

## Consulting Contracts, Managing Changes, and Scope Creep

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### Summary

Changes are often made to contracts for architectural services and to subcontracts for consulting services. Changes to construction contracts are typically made in writing and follow a well-defined change notice and change order process. Changes to architectural and consulting services under the pressure of the project schedule are too often done verbally with the expectation that the change will be formalized later. This can lead to disputes about fees for extra services, particularly toward the end of a project, and when the notice provisions of the contracts are not adhered to.

Certificate of practice (CoP) holders should notify the client and other consultants at the earliest possible time when changes in a project are identified which may result in a change in the scope of services, a change to the project cost, project schedule, and/or a change in the professional fees.

CoP holders should not proceed with changes without written authorization from the client, which includes a detailed description of the agreed change in scope of services, project schedule, and professional fees.

To help avoid disputes, standardize the change process, and reinforce that changes to contracts should be made in writing. To assist with this, the Ontario Association of Architects (OAA) has provided a standard “Extra Services or Contract Change” form for architectural services contracts.

### Background

It is important for CoP holders and clients to share a common understanding of the scope of services and the costs of the project they are working on. When differences of opinion occur, fee disputes may result. This is one of the reasons that it is prudent to keep clients aware of the reasons for changes, and the actual changes in the scope of services, and the status of project development.

Projects often start with a great deal of enthusiasm, and the CoP holder, other consultants, and the client rush to find possible solutions for the specific problems framed within the project. It is important at the outset of the project to take the time to stop and record the expectations of all parties, identify the scope of services for the project, the client’s budget, the project cost, and document the fees that will become due. In short, a contract must be negotiated, and the common understanding of the parties duly documented.

It is important to remember that it is often difficult to rationalize why additional services are required later in the project when there is no agreed scope of services at the start of the project. Agreements that are left ambiguous, or trusted to memory may be subject to differing opinions later in the project. Unrealistic or simply unmet expectations may lead to dissatisfactions and disputes. A written contract is essential to confirming and recording the common understanding. Use of standard contracts prepared by the professions are recommended.

It is prudent for the client and the CoP holder to refer to the contract terms from time to time during the project. This will help focus the parties and the work they do towards satisfying the specific requirements outlined in the contract. While working through the project requirements, refining the design, and the construction documentation, or even during the construction of the project, new requirements may have to be introduced into the contract. In isolation, such changes may or may not be significant in terms of the entire scope of services. Often, the cumulative effect of many small changes will have an impact on the project cost, scope of services, schedule, or the professional fees. This incremental change in the scope of the project is often referred to as “scope creep”.

The scope of services, schedule or total project costs outlined in the contract may not anticipate the impact of “scope creep” on the contract. Extra services or work, which was not reasonably foreseeable, may be required to bring the project to a successful conclusion. Keep the client aware of such changes and the resultant change in scope, project cost, schedule and/or professional fees. When the cost of providing services increases, renegotiating the fees and or other terms and conditions of the services contract is appropriate. A form, similar to a construction change order form, is one method that many have found to be useful in communicating changes in contractual requirements and obtaining client approval.

Reference to those Basic and Additional Services anticipated on a unit rate or time and materials basis and already noted in the client services contract per the OAA 600 or OAA 800 Schedules should be made during the progress of the project as reminder that if they are already included in the contract, they don't constitute Extra Services.

All agreed changes in the terms and conditions of the professional services contract should be recorded in writing.

Effectively managing scope creep or other contractual changes at the project's early stages is in the best interest of the client, the CoP holder, and the consultants to avoid disputes later in the project, and to contribute to constructive working relationships and a successful project.

## **Suggested Procedure**

1. Define the scope of professional services, the project schedule, project cost, and the professional fees clearly in a written professional services contract at the outset of the project, including how each party will address changes over the course of the project. It is good practice to use standard forms of contracts recommended by the OAA to confirm these and other important elements of the agreement. Consult a lawyer about appropriate wording and to evaluate changes proposed by others.
2. Brief all project team members within the practice and on the consultant team on the scope of services to be provided under the professional services contract. Emphasize the importance of identifying any potential change in that scope of services, and of obtaining authorization before proceeding with any changes. Many CoP holders consider it good practice to distribute to the team copies of the description of the scope of services set out in the professional services contract.
3. Establish milestones for Schematic Design, Design Development, and Construction Documents phases including formal approvals to proceed from the client.
4. Prepare a detailed Project Brief that documents the scope of work included in the professional services contract. This is particularly important at the completion of Design Development (after which point the bulk of fees are expended). Track any scope changes during all phases by referring to the Project Brief and obtain client authorization before proceeding. (Refer to Schedule 2, item 2.1.9 of the OAA 600-2021 for additional information)
5. When a change in scope of services is identified, inform the client in writing and include a detailed description of the change in services, impact on the project schedule, project cost, and on professional fees for which the CoP holder is responsible.
6. Negotiate with the client to arrive at an agreement on the extent of the change in services, schedule, project cost and professional fees that the client will authorize.
7. Before starting work on a change, obtain written authorization from the client. A standardized contract change form is used by many to confirm the change in services, schedule, project cost, and fees, and the client's authorization to proceed. Maintain a record of the discussions and correspondence that led to the change.
8. Upon receipt of the authorization to proceed with the change, advise the project team and consultants. Instruct your subconsultants in writing to proceed with the change. Instructions to subconsultants may also be issued as subcontract change orders. Confirm with the client that will instruct their other consultants appropriately (if required).

## References

[OAA Standard Extra Services or Contract Change Form Template](#)

[OAA Contracts and Guides](#)

Mastering the Business of Architecture (MBA) Chapters 2A-2; 2A-6; 3A-3; 3A-4

Canadian Handbook of Practice (CHOP) 3<sup>rd</sup> Edition 2020 – Part 1 - Chapter 2.3 – Consultants, and Part 6 - Chapter 6.6 – Construction Contract Administration and Field Review

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