

Contract Clause - Supplemental Fee Clause

by
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All surveyors in private practice have been in the situation where the client has sought services beyond the scope of the contract. For example, a survey crew will go to a construction site and be delayed several hours after they should have completed the contractual services because the client requested extra services (“While you’re here...”). All too often when the surveyor attempts to bill for the extra services the client objects that the extra charge was never agreed upon.

It is neither good for practice nor good for the promotion of the business to refuse a client’s request to perform extra services or delay performing additional services until a new or modified contract can be executed. Therefore, prudence requires the surveyor include in the initial contract what will more than likely be an eventuality after its execution.

To prepare for client requests beyond the scope of contractual services, the surveyor should include a supplemental fee clause in the contract. The supplemental fee clause is included in a contract to provide a basis for the fee charged for additional work performed outside the scope of the contract. The supplemental fee clause also provides notice to the client that they can and should expect to be charged for additional work outside the scope of the contract that they have requested the surveyor to perform.

Supplemental Fee: For any and all additional work outside of the scope of the contract that is requested by the Client or the Client’s agent or representative, the Surveyor shall be paid \$__ per hour plus costs.

The supplemental fee clause is often predicated on an hourly rate or cost plus basis. These two formulations of a supplement fee are the most flexible and easy to apply to unknown or unexpected situations.

The supplemental fee should be reasonable; yet, it should be set higher than the fee that would be negotiated directly for the same services. A higher (but still reasonable) supplemental fee provides some leeway for the surveyor to compromise and still profit should the surveyor wish to compromise their fee for promotional purposes. A supplemental fee clause also helps coerce the client to plan ahead and negotiate additional services with the surveyor in order to save money. Perhaps most importantly, a higher supplemental fee compensates the surveyor for the aggravation brought about by the disruption of surveying services scheduled for other clients.

Often a notice provision is included with the supplemental fee clause. The client may have some concern about unanticipated additional work and associated supplemental fees, especially when the surveyor may be dealing with the client’s agent or representative rather than directly with the client.

Supplemental Fee: For any and all additional work outside the scope of the contract that is requested by the Client or the Client's agent, or representative, the Surveyor shall be paid \$__ per hour plus costs. Provided; however, the Surveyor shall attempt to contact the client or leave a voice mail message using the client's cell phone (# __) if the additional services are being requested by the Client's agent or representative.

A clear declarative act should be required in the contract where the client is concerned that they may be charged a supplemental fee when they could believe the work is covered within the scope of the contract.

Supplemental Fee: For any and all additional work outside the scope of the contract that is requested by the Client or the Client's agent, or representative, the Surveyor shall be paid \$__ per hour plus costs. Provided; however, before commencing the additional services, written (handwritten, typed, or printed) confirmation of the services shall be prepared and initialed by the Client or Client's agent, or representative before commencing the additional work. Otherwise, all services performed on behalf of the client will be presumed to fall within the scope of the contract.

The scope of work section of the contract is related to the supplemental fee clause. A clearly defined scope of work does not allow confusion as to what is or is not additional work that is subject to a supplemental fee.

Despite including the supplemental fee clause, some clients will not be pleased to pay additional money. (Some clients are not pleased to pay the contracted amount.) Accordingly, it is always wise to clearly document the additional services and put the client on notice that the services about to be performed are additional services and subject to the supplemental fee.

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