

WELCOME TO  
**HALL & COMPANY**  
Serving Architects, Engineers and Environmental Consultants

AE RESOURCES WEBINAR



Introduction and closing by  
**ASHLEY HURD, CRM, CIC**

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**CONTRACT NEGOTIATIONS**

*"Great things are done by a series of small things brought together."*  
-Vincent Van Gogh



**PRESENTER:**  
**JOHN D. BROGHAMMER**  
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**Alternate Title Rejected By  
Wiser Heads Than Me:**

**Contract Negotiations:**

*"Walking the fine line between  
hunger and stupidity."*

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**Gravensten Castle**



**PROTECTION OF YOUR CASTLE IS OUR BUSINESS**

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**Moats, Curtain Walls and Bastions:**

CLAUSES AND WORDS IN YOUR CONTRACT PROTECT YOUR CASTLE LIKE BRICKS AND MORTAR.



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The stronger the bastions, the higher the walls and the deeper the moat, the better your design professional practice can withstand the invading hoards.....otherwise known as former clients and disgruntled contractors.



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Indeed, the term "curtain wall" which we now use to mean the exterior windows or lightweight steel cladding was historically defined as the primary protective wall surrounding a castle.

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**Contracts should ALWAYS be in writing (and some states mandate it). Remember the sage advice:**

***"An oral contract is not worth the paper it is written on."***

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### **File Management:**

**Make and keep copies of the contract in separate places. Add to the files separate papers or notes that impact on the contract and your duties.**

**Scan the paper contract and keep the electronic copies stored in a secure computer.**

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**File Management:**

For goodness sake, make sure that you and the client actually **SIGN** your contract!!!

Far too often a scope of work letter is sent to which the client orally agrees. Then, no one follows up with a formal contract.

Or, a formal contract is forwarded and the excitement of a new project causes everyone to forget to get an executed copy returned.

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**AND, most importantly:  
READ your contract.**

Make sure that the contract you wanted is the contract you signed.

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No one ever said, at the end of the law suit:

*“Darn, I should never have gone over the details of that contract with such a fine toothed comb.”*

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**Contracts Should Always Be In Writing: (Required by Cal. Bus. & Prof. Code Section 5536.22)**

- A. Description of services provided by architect for the client.
- B. Description of the basis for compensation under the contract and the method of payment agreed upon.
- B. Architect's name, address and license number.
- C. Description of the procedure employed to accommodate additional services.
- D. Description of procedure to terminate the contract.

Engineers have a similar statute: Cal. B&P Code section 6747

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### Six critical provisions of client contracts with an architect/engineer

1. Detailed Scope of Work language
2. Indemnity Language
3. Construction Administration/Inspection Services
4. Standard of Care/Compliance with laws
5. Third party beneficiary language/Non-Assignment
6. Ownership of Plans and Specifications

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### Scope of work language:

It is the most important language in your Contract.

Ideally, it defines exactly what you are going to do (and NOT do) as the design professional.

Beware of mission creep and doing volunteer work! Clients always ask more of you and it SEEMS like good policy to help. However....

*"No good deed goes unpunished."*

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### Sample Attachment to Contract.

Architect specified exactly what services were and were not included. Very detailed.

Scope of Services  
Date: 5/19/09  
Page 3 of 5

Other:	PERFORMED BY ARCHITECT	NOT INCLUDED	ASSISTANCE BY ARCHITECT	OTHER
A. Additional Service By Architect				
B. Duties Reserved By Architect				
C. By Owner and Coordinated By Architect				
D. By Owner				
14. Preliminary Civil Engineering Analysis		X	X	
15. Preliminary Landmarks Study		X	X	
16. Preliminary Building Code Analysis		X	X	
17. Construction and Language Agency Review		X	X	
18. U.S.C. Energy Calculations Coordination		X	X	
19. Verify and/or Amend Permits		X	X	
20. Amend Design Review Meetings		X	X	
21. Other				
<b>OWNER PROVIDED EXPENSES TO ARCHITECT ( 25% of overall fee)</b>				
1. Architectural Site Plan (DWG/PLA)		X	X	
2. Architectural Site Details		X	X	
3. Civil Site Plan (For Construction)		X	X	
4. Civil Site Plan (For Approval)		X	X	
5. Utilities Site Plan (For Construction)		X	X	
6. Utilities Site Plan (For Approval)		X	X	

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### Scope of Work.

