

ASLA 2010 ANNUAL MEETING SESSION OUTLINE

Sat-B10

ASLA Standard Contract – In Practice

11 September 2010

1:30 p.m. – 3:00 p.m.

Presenters:

Suzanne Coleman

Vince Zucchini Associates

Frank Musica

Victor O. Schinnerer & Company, Inc.

Vaughn Rinner, ASLA

Vanasse Hangen Brustlin, Inc.

Learning Objectives:

- Learn the purpose and practical use of the short form and standard form
- Know the importance of the liability clauses and how to negotiate an insurable contract
- Understand the importance of the client's understanding of a detailed scope of work

This session describes the structure and use of the ASLA Standard Contract Forms that were first released in 2008 and were most recently updated in the spring of 2010. Beyond the specific ASLA contract, the session covers the importance of a landscape architecture consultant-client contract, the essential elements of a contract, the reasons the contract is needed, and liability issues for landscape architects.

Suzanne Coleman of Vince Zucchini Associates has used the ASLA standard contracts, and she will provide an entertaining and very informative presentation about VZA's search for a good contract form to fill the requirement for a standard contract, why they now use the ASLA contracts, and how they use them.

Frank Musica with the insurance company Victor O. Schinnerer will discuss the legal basis for using a contract and what the contract needs to address with an emphasis on liability issues for the landscape architect. Schinnerer has provided a very helpful handout about professional liability that has been posted for this session.

Vaughn Rinner, ASLA was a member of the ASLA Professional Practice Committee who worked with two other landscape architects, an attorney, and ASLA staff to develop the standard contracts. She will discuss the Scope of Practice provisions of the standard contract, its current use by landscape architectural firms, and potential next steps for the current Small Business Owner Support Subcommittee of the ASLA Professional Practice Committee.

The following outline covers the main discussion points for each presenter.

Suzanne Coleman of Vince Zucchini Associates (VZA)

VZA before ASLA Contracts – Options:

- Adapt AIA C141 Document
 - Std Agreement between Architect & Consultant
- Adapt Past VZA contracts
 - Pick a Contract
 - Pick a Format
 - Pick a Legal Phrase
 - Cut and Paste
- Hire / Retain Attorney

The Tipping Point: Renewal Application for Professional Liability:

Be advised that this program **REQUIRES** your use of a standard contract that has been approved by YOUR attorney. On projects where you must use a contract provided BY OTHERS, it is a requirement AT A MINIMUM to have the INDEMNITY PORTION of that contract reviewed by YOUR Attorney.

General Purpose of Contracts

- Manage Owner Expectations
- Define Responsibilities
- Manage Liability

Specific Purpose

- Build Trust
- Educate Clients
- Schedule Projects
- Manage Cash Flow

Characteristics of ASLA Contracts

- Industry specific
- Easy Clear and Concise
- E&O Compliant
- Annual Updates
- Inexpensive
- Fosters Client Trust
- Useful Educational Tool

Formatting and Customizing

- Easy to Use
- Easy to Adapt
- Add / Delete Paragraphs (does not renumber)
- Add / Delete Exhibits
- Microsoft Word Experience

Suzanne Coleman of Vince Zucchini Associates (VZA) (cont)

Use short form for:

- Small, simple projects
- Low risk level
- VZA only consultant
- Residential, small parks, plan segments

Use standard form for:

- Medium to large projects
- Simple to complex
- Low to medium risk level
- With partners/team
- Estates, institutional, commercial

Challenges

- Scope & Supplemental Services: Are they crystal clear?
- Terms: Did you get what you bargained for? Did the client?
- Client's approval of subsequent changes in scope
- Changes made in the field to contract to client authorization
- Opinions of probable construction costs

VZA Client Contract Package – education and contract preparation

- What is Landscape Architecture?
- Questions to ask a Landscape Architect
- *All About Landscape Architects and What they Can Do For You*
~ The New York Times 04/23/67
- Subcontractor P & P
- License and Insurance
- Client Questionnaire
- Sample Contract
- Attachments:
 - Exhibits A-D
 - Glossary of Terms

Guiding Principles

- Foster trust among all parties
- View contract from Client & LA perspectives
- Minimize “legalese”
- Plan for “no surprises”
- Ensure policies, procedures and docs complement ASLA contracts
- Walk the Client through the Contract
- Educate Client how to use your services
- If special risks, consult with your attorney

Frank Musica of Victor O. Schinnerer & Company, Inc.

Rule of Contracts: You get what you negotiate - not necessarily what you deserve

Tort and Contract Law

- Basic protection of negligence standard
- Freedom to assume contractual obligations

Negligence and Liability

- Breach of duty
- Damage caused

Breach of Contract

- Breach of Warranty
- Other causes of legal action

Minimal Contract Requirements

- Client and consultant
- Scope of services
- Compensation
- Schedule
- Dispute resolution mechanism

ASLA Contracts are:

- Equitable but protective of profession
- Clear and concise
- Usable with only project-specific changes
- Educational in any negotiation of owner-generated contracts or modifications

Advice and questions when using the ASLA contracts

- Know the Project Client
- Define Your Scope of Services
- Protect the Standard of Care
- Beware of Giving or Implying Estimates
- Be Sensitive to Time Commitments
- Recognize Vicarious and Coordination Liability Situations
- Limit Responsibility for Construction Site Safety
- Be Aware of Insurance Requirements
- Carefully Commit to Contractual Indemnity Provisions
- Limit Liability for Consequential Damages
- Recognize the Value of Ownership of Copyrights and Design Materials
- Plan for the Resolution of Disputes
- Preserve Rights in Suspension or Termination Situations

Frank Musica of Victor O. Schinnerer & Company, Inc. (cont)

Emerging Risks in Contracts

- Design-Build
 - Contractually Assumed Exposures
 - Difficulties in Recognizing “Client”
- Stimulus Projects
 - Special Documentation and Reporting
- Public-Private Partnerships
 - Extension of “Window of Vulnerability”
 - Flow-down Provisions

Vaughn Rinner, ASLA of Vanasse Hangen Brustlin, Inc.

The standard form contract: Short and Standard Contract Forms, Guidelines and Definitions

Standard Contract Provisions Project Specific Information

- Exhibit A – Client’s Program
- Exhibit B – Scope of Services
- Exhibit C – LA’s Hourly Compensation Schedule
- Exhibit D – LA’s Schedule of Services

Major Elements

- Client
- Owner
- Landscape Architect
- Project-Specific Information
- Scope of Services
- Budget
- Compensation

Phases

- Site Analysis
- Schematic Design
- Design Development
- Construction Document
- Bidding
- Contract Negotiation
- Construction Contract Administration

Vaughn Rinner, ASLA of Vanasse Hangen Brustlin, Inc.

Supplemental Services

- Pre-design
- Design Phase Limitations
- Construction Phase Services
- Post-Construction

Agreements have been purchased by **549** ASLA members and non-members from April 2008 through July 2010.

2010 Edition Improvements

- Pagination revisions for clarification
- Fonts refined
- Page insert for Exhibit A – Client’s Program
- Page insert for Exhibit C – Compensation Schedule

Download contracts:

<https://www.asla.org/contracts>

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