

# **CASE #3 - An Agreement Between Structural Engineer of Record and Consulting Design Professional for Services**

## **ABSTRACT**

The Structural Engineer of Record, when serving in the role of Prime Design Professional or as a Consultant, may find it necessary to retain the services of a sub-consultant or architect. This agreement provides a form that outlines the services and requirements in a matrix so that the services of the sub-consultant may be readily defined and understood.

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

1. In 4.3.1 added phrase that requires SER to make payment to CDP in proportion to fees received for CDP's services.
2. In 5.5.1 removed "if requested in writing".
3. In 5.2.1:
  - a. Combined and rewrote CDP/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.
4. Added paragraph 5.2.2 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.
7. In 6.2.1 changed "Owner" to "Client".
8. Other minor grammatical modifications.