

## Construction Contracting & Risk Management

Members of the firm's Construction Contracting & Risk Management Practice Group prepare and negotiate construction-related contracts with an eye toward managing risk and minimizing potential liability for our clients. We take a proactive and preemptive approach to protecting our clients' interests.

Whether at the inception of a project – before a project delivery system has been selected – or after a draft agreement has been prepared by another party, our attorneys stand ready to assist clients in achieving their business objectives throughout the construction contracting process. Our experience encompasses a wide variety of projects, including multi-unit residential developments, condominiums, high-rise apartment buildings, hotels, commercial and industrial buildings, daycare centers, fitness centers and warehouse facilities.

The firm's team represents clients including property and business owners, construction managers, general contractors, subcontractors, and design professionals, and are frequently called upon to draft and review contracts between various configurations of those parties, each with their own unique concerns and goals.

Our attorneys are well-versed in contracts spanning the gamut of project delivery systems, including fixed price design-bid-build, construction manager at risk, construction manager as advisor, design-build, cost plus and cost plus with a guaranteed maximum price (GMP). We are experienced at drafting and reviewing bid documentation, including invitations to bid, bid addenda and other procurement documents, at the early stages of a project.

We are familiar with standard industry contracting forms, including those published by the American Institute of Architects (AIA), ConsensusDocs and the Design Build Institute of America (DBIA). We also have experience drafting custom contracts specifically designed to meet our clients' needs. In many instances, clients with custom contracts are able to leverage our expertise in preparing an initial agreement by having that agreement modified accordingly, and in a cost-effective manner, for subsequent projects. We are also able to modify existing contract

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documents so as to better protect our clients' interests and manage their risk appropriately.

Regardless of who we represent and the specific contract at issue, our attorneys pay close attention to key risk-shifting provisions in contract documents. These include payment terms, liquidated damages, no damages for delay, pay-if-paid/pay-when-paid, waiver of consequential damages, differing site conditions, force majeure, indemnification, insurance and bonding, flow-down, termination and suspension and dispute resolution. These clauses each have serious implications and it is imperative for our clients to have a clear understanding of the precise risks associated with them.

Construction contracts are often one piece of an intricate "business puzzle." To best address these complexities, our team often draws on the expertise of attorneys who focus in other areas of the firm's practice, including corporate, environmental, real estate, redevelopment, land use, and transaction financing. This enables our team to come together in a multidisciplinary effort to protect our client's interests at the contracting stage of a construction project.

#### **OF NOTE**

"Greenbaum, Rowe, Smith & Davis is an established practice focused on representing developers, owners, condominium associations and general contractors in litigation. Experienced in handling a broad range of disputes, including claims relating to defective construction and design, negligence and construction delays."

- 2023 edition of *Chambers USA* (a publication of Chambers and Partners) Practice Review