



The Art of Contract Correspondence

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1. INTRODUCTION

Correspondence on any construction project, irrespective of its size and value, is a crucial element of the contract administration process. To be effective, correspondence requires measured, complete, and structured management. However, project managers, contract managers, and administrators often fail to implement or even recognize simple basic guidelines that can substantially help contract correspondence achieve its primary objective, which is to communicate.

Typically, contract correspondence falls into two groups. The first includes systemic, formal processes such as transmittal forms, letter logs, payment certificates, requests for information, deficiency notices, and daily construction logs. These types of communication, many produced on a daily basis, use recognized, standard forms to address particular issues. The second type of communication has no particular format or subject; they are at the author's discretion. This article primarily focuses on this second form of communication, in effect writing and responding to contract letters and change orders.

Communications, including letters, emails, telephone calls, virtual and in-person meetings, and transmittal of drawings, data sheets, and specifications, are the essential foundation of a construction project. Effective communication decreases the risk of misunderstandings that may result in disputes.

Having worked on numerous major construction projects globally for 40 years, the author has observed that few key personnel draft important correspondence well, including letters and change orders. Most do not take the time to learn or appreciate the necessity of writing clearly and effectively. We have all seen examples of confusing, rambling letters lacking a clear objective. Why jeopardize your position with a poorly crafted document when you could more clearly support your position by following a few simple guidelines?

This article provides principles you can apply to any kind of contract correspondence. There is an art to writing a very good contract letter that comes with experience. Through experience, you recognize when and how to apply the guidelines to optimum effect. The more letters you write, the more you understand how to formulate and respond to specific contract matters.

After a prolonged absence from drafting contract correspondence, it may take time to recall how to write it well to elicit a comprehensive response. It is therefore best on a large construction project to designate an experienced individual, such as a contracts manager or administrator, to draft key correspondence and oversee all letters before they are signed and issued. This promotes stability and uniformity on contract issues, which are critical to support your position, particularly if a dispute arises. Consistency supports credibility.



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While grammar and spelling are important, this article does not address them. Many software programs can help with these potential problems. This article focuses on the art and craft of effective contract correspondence. The following guidelines are not exhaustive, nor should they hamper individual style. Hopefully they will help both experienced and novice contract administrators deepen their expertise in contract correspondence.

2. PURPOSE

Merriam-Webster defines correspondence as “communication by letters or email” and “letters or emails exchanged.”¹ Mr. Tyler Riddell writes,

Correspondence management is a company’s process of receiving, responding, recording, and sending information about a construction project or project related topics... in the manner of simple communication between contacts, or formal information being exchanged.²

Mr. Trevor Price writes,

According to a 2013 report, 2 out of 5 projects do not meet the designated project objectives, and one half of those are related to inefficient communication... Communication among stakeholders and team members should be continuous to maintain the smooth flow and progress of the project. Different forms of communication must be used in order to promote clarity and understanding ...³

Communication is the essence and goal of all contract and project correspondence. Write all correspondence with an aim to protect the legal and contractual rights of the authoring organization and to recognize those of the receiving party. Sadly, authors often incorrectly or insufficiently address these needs.

The essential reference document for all contract correspondence is the contract itself. The contract expressly provides, among many other things, the parties’ rights and obligations. Project personnel who know and understand the contract in detail, such as the contracts manager or administrator, should draft letters and change orders, for example.

¹ Merriam-Webster, s.v. “correspondence (*n.*).” See <https://www.merriam-webster.com/dictionary/correspondence>.

² Riddell, Tyler. “The 5 Best Ways to Manage Correspondence Process Systems,” 7 July 2017, eSUB construction software blog. See <https://esub.com/blog/5-best-ways-manage-correspondence-process-systems/>.

³ Price, Trevor. “How Email Management Expand Project Management Efficiency,” 16 August 2016, CrowdReviews blog. See <https://www.crowdreviews.com/blog/how-email-management-expand-project-management-efficiency/>



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While a construction contract is designed to protect stakeholder rights, the contract and supporting documents, particularly on a major project, can become complex, voluminous, and difficult to manage. This can lead to differing interpretations and disputes.

