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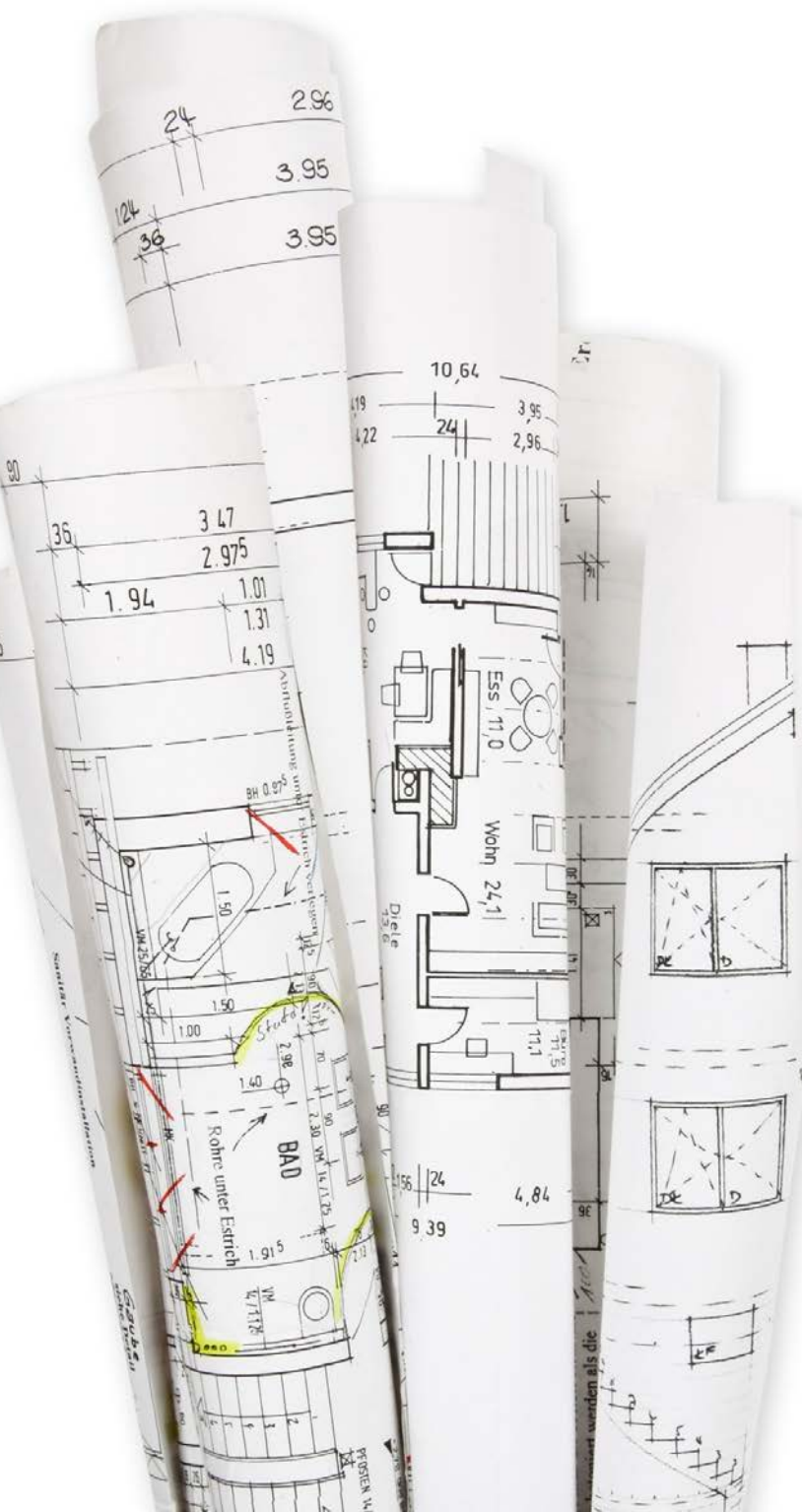
DEVELOPING A SCOPE OF SERVICE WITH APPROPRIATE COMPENSATION – #6 OF THE TOP 10 RISK MANAGEMENT PRINCIPLES FOR DESIGN PROFESSIONALS

