

**CONSTRUCTION & DESIGN
AGREEMENTS FOR OWNERS
Basics for Projects of All Sizes**

Presented by
ALEXANDER F. FERRINI, III

Why do I need an agreement?

The Project Construction Cycle - The Tree Swing

Create your own cartoon at www.projectcartoon.com



How the client described it



How the architect envisioned it



How the engineer designed it



What the budget allowed



How the liability insurance agent described it



How the estimator bid it

Why do I need an agreement?



How the manufacturer made it



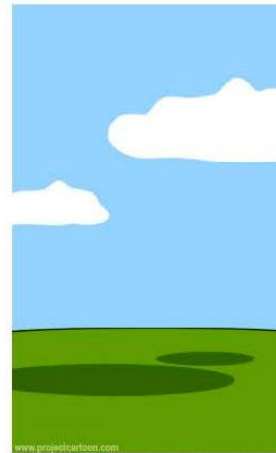
What the building inspector expected



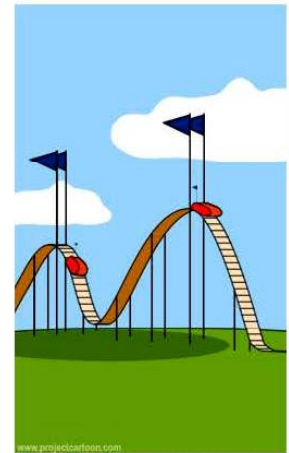
How the contractor installed it



What the customer really wanted



How the project was documented



How the customer was billed

Why do I need an agreement?

Design

- Fee control
- Schedule
- Budget control
- Ownership of documents/designs
- Insurance / Liability issues

Why do I need an agreement?

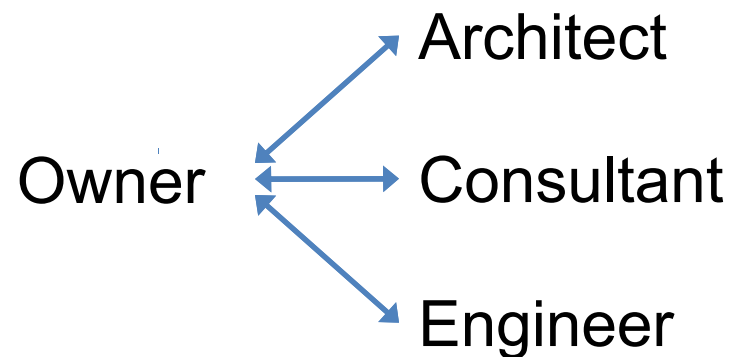
Construction

- Cost control
- Schedule control
- Insurance / Indemnity
- Personnel
- Subcontractor protection
- Close out
- Warranty

Design Agreements: Initial Considerations

One consultant or many?

Design Agreements: Initial Considerations



Design Agreements: Initial Considerations

Whose form?

Design Agreements: Initial Considerations

Whose form?



Design Agreements: Initial Considerations

Whose form?

(or why you should not use AIA agreements)

- Architect as agent?

Design Agreements: Initial Considerations

Whose form?

(or why you should not use AIA agreements)

- Architect as agent?
- Architect as arbiter?

Design Agreements: Initial Considerations

Whose form?

(or why you should not use AIA agreements)

- Architect as agent?
- Architect as arbiter?
- Architect as witness?

Design Agreements: Contractual Issues

Price

– Fee

- Basic services
- “Additional” services
- Reimbursable expenses

Design Agreements: Contractual Issues

Price

- Fee
 - Basic services
 - “Additional” services
 - Reimbursable expenses
- Of the Work
 - Design to budget?
 - Change orders?

Design Agreements: Contractual Issues

Schedule

- Design Schedule
 - Design phases
 - C / A Services

Design Agreements: Contractual Issues

Schedule

- Design Schedule
 - Design phases
 - C / A Services
- Of the Work
 - Response time:
 - Submittals
 - “RFI’s,” clarifications & sketches
 - Change orders

Design Agreements: Contractual Issues

Copyright

– What is it and who cares?

- Intrinsic value
- Additional fees / multiple locations
- Shield / sword in fee disputes

Design Agreements: Liability Issues

Liability to who?