- Always attach any scope of work letter to the contract.
- If your contract scope of work is different from your scope of work letter, makes sure everyone understands which one controls.
- Make sure there is a method for payment for work that exceeds initial scope of work.

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### Scope of Work:

- Make sure there is a dispute resolution protocol to avoid work stoppages and/or "black mail" situations.
- Be wary of hidden expansions of scope of work. Know what your client is expecting from you.

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### Sample contract language:

**Article 1**  
**Consultant's Services and Responsibilities**

1.1 Consultant's scope of work is more particularly described in Exhibit A, which is incorporated herein as if fully set forth. Consultant shall complete all tasks within the time necessary for such tasks. **GOOD!!**

1.2 Society upon receipt of written authorization from \_\_\_\_\_, Consultant shall perform additional services, outside of the scope established herein. Such additional services shall be requested by way of a written change order from an authorized representative of \_\_\_\_\_.  
 Consultant shall have no right to payment for any extra work if it begins work without first receiving a written change order from \_\_\_\_\_. **BAD!!!**

1.3 Consultant at all times shall comply with the terms of the Owner Contract, including without limitation, the specifications and standards incorporated therein. Consultant shall be deemed to have accepted the terms and conditions of the Owner Contract and shall be deemed to have agreed to be bound by the terms and conditions of the Owner Contract and to be bound by any right enjoyed by Owner thereunder shall constitute a right enjoyed by \_\_\_\_\_ with respect to Consultant. In no event shall Consultant's level of competence, skill and professionalism fall below the level required by the Owner Contract, or if such contract is silent on a particular matter, below the level of recognized firms in the United States performing tasks of similar difficulty and sophistication.

**Article 2**  
**Consultant's Fee**

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### Prior Language: Edited For Ease of Reading

"1.3 Consultant at all times shall comply with the terms of the Owner Contract, including without limitation, the specifications and standards incorporated therein. Any duty owed to the Owner and to [the prime architect] and any right enjoyed by Owner thereunder shall constitute a right enjoyed by [the prime architect] with respect to consultant."

Is this what you intended?

Do you even know what you agreed to do?

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### Six Critical Provisions of Client Contracts With An Architect/Engineer

1. Detailed Scope of Work language
- 2. Indemnity Language**
3. Construction Administration/Inspection Services
4. Standard of Care/Compliance with laws
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6. Ownership of Plans and Specifications

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### Indemnity Duties Vary Widely From State to State.

The duties you may have under an indemnity clause vary from state to state. However, two general guidelines will serve you well.

**First**, if you cannot insure the indemnity risk with which you are presented, don't assume it. Owners are not aware of insurance limitations.

**Second**, know which contractual obligations (such as a duty to defend) are not tied to your negligence and thus might not be insurable.

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### Possible Indemnity Clauses

- The Consultant will indemnify the Client for actual damages for which the Client becomes liable if the damage upon which the liability is based was caused by the **proven active negligence** of the Consultant.
- If the Client is determined to be liable for damage caused by the **proven active negligence** of the Consultant, the Consultant will **reimburse** the Client for the reasonable value of the defense costs insured to defend against the damages caused by the Consultant's proven negligence.

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### Possible Indemnity Clauses.

- Consultant agrees to indemnify Client from liability for damages arising out of the performance of Consultant's services to the extent such liability is **actually caused** by the Consultant's negligent acts, errors or omissions.
- Consultant shall not be responsible for the costs of Client's defense.

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### Possible Indemnity Clauses.

- Suppose your Client insists that you defend it if it is sued. Then, add:
- Consultant has no obligation to pay for Client's defense costs until there is a **final determination of liability**. Consultant's obligation to reimburse Client's defense cost shall be **limited to the Consultant's percentage of liability based upon Consultant's comparative fault**.