Owners and contractors are sometimes reluctant to adopt a contrary position or take a stand on a particular matter and put it in writing because it might upset the other party and damage the relationship. This approach is problematic. Any such matter should be conveyed through contract correspondence in a timely manner for several reasons:

- If you do not address the matter, negative impacts may lead to a dispute at a later date. You do not want to hear, “Why didn’t you say something earlier?” Postponing communication about the issue may allow it to worsen in terms of impact and cost. Furthermore, you may prevent the recipient from undertaking early mitigation efforts.
- By not writing about the matter, you increase the risk of your position failing pursuant to contract “notice” conditions.
- If you communicate early, you can always maintain, change, or withdraw your position later, as things develop or additional information is provided. Putting your position in writing does not mean you are stuck with it.
- A simple “reservation of rights” should provide contractual and legal protection. Never ignore or attempt to dilute your rights.

All too often, an owner attempts to deny a contractor’s reservation of rights, particularly in a change order where contributory factors such as schedule delay and costs are not yet clear. An owner does this by striking the contractor’s reservation of rights language and unilaterally issuing a change. While an owner understandably does not want exposure to unknown delays and costs in a change order, the contractor must not succumb. Under such a circumstance, the contractor may be contractually obliged to implement the unilateral change where there is disagreement over any cost or schedule impact. However, the contractor should state its position and appropriate reservations in a contract letter. The owner may disagree, but the reservation of rights will remain on the project record. Recognizing, maintaining, and communicating the rights of both parties to a contract are paramount.

When a dispute or disagreement arises, what you have said and how you have said it in contract correspondence should support your position towards promoting settlement. However, even if you achieve this, there are no guarantees of reaching an agreement, particularly if the opposing party is intransigent. Good correspondence increases confidence for negotiations, and from an arbitration and litigation perspective, assists the process and the prospect of success.



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3. BASIC GUIDELINES

3.1 *Subject Matter*

Whenever possible, constrain the subject matter of a letter to a specific project and topic. Introducing unrelated topics may create confusion, leading to an equally confusing response. By focusing on one subject, you can fully address an issue, and the letter can be managed and filed appropriately. Introducing separate topics, particularly if they are unrelated, may make it difficult to administer the letter and increase the risk of misinterpretation, misdirection, and mixing up issues. It may also decrease the likelihood of resolving the main issue.

If you receive a letter addressing multiple unrelated subjects, isolate them into individual topics and respond to each in separate letters. This separation helps everyone track each issue and identify a letter or series of letters pertaining to each issue in the correspondence log and project record. Issue tracking is especially important in a dispute resolution process that involves document “discovery.” It improves record management and reduces errors. Multi-subject letters may convolute filing, which could negatively impact the issue you want to resolve.

If an issue becomes part of a litigation or arbitration proceeding, providing letters that contain unrelated matters may defocus the proceedings, and you may end up presenting evidence that you would rather not include. If multiple issues are related to and support your primary topic, it is acceptable to introduce them, but the correspondence title and supporting references should remain clearly focused on the main topic.

Staying focused in a letter helps clarify what actions are required of which parties and the required time frames for these actions. Timely tracking of required actions is particularly important if the correspondence involves “notice” of any kind. Recipients may give a multi-subject letter too little seriousness and attention.

3.2 *Document Structure*

Many individuals, of various disciplines and levels in an organization, produce correspondence for a project, particularly a large one. Developing and maintaining a consistent appearance and format that clearly identifies the company, project, subject, and references will facilitate proper document management. The following guidelines promote conformity, identity, and stability. While some of the guidance may seem obvious, it is not always applied. Whatever format you adopt for a document, maintain it throughout the project lifecycle. Everyone in the organization should be made aware of and follow your document formats.

1. Valid Date

Include a date in all contract correspondence. The date should be the day the document is issued or as close to it as possible. For example, it discredits a letter,



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particularly an urgent one, to date it several days before it is transmitted. Such delays may occur if a draft letter goes through a lengthy review process by several project personnel before it is signed. It is therefore important that the document's author manages or maintains a direct connection to its distribution and timely issue.

2. Contract Heading, Subject, and Reference

The main heading should be the project reference name and number as noted in the contract. The second heading should be the subject. The third heading should refer to any previous documents in the correspondence chain for this type of document and topic. This enables any reader, familiar or not with the subject, to trace the document sequence from the beginning. While it is neither required nor prudent to cite every prior document, particularly in a long correspondence chain, it is important at a minimum to reference the document to which you are responding and your latest submittal, if applicable.

