

CASE #13 - An Agreement Between Owner and Structural Engineer as Prime Design Professional

ABSTRACT

This agreement is intended for the Structural Engineer to serve as the Prime Design Professional. It addresses projects which may require other engineering disciplines and architectural services which are more than incidental. Examples are parking garages, warehouses, light industrial buildings, sports facilities and structural renovations. It should be distinguished from CASE # 2 which is to be used when the Structural Engineer of Record has an agreement with the Owner but does not serve as the Prime Design Professional. This document is written to be compatible with [CASE #3](#) which can be used by the Structural Engineer as Prime Design Professional to contract with consultants on the same project in conjunction with this agreement.

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

1. In 3.1.1.f added “or any third party”.
2. In 4.3.2 added phrase that indicates Structural Engineer will not be responsible for resultant delays.
3. In 5.2.1:
 - a. Combined and rewrote Client/Structural Engineer 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 Structural Engineer’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. In 6.2.1 modified last sentence to encourage Owner to hire a cost estimator.
7. Other minor grammatical modifications.