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### Problems With Prior Language:

- Next, this contract actually granted greater rights to the subconsultant, than the architect (the "Prime"). The architect's insurer has refused to insure these risks.
- The architect must contemplate bankruptcy if he is hit with a defense or indemnity obligation.
- "To the fullest extent provided by law" and "sole" or "solely" are immediate red flag language!! Proceed with extreme caution!!

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### Indemnity and Consistency:

- Make sure your subconsultant's indemnity obligations to you are the same as, or stronger than, your indemnity obligations to your client.
- Indeed, the prime contract should be attached and incorporated into the subconsultant's contract.

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### Problem Indemnity Clauses: Prime A/E Contract Language:

Section 3.9 The Consultant hereby agrees to indemnify and save harmless the Architect of Record and the Owner's Indemnified Persons from and against all claims, costs and liability arising out of the Consultant's Services hereunder, to the extent that such claims, costs, and liability are the result of negligent acts, errors or omissions of the Consultant, or breaches by the Consultant of its obligations hereunder.

Section 3.10 The Consultant shall...

"Arising out of the Consultant's....negligent acts."

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### Problem Indemnity Language: The subconsultant's indemnity clause:

...without your prior agreement.

**INDEMNIFICATION**

Sub will indemnify and hold harmless CLIENT, Inc.'s officers, directors, partners, employees and agents, from and against any and all claims, suits, costs, losses and damages (including but not limited to all fees and charges of attorney and all court or arbitration or other dispute resolution costs and claims expenses) caused solely by the negligent acts or omissions of SUB, its partners, employees, agents and consultants in the performance and furnishing of the services under this Agreement.

**AGREEMENT**

"caused solely by the negligent acts or omission of" the sub.

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### The Problem:

- The sub only agreed to indemnify its client if it was "solely" negligent.
- The sub's client, the "consultant," was forced to defend and indemnify the Architect of Record and Owner, for any negligence it (or the sub) committed.
- If the sub was 95% negligent, it owed no indemnity to anyone. If the consultant was just 5% negligent it was in the cross hairs for 100% of the problem.
- It ended up being a \$100,000 error.

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### Six Critical Provisions of Client Contracts With An Architect/Engineer

1. Detailed Scope of Work language
  2. Indemnity Language
  3. Construction Administration/Inspection Services
  4. Standard of Care/Compliance with laws
  5. Third party beneficiary language/Non-Assignment
  6. Ownership of Plans and Specifications
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**Cal. Business & Professions Code  
Section 5536.25(a)**

A licensed architect who signs and stamps plans, specifications, reports, or documents **shall not be responsible for damage caused by subsequent changes** to or uses of those plans, specifications, reports, or documents, where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are **not authorized or approved in writing** by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the written authorization or approval was not unreasonably withheld by the architect and the architectural service rendered by the architect who signed and stamped the plans, specifications, reports, or documents was not also a proximate cause of the damage.

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**Cal. Business & Professions Code  
Section 5536.25(b)**

(b) The signing and stamping of plans, specifications, reports, or documents which relate to the design of fixed works **shall not impose a legal duty** or responsibility upon the person signing the plans, specifications, reports, or documents **to observe the construction** of the fixed works which are the subject of the plans, specifications, reports, or documents. However, this section shall not preclude an architect and a client from entering into a contractual agreement which includes a mutually acceptable arrangement for the provision of construction observation services. This subdivision shall not modify the liability of an architect who undertakes, contractually or otherwise, the provision of construction observation services for rendering those services.

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**Cal. Business & Professions Code  
Section 5536.25(c)**

(c) **"Construction observation services"** means periodic observation of completed work to determine **general compliance** with the plans, specifications, reports, or other contract documents. However, "construction observation services" **does not mean** the superintendence of construction processes, site conditions, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety in, on, or about the site. For purposes of this subdivision, "periodic observation" means visits by an architect, or his or her agent, to the site of a work of improvement.

