

CASE #2 - An Agreement Between Client and Structural Engineer of Record for Professional Services

ABSTRACT

This agreement form may be used when the client, e.g. owner, contractor developer, etc., wishes to retain the Structural Engineer of Record directly. The contract contains an easy to understand matrix of services that will simplify the “what’s included and what’s not” questions in negotiations with a prospective client. This agreement may also be used with a client who is an architect when the architect-owner agreement is not an AIA agreement.

For agreements with Architects where Structural Engineer of Record is a consultant see [CASE #6](#).

For agreements when Structural Engineer of Record is a Prime Design Professional see [CASE #13](#).

As of 2015, the document was legally reviewed and the following changes were made:

1. Added sentence in cover letter indicating that any changes to document by Client would require approval by SER.
2. In 3.1.1 changed “may” to “shall”.
3. In 4.3.2 added phrase that indicates SER will not be responsible for resultant delays.
4. In 5.2:
 - a. Combined and rewrote Client/SER mutual indemnification.
 - b. Added sentence indicating that neither party has obligation to defend or pay for defense until one party has been found at fault and then only to the proportion found at fault.
 - c. Added paragraph for indemnification from third party claims. This was added since the original indemnification only dealt with claims from one of the contracting parties.
5. In 5.3.1 Risk Allocation:
 - a. Added “or any third party”. This was done to get the client to limit the SE’s liability for a third party claim. This is an aggressive approach and has not been tested by case law.
 - b. Expanded language regarding attorney and expert fee costs.
 - c. Removed “or other amount agreed upon” to remove open-endedness.
6. Other minor grammatical modifications.