Each document type should have an individual, sequenced reference number that both the issuer and recipient follow throughout the project lifecycle. Always number letters sequentially, even if the subject matter from one letter to the next is completely different. While each party may maintain its own internal reference system, it is essential that the contractor and owner, for example, use a jointly agreed-upon numbering system to support the correspondence log database.

3. Signature Authority

A designated person should approve and sign documents such as contract letters, change orders, payment certificates, and other documents that have monetary or contractual implications. This person should be the project manager or a senior manager in the project organization who has the appropriate level of authority pursuant to the contract.

Channeling key contract correspondence through this designated approver supports consistency, contract compliance, and accountability. It prevents unauthorized personnel from issuing unapproved correspondence and gives each communicating party the confidence that the issuing organization has contractually sanctioned each document. While several personnel may develop a document, a single-source signatory renders a final level of oversight before the document is transmitted and becomes an irrevocable part of project records.

4. Content Efficacy

Long letters are usually less effective than brief ones. While some circumstances may require detail and length, it is best to communicate with brevity and precision. A letter should focus and influence the recipient on the main points without the distraction of supporting details. Think of the attention spans of the busy individuals who will read and respond to your letter, particularly if its purpose is to



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compel action. Consider how you would respond if you received a long, burdensome letter requiring considerable focus and effort just to understand its central issues.

In both your and the receiver's organizations, senior management may have little time or regard for details and may prefer just to focus on what the problem is, what is at risk, what if any actions are required, and what is the likely solution. Therefore, content should address principal matters quickly, clearly, and accurately.

Write an important contract letter almost like an executive summary, with salient points immediately visible and self-explanatory, and communicating exactly what you want to say and no more. Long supporting narratives may conceal or dilute your point. If you need to include additional information, focus the letter on main points and provide supporting documents as attachments. This allows management to focus on the matters in the letter, while supporting personnel can analyze supplementary details.

Keeping a letter to a single page is not always achievable and is not a "golden rule." However, once a letter is over two pages, it is probably time to review the document's goal and streamline the document with the above guidelines in mind.

5. Simplicity, Facts, and Components

Keeping a document simple and logical, particularly a letter, supports content efficacy and helps senior management at the recipient organization quickly recognize and understand its objective. Clarity is paramount. Each word should contribute to the letter's purpose. Avoid redundancy.

Keep to the facts, and avoid opinions, assumptions, and unsupported statements. Before positing something as a fact, make sure that supporting data and documents make it difficult to refute. Always assume that many people, with wide disparity in understanding of and viewpoints on the subject matter, will read the document, so any non-factual information may disadvantage your position, particularly when you are not there to explain. Furthermore, non-factual and unsupportable comments will be exposed for what they are, particularly in a dispute forum. They will discredit your position and become obstacles in achieving an agreement or settlement.

A poorly substantiated statement has little to no weight, even if there is some truth behind it. If there is a document that supports your statement, reference it. Always give facts a referenced foundation to avoid ambiguity and misinterpretation.

If a letter addresses an issue that involves several components, clearly identify each element, break it into a manageable size, and number and/or give it a subtitle in a logical sequence pertinent to the core issue. For anyone involved in the administrative process, this facilitates comprehension of and research on the subject. If a letter is evolving into an overly complex set of components, it may be



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time to reconsider the letter's framework and split it into multiple documents. There is no express rule to say when a document becomes too complex; use common sense, reviewing the draft as if you were the recipient.

6. References

If you refer in a document to your or the receiving party's rights, obligations, responsibilities, and relationships, always cite the specific contract article number and title that support your comment. This gives substance to your statement and should prevent you from making assertions and attempting to compel actions that are outside contract terms and conditions. Knowing your contract supports your confidence in enforcing it.

Do not quote entire sections of a contract article in a letter to drive home a point. A simple number and title reference enables receivers to understand where you are coming from, even if they disagree. It helps to prevent misunderstanding and shows that you have at least read the contract. Anyone reading the letter should not be left wondering what the referenced article is about.

Similarly, when referring to other documents, such as a letter to which you are responding, cite the letter number and date. Because letters rarely contain paragraph numbers, you may need to insert a quote to avoid ambiguity. Avoid adding lengthy quotes; use single or partial sentences wherever possible.