- 1st Party (breach of contract / negligence / “standard of care”)
- 3rd Parties (indemnification)

Design Agreements: Liability Issues

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Professional Liability Insurance

Design Agreements: Liability Issues

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- 3rd Parties (indemnification)

Professional Liability Insurance

Limitation of Liability

Construction Agreements: Initial Considerations

- Pre-Con?
- LOI?

Construction Agreements: Initial Considerations

- Pre-Con?
- LOI?
 - DO – say in writing you are not obligated to pay until a formal contract is in place

Construction Agreements: Initial Considerations

- Pre-Con?
- LOI?
 - DO – say in writing you are not obligated to pay until a formal contract is in place
 - DON'T – “accept” a proposal

Construction Agreements: Initial Considerations

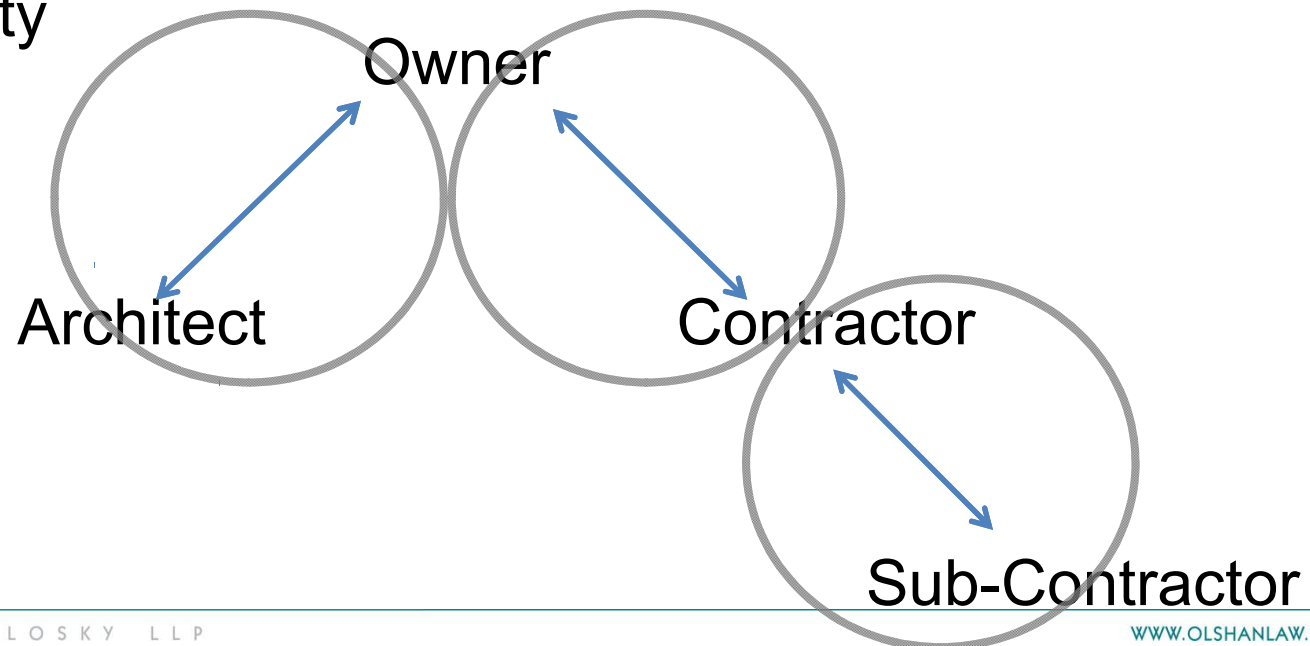
General Contractor vs. Construction Manager?
What's the difference?

Construction Agreements: Initial Considerations

General Contractor vs. Construction Manager?

What's the difference?

