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Understanding the Agreement With Your Client

by Richard N. Pollack, FAIA, FIIDA

Your firm has won the project, and now it is time to get an agreement in place to begin your services. In California, a consumer protection law prevents an architect from working for a client without a signed agreement. While it was passed to protect residential clients and ensure that the client was aware of their financial exposure, it is a great tactic to use with commercial clients. Even if your state does not have similar legislation, it is critical to have the client understand that you are an equal in the business relationship. Designers and architects will often be so excited about getting the project that they bypass this straightforward business principle.

When trying to get the agreement signed before starting, clients will often push back, saying that it takes time for their attorney to respond to your proposed contract. Your response is to insist that you have a signed agreement. If that will take too long, then there is a need to execute a letter of intent that is prepared by you while the agreement is being negotiated. The letter of intent language makes reference to the agreement, which can help make your negotiating position stronger. The following paragraph contains sample language, but know that I am not an attorney, and any architect or designer should consult legal professionals.

This Letter of Intent will act as authorization for [architect/designer] to proceed with services in accordance with our proposed Agreement dated [date] pending receipt of the executed contract. Client agrees to reimburse [architect/designer] on the fee basis plus expenses outlined in the Agreement. Please indicate your approval for [architect/designer] to proceed by signing and returning a copy of this letter.

Again, to reinforce the point, you will want to use your own agreement language. If the Request for Proposal or your previous discussions did not make reference to the form of the client's contract—for example, a reference to an AIA agreement—use your own agreement. As soon as you have been awarded the project, let the client know that you will be submitting a draft contract for their review.

Your firm should already have a standard agreement that has been vetted by both an attorney and your professional liability carrier. It will include all of the legal terms and conditions required by the laws in your locale, as well as language to better protect you under those laws. A typical agreement template would have all the legalese in place and allow you to simply paste in the scope of services and compensation from your proposal. Using this approach also gets a draft agreement into the client's hands quickly.

- Terms and conditions of your agreement would likely include:
- **Payment Terms:** How you invoice, when you invoice, penalties for late payment, and how often you adjust your hourly rates.
 - **Premium Time Services:** When and how you charge for overtime.
 - **Reimbursable Expenses:** What is and is not included in any markups.
 - **Owner's Responsibilities:** The client provides accurate information, and approval of a phase is authorization to proceed to the next phase.
 - **Use of Documents:** You own the documents, you will provide copies to the client, and they cannot be reused without your agreement and additional compensation.
 - **Termination, Suspension or Abandonment:** How the agreement can be terminated, and provisions for you to stop work if not paid in accordance with the payment terms.
 - **Limitations of Liability:** Your liability is limited to a certain amount, such as your fee or a stated amount.
 - **Dispute Resolution:** The method through which disputes would be handled, such non-binding mediation, arbitration, or another approach.

And other terms and conditions may include:

- **Extent of Agreement:** Stating that this is the whole agreement.
- **Hazardous Materials:** Noting how you would deal with any discovered asbestos or similar hazardous material.
- **Successors and Assigns:** Naming who is bound by the agreement and how interests are transferred.

During my years of practice and building a firm, I made a serious effort to learn as much as I could about the legal framework, including spending time with the firm's liability insurance broker to learn about the legalese and how it is applied. An insurance broker or a representative of the insurance company can visit your firm, without cost, and teach your team about agreements, mitigating risk, and other legal issues. In my experience, an added benefit of this consultation was that my firm's professional liability insurance premiums were reduced.

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