7. “Action By” Date

Whenever you require or compel an action, state the date by which the action is to be taken, and clarify what consequences will follow failure to meet that date. Without a fixed date, the timing of a required action, unless the contract expressly stipulates it, is open-ended and subject to interpretation. Even if the contract does provide a specific timeline, reiterate the exact date in the correspondence to avoid misunderstanding.

Make sure that any express reference to the consequences of lateness or ignoring the requirement is accurate and legitimate in accordance with the contract. Only take a position on such an issue in writing if you are prepared to follow through. Never issue an idle warning or threat. Failure to implement consequences discredits you and your organization.

8. Restraint

If you receive a letter that is unprofessional or angers, frustrates, threatens, or accuses you and your organization, a common reaction is to respond immediately and in a similar manner to correct any falsehoods and put the sender in his or her place. **Do not do so.**



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When drafting and responding to contract correspondence, remain professional, cool-headed, and calm, even though this can be difficult, particularly when facing threats and accusations. Remove your emotions from the process, maintain control, and respond appropriately and professionally.

All draft correspondence should be proofread several times before transmittal, but when you receive a letter that is contentious, insulting, or unprofessional, review your draft response *the next day*, no matter how calm and professional you think it is. You will almost certainly see things you want to change, such as verbiage inspired by the original letter.

Responding to an unprofessional letter in an unprofessional manner is unprofessional. It might make you feel better, but it will likely delay resolution of the issue at hand. Taking issues personally and making them personal, even if the other side is doing it, is never fruitful and, in almost every case, will be used against you when viewed by a third party. Contract correspondence is between two organizations and is bound to the contract. It should never become a personal duel.

9. Letter versus Email

Email is easy, efficient, and instantaneous. It is a go-to tool in day-to-day business because it is quick and trackable, provides a subject-specific chain, and is easy to manage and file.

A construction project will likely have thousands of emails, both within an organization and externally, involving several parties and stakeholders, on numerous subjects. It is critical that each institution implements a system of controls to effectively manage email for several reasons:

- Emails should not be used to communicate critical contract issues, particularly to an external party, though unfortunately this often happens.
- Virtually everyone on a project team can email any other party, but very few people have the designated authority to represent their company from a contract standpoint. Usually only one or two members of senior management (the project director or manager) have the legal and contractual jurisdiction to act for the company, as expressly defined in the contract. If an email author is unauthorized to support the company position, even if the company agrees with the email's content, then that email has no contract efficacy and creates confusion and risk for both the issuing and receiving parties.
- Emails almost never go through any kind of vetting or peer review process before they are sent.
- You cannot control who will receive a copy of an email. An email sent to one person might reach hundreds more. Furthermore, key administrative personnel



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who should receive a copy often do not and may not be aware of the email's existence.

- In discovery in a formal dispute, emails can be difficult to trace, categorize, and manage compared to letters, which are usually tracked in a log database.
- Several personnel should vet formal letters before their issuance, and formal letters are on company letterhead and signed by an authority as designated in the contract. They will therefore have legal and contractual status that protects both the issuing and receiving parties.

Email external parties only to communicate matters where there is no obvious or contentious legal or contractual content, such as arranging meetings. Even internal emails require control because each one is potentially subject to discovery in the event of a dispute. The last thing you want to come across are internal emails of which you are not aware that contradict or damage your contractual position stated in letters.

If you are unsure how important a specific issue is, when communicating with an external party on a contractual matter, always by default send a signed, authorized letter. Use the method of letter transmittal, such as traditional mail or email attachment, that is defined in the contract or agreed to by the parties to the contract.



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4. SUBSTANCE AND EXPRESSION

This section provides a list of dos and don'ts for contract correspondence, particularly letters, primarily based on the author's experience correcting thousands of draft letters, meeting minutes, change orders, and similar contract documents prior to signature and submittal. It is worth repeating that clarity is paramount. Once issued, it is probable that the receiving party will scrutinize documents for content, error, interpretation, and substance. The following list addresses common mistakes.