- Privity

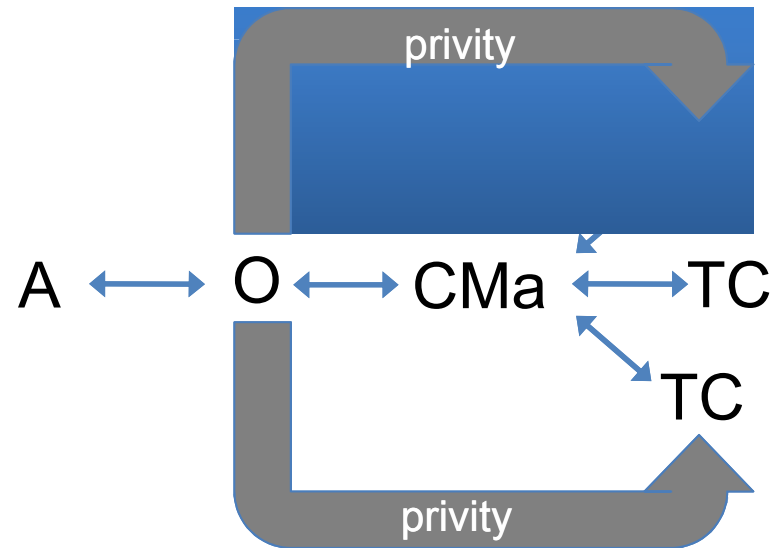
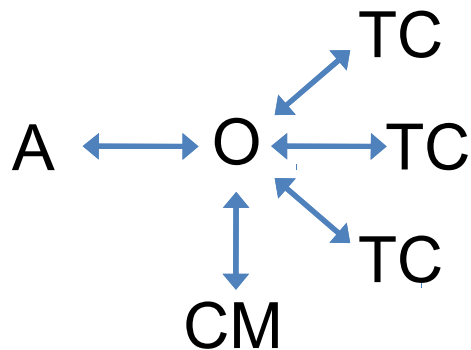


Construction Agreements: Initial Considerations

General Contractor vs. Construction Manager?

What's the difference?

- Privity



Construction Agreements: Initial Considerations

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What's the difference?

- Pricing

Construction Agreements: Initial Considerations

General Contractor vs. Construction Manager?

What's the difference?

- Pricing
 - Fixed Price (“Lump Sum”)

Construction Agreements: Initial Considerations

General Contractor vs. Construction Manager?

What's the difference?

- Pricing
 - Fixed Price (“Lump Sum”)
 - Cost Plus

Construction Agreements: Initial Considerations

General Contractor vs. Construction Manager?

What's the difference?

– Pricing

- Fixed Price (“Lump Sum”)
- Cost Plus
- Cost Plus, with a “guaranteed” maximum price (“GMP” or “Gmax”)

Construction Agreements: Initial Considerations

GMP Concepts

- “Open Book”
- Savings
- Contingency

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs)

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / %

Construction Agreements: Initial Considerations

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Construction Agreements: Initial Considerations

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- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / % \$800,000
- Fee (Lump sum / %)

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / % \$800,000
- Fee (Lump sum / %) \$324,000

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / % \$800,000
- Fee (Lump sum / %) \$324,000
- Contingency

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / % \$800,000
- Fee (Lump sum / %) \$324,000
- Contingency \$400,000

Construction Agreements: Initial Considerations

GMP Components

- “Cost of the Work” (i.e., the “Trade” costs) \$10,000,000
- General conditions costs
 - “actuals” / lump sum / % \$800,000
- Fee (Lump sum / %) \$324,000
- Contingency \$400,000
- Insurance & Bonds

Construction Agreements: Initial Considerations

GMP Components

• “Cost of the Work” (i.e., the “Trade” costs)	\$10,000,000
• General conditions costs	
• “actuals” / lump sum / %	\$800,000
• Fee (Lump sum / %)	\$324,000
• Contingency	\$400,000
• Insurance & Bonds	\$648,000
	<hr/>
GMP =	\$12,172,000

Construction Agreements: Contract Issues

Scope

- Warranty of documents vs. “everything I need”

Construction Agreements: Contract Issues

Scope

- Warranty of documents vs. “everything I need”
 - Contract Language

Construction Agreements: Contract Issues

Scope

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 - Contractor to provide “intended result”
 - Work that is “reasonably inferable”

Construction Agreements: Contract Issues

Scope

- Warranty of documents vs. “everything I need”
 - Contract Language
 - Contractor to provide “intended result”
 - Work that is “reasonably inferable”
 - CM vs. GC

Construction Agreements: Contract Issues

Schedule

- What is “Substantial Completion”?
- What is “Final Completion” (and who says so)?
- Liquidated damages?
- Delays and schedule claims