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### Sample Problem Language:

**CONSTRUCTION CONTRACT**

This agreement is made this 12th day of October, 2003, by and between  
called "Owner," and Construction, whose address is 4708  
hereinafter called "Contractor."

Witnesseth:

The parties, in consideration of the mutual agreements herein contained, agree as follows:

- Contract Work.** Contractor agrees to perform the work described in Schedule A at the premises (sometimes herein called "Site"), in accordance with the details, i.e., drawings and specifications or other descriptive references included in Schedule A, which details (hereinafter the same may be) are referred to below as the "Details." The work to be performed by Contractor is below called the "Contract Work" or "Work" and the improvement of which the Contract Work is a part is called the "Project." The Contract Work shall be performed strictly in accordance with the Details.
- Performance Standard.** The Work must be performed and completed in accordance with all requirements of law and no Work shall be undertaken until Contractor has been issued all required permits. "Completion" includes obtaining all certificates of occupancy, or amendments or existing certificates, as the case may be. Unless otherwise specified in the Details, the Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest, best and first class quality. Contractor shall check and verify all dimensions, grades, and levels before commencement of performance and whenever necessary during the progress thereof. Contractor in performing this Contract acts as an independent contractor and will provide all labor, tools, scaffolding, equipment, and supplies for the performance of the Contract Work.

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YIKES!!  
Very bad!!

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### Sample Problem Language:

**Terms from Contractor's contract for major home remodel project (\$1.5 million). Standard of care for contractor raised significantly.**

**2. Performance Standard.** The Work must be performed and completed in accordance with all requirements of law and no Work shall be undertaken until Contractor has been issued all required permits. "Completion" includes obtaining all certificates of occupancy, or amendments or existing certificates, as the case may be. Unless otherwise specified in the Details, the Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest, best and first class quality. Contractor shall check and verify all dimensions, grades, and levels before commencement of performance and whenever necessary during the progress thereof. Contractor in performing this Contract acts as an independent contractor and will provide all labor, tools, scaffolding, equipment, and supplies for the performance of the Contract Work.

**"best modern practice....highest, best and first class quality."**

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### Sample Problem Language:

**Contract terms from Architect's contract with owner on same home remodel project.**

**2.0 ARCHITECT'S SERVICES AND RESPONSIBILITIES**

Architects will provide the following services:

- Preliminary design including floor plan and exterior elevations for review and approval by the Owner.
- Construction drawings suitable for bidding, obtaining a building permit and construction.
- Construction administration when requested by Owner.

→ If the Architect can fit it into his schedule he shall provide the following services: He is not obligated to perform this work:

What does this mean?  
What is the owner entitled to receive?  
Is it unreasonable for the owner to expect the architect to perform site visits?

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### Contract Administration:

- Understand what is required under the laws of your state. Make sure your client understands explicitly your duties.
- Each state by statute, case law or custom and practice may define "construction administration" duties.
- Regardless, define what you mean in your contract. Rein in expectations.

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### Construction Administration:

- Owners never want to pay for full time observation or inspection but surely will blame you if your periodic site visits miss a construction defect.

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### Construction Administration:

- Are you contractually:
  - "inspecting,"
  - "observing," or just
  - "visiting?"
- Each has a different legal meaning with a different legal obligation.
- Explain the differences to the client and the risks with lesser on-site duties.



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### Construction Management:

- Be wary of taking on "Construction Management" obligations as this implies and owners rightly assume you have complete control over a job site, including job site safety.
- Define "construction management" duties in the contract."
- Are you insured for "construction management? Are you sure?