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In the October 2019 issue of Building Blocks we outlined the top 10 risk management principles regarding design professionals for the next 10 months, one principle at a time, focusing on one each month.¹ Consequently, in the sixth of the top 10 principles, the April, 2020 issue of Building Blocks is focusing on **“Developing a Scope of Services with Appropriate Compensation.”** The top 10 principles are based, in part, upon the Council of American Structural Engineers’ (CASE) “Ten Foundations for Risk Management,” and the National Council of Architectural Boards’ (NCARB) two of the six educational modules titled “Practice Management” (PcM) and “Project Management” (PjM) of the Architectural Registration Examination (ARE). The first five risk management principles relate to practice management, and last five risk management principles relate to project management.

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DEVELOPING A SCOPE OF SERVICES

Professional services are occupations in the sector of the economy requiring special knowledge, skill and training, when exercising judgement, in the arts or sciences. Some *professional services* require holding licenses such as architects, engineers, accountants, doctors and lawyers. Design professionals, when either proposing to a potential client the provision of professional services, or when requested by a potential client to respond to a request for proposal (RFP), have to understand that there four types of scopes of services – 1) stated or negotiated basic services for a fee, 2) for extra fee - available additional services that a client may elect to choose, 3) supplemental services, and 4) services that are specifically excluded from basic services.



<https://www.publicdomainpictures.net/en/view-image.php?image=162966&picture=service-with-a-smile>

1) Stated or Negotiated Basic Services for a Fee

A poorly crafted basic services often leads to misunderstandings and mismatched expectations between the design professional and their client. And these misunderstandings and expectations can result in a dispute. Anything that is left open-ended and subject to interpretation may lead to a “bottomless pit” of expectations by a client. Thus, it is absolutely critical to spend the time and effort to establish the basic services for the design professional-client relationship. One exception to this practice is if the design professional and their client have an established on-going relationship, such as projects that are repetitive in nature.

The basic scope of services may be in broad the terms, with more specificity following. For example, the American Institute of Architects, Standard Form of Agreement between Owner and Architect B101 (2017), states that:

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

These broadly stated services are typically followed up with more specific terms, such as the number and types of various meetings throughout the course of a project, design scenarios, or construction phase reviews of submittals and requests for information from contractors.

2) For Extra Fee - Available Additional Services that a Client May Elect to Choose

The basic services can be expanded, such as with extra meetings, design scenarios, or construction phase reviews of submittals and requests for information from contractors. These expanded services are in addition to what are already stated in basic services (a distinction compared to the next type of scope of services below - Supplemental Services).

One problem that may occur is when the design professional allows their client to expand the services, and does not get compensated for the extra efforts. This is known as “scope creep,” which in project management refers to changes, continuous or uncontrolled growth in a project's scope, at any point after the project begins. This can occur when the scope of a project is not properly defined, documented, or controlled.

3) Supplemental Services

These services are not included in basic services at all, so they cannot be expanded. Examples of supplemental services that could be added would be another discipline to architectural or engineering basic services, such as landscape architecture, commercial kitchen design, or interior design, etc.

To better manage scope creep, a design professional may utilize a “**Change in Professional Services Amendment**” for both “For Extra Fee - Available Additional Services that a Client May Elect to Choose,” and “Supplemental Services.”

This is a sample agreement for your use and to modify as you see fit. Work with your legal counsel that is knowledgeable in your state and other applicable state laws, to use in your design professional practice for risk management purposes, and is not provided for legal advice.

