - Ensure that all work is completed satisfactorily and all claims resolved before final payment