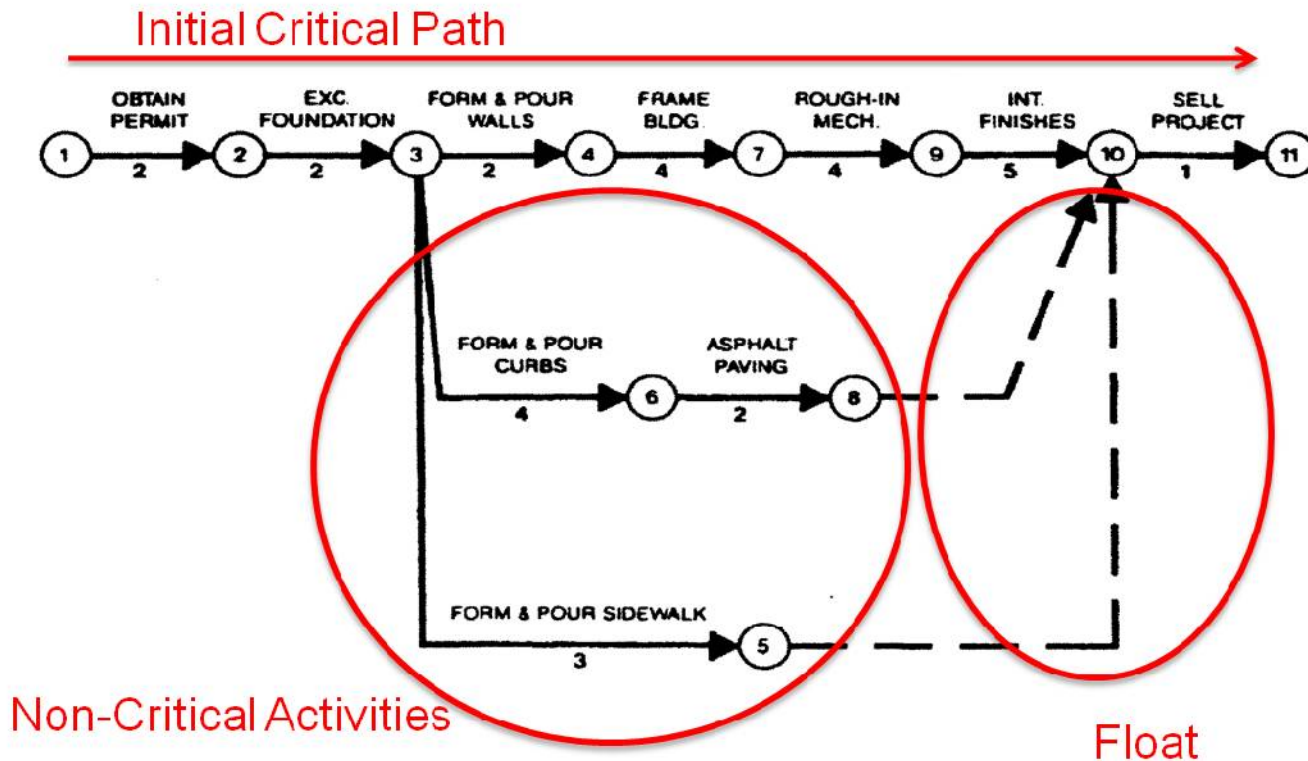
Construction Agreements: Contract Issues

Schedule

- What is “Substantial Completion”?
- What is “Final Completion” (and who says so)?
- Liquidated damages?
- Delays and schedule claims
 - The “Critical Path”

Construction Agreements: Contract Issues

CPM SCHEDULE



Construction Agreements: Contract Issues

Payment

- Schedule & cycle
- Conditions precedent
 - Lien waivers
- SOV
- “Retainage”

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
 - Notice as a Condition Precedent

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
 - Notice as a Condition Precedent
 - Waiver / Release

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
 - Notice as a Condition Precedent
 - Waiver / Release
 - Course of Conduct

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
- Personnel / Staffing

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
- Personnel / Staffing
- Subcontractors
 - Approval
 - Payment

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
- Personnel / Staffing
- Subcontractors
 - Approval
 - Payment
- Warranty

Construction Agreements: Contract Issues

Additional Concerns

- Claims / “Change Orders”
- Personnel / Staffing
- Subcontractors
 - Approval
 - Payment
- Warranty
- Indemnity / Insurance

Summary & Questions

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