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### Construction Administration:

Scope of Services  
Date: 07/29/09  
Page 24 of 3

Other: A. Additional Service By Architect B. Outside Services By Architect C. By Owner and Coordinated By Architect D. By Owner	RULE BASIC SERVICE BY ARCHITECT	NOT INCLUDED	ARCHITECT BASIC SERVICE BY ARCHITECT	OTHER
<b>BID &amp; NEGOTIATION SERVICES (5% of overall fee)</b>				
1. General Bidding Documents	X			
2. General Construction Bidding	X			
3. Negotiated Construction Bidding		X		
4. Segregated Construction Bidding		X	X	
5. Addenda and Drawing Revisions		X	X	
6. Bid Evaluation		X	X	
7. Construction Agreement Assistance		X	X	
<b>CONSTRUCTION ADMINISTRATION (15% of overall fee)</b>				
1. Construction Contract Admin./Conferences		X	X	
2. Evaluations of Applications for Payment		X	X	
3. Change Orders - Based on Contract Documents		X	X	
4. Change Orders - Based on Owner Changes		X	X	
5. Clarifications		X	X	

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Other: A. Additional Service By Architect B. Outside Services By Architect C. By Owner and Coordinated By Architect D. By Owner	RULE BASIC SERVICE BY ARCHITECT	NOT INCLUDED	ARCHITECT BASIC SERVICE BY ARCHITECT	OTHER
<b>BID &amp; NEGOTIATION SERVICES (5% of overall fee)</b>				
1. General Bidding Documents	X			
2. General Construction Bidding	X			
3. Negotiated Construction Bidding		X		
4. Segregated Construction Bidding		X	X	
5. Addenda and Drawing Revisions		X	X	
6. Bid Evaluation		X	X	
7. Construction Agreement Assistance		X	X	
<b>CONSTRUCTION ADMINISTRATION (15% of overall fee)</b>				
1. Construction Contract Admin./Conferences		X	X	
2. Evaluations of Applications for Payment		X	X	
3. Change Orders - Based on Contract Documents		X	X	
4. Change Orders - Based on Owner Changes		X	X	
5. Clarifications		X	X	

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### Six Critical Provisions of Client Contracts With An Architect/Engineer

1. Detailed Scope of Work language
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6. Ownership of Plans and Specifications

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### Standard of Care: Know what the law in your state requires.

- An architect/engineer is negligent if he/she fails to use the skill and care that a reasonably careful architect/engineer would have used in similar circumstances. This level of skill, knowledge, and care is sometimes referred to as "the standard of care."
- You must determine the level of skill and care that a reasonably careful architect/engineer would use in similar circumstances based only on the testimony of expert witnesses, including [defendant(s)], who have testified in this case.
- Cal. Jury Instruction 600

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### Success Not Required

- An architect/engineer is not necessarily negligent just because his/her efforts are unsuccessful or he/she makes an error that was reasonable under the circumstances. An architect/engineer is negligent only if he/she was not as skillful, knowledgeable, or careful as other reasonable architect would have been in similar circumstances.
- Cal. Jury Instruction 602

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### Six Critical Provisions of Client Contracts With An Architect/Engineer

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### Third Party Beneficiary Language:

- Nothing contained in this agreement shall create a contractual or legal relationship with, rights in favor of, or a cause of action in favor of any third party against the Architect. The **Architect's services under this Agreement are being performed solely for the Client's benefit**, and no other party or entity shall have any rights or a claim against the Architect because of this Agreement or the performance or nonperformance of services hereunder.
- This provision may be **waived only by express written consent** of the Architect.

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### Non-Assignment Clause

- The Owner and Architect, respectively, bind themselves, their partners, successors, assigns, and legal representatives with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement **without the express written consent** of the other. The Owner may without written consent but with notice in writing, assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume all of the Owner's rights and obligations under this Agreement. Consent to assignment by either party shall not be unreasonably withheld.

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### How To Review Client Generated Agreements

1. Immediately be wary of "non-negotiable" or "take it or leave it" agreements.
2. If you are not comfortable with contract review, hire a lawyer to be in the background.

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### How To Review Client Generated Agreements

3. Meet face to face. Ask questions and be prepared to explain why certain clauses are unfair.  
Be alert to insurance issues. If you cannot insure it, don't assume it.
4. Know what language is critical for risk allocation and what you can negotiate. In many states, A/E duties are controlled by statute. Understand your statutory protections.

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### How To Review Client Generated Agreements

5. Look for certain "red flag" clauses. Have canned answers prepared ahead as to why a change is in both parties' best interests.
6. Discuss thorny issues with your partners or trusted friends. Review for worst case scenarios.