Change in Professional Services Amendment

Design Professional:		Change No.:		
		Client:		
Project No.		Change of Services Date:		
Project Name:				
Location:				
Agreement Between Design Professional and Client (name & date):				
Scope of Change in Services:				
Fee Arrangement for Change in Services:				
Principals	\$ /HR		Technicians	\$ /HR
Architect/Engi	\$ /HR		Clerical	\$ /HR
This Change in Services Amendment modifies the scope of the services between Design Professional and Client in the Agreement stated above, as of date accepted by Client for this Amendment. All other terms and conditions of the Agreement stated above not previously amended or specifically modified by the Change in Services Amendment remain in effect.				
Special Notes:				
Offered by (Design Professional):			Accepted by (Client):	
Signature			Signature Date	
Printed name / title			Printed name / title Signature indicates the authority to bind the company to the terms herein	

4) Services that are Specifically Excluded from Basic Services

There are circumstances when a design professional does not want to include certain items to basic services. For example, services that go well beyond the experience of an architect or engineer, or create a liability exposure because they exceed the risk tolerance of a design professional. These services could include geotechnical or environmental engineering, or construction services.

APPROPRIATE COMPENSATION

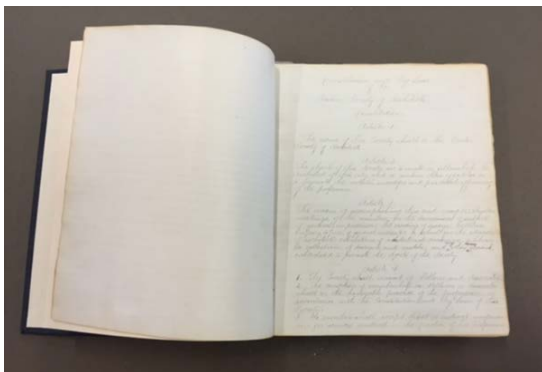
Appropriate fees allow for adequate time to produce quality professional services, such as contract documents and construction administration. Negotiate fees together with scope of services, so the client understands what is included in the basic services. Weigh contract fee versus risks to determine if the proposed fee is commensurate with scope, client, project type, complexity, schedule, delivery method and profit strategy.



Design professionals must be mindful that their ethical responsibilities guard against situations where they are presented with an opportunity to accept compensation from more than one party on the same project. The National Society of Professional Engineers' (NSPE) Code of Ethics for Engineers, Canon II.4.b. states that:

Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

This is not a new concept, such as the Boston Society of Architects' Articles of Incorporation in 1867 that prohibit a BSA member architect to accept compensation from more than one party on the same project.



When presenting an ethics program at the BSA a few years ago, I asked the Executive Director if she had a code of ethics for their organization. She checked in the BSA archives and came up with this immensely historic document created over 150 years ago. The ink was very fade, but was mostly legible. This photo of the Articles of Incorporation remains the best memory of that program and trip to Boston. The Executive Director warned me not to put my glass of cranberry juice on the table next to the Articles.



IN CONCLUSION

Based upon the scope of services, an architect or engineer needs to understand the effort required, the associated risks, and the value of the services provided to set fees. And it is worth noting that the choice of words is important for risk management purposes in the design professions and the construction industry as a whole. The word "services" is reserved for what architects and engineers do, and the word "work" is best associated with what construction contractors do when they provide labor and materials. The two words "services" and "work" should not be used interchangeably, because they can easily be confused by lay people outside the design professions and the construction industry as a whole.

¹ The above risk management principles have been adapted, in part, from an article that originally appeared in the June 2012 issue of STRUCTURE magazine, published by the National Council of Structural Engineers Associations (NCSEA), and is **reprinted with permission**. The top 10 principles of risk management for design professional are 1) A Firm's Culture & Ethical Practices, 2) Mentoring And Education, 3) Communication Skills, 4) Go/No Go" Policy, 5) "Contracts & Ownership Of The Firm's Documents," **6) Developing a Scope of Services with Appropriate Compensation**, 7) Produce Quality Contract Documents, 8) Construction Phase Services, 9) Utilize A Certificate Of Substantial Completion, and 10) Dispute And Claim Handling.

<https://cseengineermag.com/article/principles-and-tools-for-risk-management/>

About the Author

Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for the last 15 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 33 years. As a Fellow of the American Institute of Architects and a member of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities, and should not be construed to represent a determination of legal issues, but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

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“Practice Management (PcM), Architecture Registration Examination (ARE 5.0)”

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