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### How To Review Client Generated Agreements

- 7. If you are not able to negotiate away a clause understand the risks and risk allocation so that you can stay on top of those risks during the project.
- 8. Have the contract reviewed by your insurance carrier and/or insurance broker to make sure that the work is covered by your insurance policy.

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### Use Your Insurance Company:

- Many insurance companies and large insurance brokers have great resources for contract review. Many have publications or "Contract Review Checklists."
- Many companies or brokers will review contracts for insurance coverage issues to help you spot problems before you sign.

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### Use Your Insurance Company:

- Some brokers will even help negotiate contracts with your clients in person. It is powerful for a client to hear directly from the insurance representative.
- Get your broker's or insurer's assurances in writing (e-mail is okay) that the contract work is covered by your E&O insurance. Don't ever assume it is.

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### Other Troublesome Clauses

1. **Billing and Payment Provisions:** Payment terms, interest, attorney fees and collection cost provisions. Terms for suspension or termination for non-payment.
2. **Certifications, Guarantees & Warranties:** Delete whenever possible. Delete an agreement for code compliance or that construction will be pursuant to "all laws, regulations and codes." Some state laws define "certify" for architects and engineers to mean only an expression of opinion, not a warranty or guarantee.
3. **Arbitration and Dispute Resolution:** Generally avoid mandatory arbitration provisions. Other forms of dispute resolution are acceptable.

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### Other Troublesome Clauses

4. **Job Site Safety:** You should not be responsible (directly or indirectly) for job site safety. You should not be responsible for construction means and methods. Ensure language that keeps these responsibilities with contractor or owner.
5. **Liquidated Damages:** Liquidated damages provisions should not be included in your contract. There are too many variables not in your control as the designer.
6. **Limitation of Liability:** Where possible insert limitation of liability clause or some type of cap on damages. Be willing to receive a lower fee to obtain this protection. Try to limit damages to "available insurance limits" or similar insurance limitations.

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### Sample Contract Language

ENVIRONMENTAL SITE ASSESSMENT CONSULTING AGREEMENT (Continued)

**7. LIMITATION OF LIABILITY.** Client agrees that [redacted] liability for damages due to any cause or causes, including but not limited to negligence, errors or omissions, strict liability, or breach of contract or warranty, will be limited to a sum not to exceed \$50,000 or [redacted] a total fee, whichever is greater. In the event that Client does not wish to limit [redacted] liability to this sum, [redacted] agrees to raise the limitation of liability to a sum not to exceed \$100,000 for increased consideration of four percent (4%) of the total fee or \$200, whichever is greater, or to a sum not to exceed \$1,000,000 for increased consideration of ten percent (10%) of the total fee or \$500, whichever is greater, upon reaching Client's written request prior to the start of [redacted] a week. Notwithstanding any other provision herein to the contrary, [redacted] shall not be responsible or held liable for any special, indirect or consequential damages resulting in any way from [redacted] performance under this agreement.

**8. ACKNOWLEDGMENTS.** In the event that [redacted] is verbally authorized by Client to proceed with the services prior to receipt of the executed Agreement, the acceptance of which would be acknowledged by signature, the terms and conditions as outlined herein and in accompanying documents, if any, shall be considered by both parties to be full force.

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### Sample Language Edited for Ease of Reading.

"LIMITATION OF LIABILITY. Client agrees that [consultant's] liability for damages due to any cause or causes, including but not limited to negligence, errors or omissions, strict liability, or breach of contract or warranty, **will be limited to a sum not to exceed \$50,000 or [consultant's] total fee, which ever is greater.**

In the event Client does not wish to limit [consultant's] liability to this sum, [consultant] agrees to raise the limitation of liability to a sum not to exceed \$500,000 for **increased consideration...."**

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### Limitations of Liability Clauses:

- Do not limit your limitation of liability clause to just your negligence. If you are sued, most suits will be for both negligence and breach of contract.
- Offer you client options and alternatives as a way to manage your risks.

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### Other Troublesome Clauses

7. **Attorney Fees & Costs:** Generally delete all such clauses where possible. Or, limit the clause to very specific disputes, such as fee disputes.
8. **Insurance Requirements:** Assure yourself that the owner agrees to what insurance is needed for a project (and make sure you AND subs comply). Many policies do not cover certain contractual risk assumptions.
9. **Shop Drawing Review:** Define shop drawing review responsibilities between contractor and architect. Try to ensure non-responsibility for errors in shop drawings and that review is only for general conformance with the design concept. Make sure both owner and contractor know ahead of time the scope of your shop drawing review.

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### Ensure That Your Subs Have the Same (or better) Insurance Coverage That You Are Required to Have.

- Make sure your subconsulting contracts require your subs to comply with insurance provisions of the prime contract. All designers should have the same insurance obligations.
- Have someone in your office responsible for obtaining Certificates of Insurance from your subs. If the project lasts for more than a year, get renewal certificates. Use an electronic tickler system like Outlook.

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### Sample Contract Language From Owner/Client.

Coverage applies in the event of a claim against the Consultant.

If the Consultant should sublet their work to a third party, Consultant guarantees that such third party shall indemnify Developer as set forth in this Agreement and shall carry insurance as set forth in this Agreement prior to permitting such third party to commence its work. Consultant shall obtain a signed agreement from such third party indemnifying Developer as set forth in this Agreement and agreeing to carry insurance as set forth above.

If possible, try to get listed as an Additional Named Insured on the Contractor's insurance policy and be named as indemnified in the Contractor's contract with the owner.

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### Sample Problem Language.

Make sure the contract is internally consistent and that the insurance product required actually exists. Any error will be borne by you, not the insurance carrier.

Professional Liability - Professional Liability insurance (Errors and Omissions Coverage) on a claims made form containing a per occurrence limit of at least \$1,000,000 providing against liability arising out of any willful or negligent act, error, mistake, or omission in rendering or failing to render professional services on behalf of Developer. If said policy contains a retroactive date, this date will be prior to the date the Consultant begins to perform work under this Agreement.

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### Claims Made Insurance:

- Errors & Omissions Insurance is always "claims made," meaning triggered by the date of a claim or law suit. It almost always has declining policy limits. Attorney fees and litigation costs reduce the policy limits. Limits of \$1 million erode quickly in major litigation because every dollar spent reduces what is left to pay for indemnity.
- "Occurrence" based policies are triggered by when the damage occurred and generally have unlimited defense obligations that do not affect limits.

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### A Note About Insurance Deductibles.

- Be aware high deductibles can be fool's gold. Deductibles must be paid by you first before the insurer will participate. A single claim with a \$50,000 deductible can bankrupt you.
- Some carriers do offer programs that allow you to spread out your deductible over time, such as an 20%/80% split.

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**YOUR FIRM NAME  
and Address**

Approved       Approved as Corrected  
 Rejected       Revise and Resubmit  
 Submit Specified Item

This review is only for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. Corrections or comments made on the shop drawings during this review do not relieve contractor from compliance with the requirements of the plans and specifications. Approval of a specific item shall not include approval of an assembly of which the item is a component. Contractor is responsible for: dimensions to be confirmed and correlated at the jobsite; information that pertains solely to the fabrication processes or to the means, methods, techniques, sequences and procedures of construction; coordination of the Work of all trades; and for performing all work in a safe and satisfactory manner.

Date \_\_\_\_\_ By \_\_\_\_\_

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### Other Troublesome Clauses

10. **Stop Work Authority:** Only the owner should have the power to stop the work. The duty of the architect is only to "advise" the owner.
11. **Retention of Documents/Storage:** Explain in contract what your document retention policy entails. Transfer all documents or plans or "as built" with cover letter and obtain a signed receipt notice in your files.
12. **Statute of Limitations Clauses:** Specify when statute of limitations begins to run (date of substantial completion, regardless of punch lists or government approvals). Send letter notifying owner of "substantial completion."

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### Questions

Thank You for Attending!



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71

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THANK YOU FOR YOUR TIME AND ATTENTION.

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72

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