- Write and review every contract document with the mindset that a third party such as a judge, arbitrator, mediator, jury, or lawyer will read it.
- Establish a system whereby the relevant personnel will proofread all contract documents, particularly letters and change orders, several times before they are signed and issued. Grammar and spelling are important, but content is critical. Others may know the facts, but not everyone knows the contract and how to use it.
- Always use the words "Company," "Owner," and "Contractor" as described in the contract definitions, not the actual names. Avoid using pronouns such as "we," "us," "you," or "its" when referring to a contract party.
- Stick to the provable facts, cite the contract as necessary, and be specific, precise, and concise.
- When taking a position, be clear. Avoid words such as "maybe," "possibly," and "probably." A party will interpret these adverbs as signs of indecisiveness or lack of commitment. Your position needs to be black or white, not shades of grey. Never leave the status of an issue "open" without a written response.
- Either agree or disagree; avoid being somewhere in between. Using phrases like "it would appear" or "we are of the opinion" weakens your position. It either "is" or "is not."
- Never threaten or be overly aggressive; just advise of consequences.
- If a party has not done something it was supposed to do or is lacking in performance, use the word "failed," which has contractual significance. For example, instead of saying "Contractor did not achieve the deadline," state "Contractor failed to achieve the deadline."
- "Deny" rather than "reject." These words effectively mean the same thing, but to deny is on its face more acceptable than an outright rejection and will be read by a third party accordingly.
- "Require" rather than "request." A request allows the recipient to choose not to accede. When you state a "requirement," make sure you fully understand the



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potential consequences. Be careful the requirement will not, for example, interfere with a contractor's means and methods. The word "require" is best applied to production of information, drawings, data, etc., and where the contract expressly supports the action.

- Do not exaggerate; avoid hyperbolic language. For example, do not write that you are "extremely" or "gravely" concerned. Simply state that you are concerned.
- Be the first. Being the first to declare and put in writing a specific event, conversation, or impact such as a *force majeure* occurrence may give you the upper hand, both contractually and morally. Do not wait for the other party to do it unless it is to your advantage to do so.
- Do not take a contrary position on an issue when you know you are wrong and the facts do not support your argument. It damages your credibility and may even work against you on issues where you do have merit. Never be afraid to admit you are wrong.
- Do not be afraid to agree with the other party in writing when you agree with its position. This reduces the number of issues under discussion and helps focus efforts on those in dispute. It also shows a third party that you are being reasonable in your attempts to foster resolution.
- Always respond to contractual documents in a timely manner and within any expressly defined contractual timeframes. Where specific timelines may not exist, such as when replying to a letter, make every effort to issue a response within 48 hours or less, if possible, particularly on important matters. A delay in replying indicates to a third party that an issue may not be that important to you, even if it is. Where the contract specifies a response timeframe, such as commenting on drawings within 15 days of receipt, always respond as early as possible; do not use the timeline as a rule of conduct. Respond to all contract documents as quickly as you can.
- Avoid protracted document chains and repetitive arguments. Often one party decides it must have the last word on a subject. A simple way to try to end a discussion when a party continues to repeat itself is to state that you stand by the content and position of your last letter or letters and leave it at that. Even if the other party continues writing, you have made your position clear.
- When writing meeting minutes, avoid including a trail of "we said" and "they said" before reaching a discussion's conclusion. Simply minute the agreement, disagreement, and/or whatever action item has been compelled. How each party arrived there and what was discussed is unimportant and distracting.
- Be careful of what exactly you say or imply. Do not make statements you cannot fully corroborate. For example, when discussing mitigation efforts, stating "in order to mitigate" may suggest that mitigation is a forgone conclusion. Instead, say



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“in an attempt to mitigate,” which implies that mitigation efforts will occur, which may or may not succeed. Do not back yourself into a corner with your words.

- When responding to a delay or cost claim that you do not accept, make sure your language does not suggest acceptance of alleged events. Instead of writing “the delay” or “the costs,” use terms that reflect your position, such as “alleged delay” and “purported costs.”
- Do not be too quick to judge when responding to an issue in dispute. If a claim lacks information and support, ask for “further and better particulars” before stating your position. This shows a third party that you are amenable to additional information and are trying to be fair and reasonable before deciding on the merits of the matter.
- Be logical and state the facts in a way that is easy to understand. Never assume the person reading the letter is familiar with the subject matter.
- When using acronyms or abbreviations for the first time, explain them so that they are clear to the reader. Use them sparingly.
- If you believe the receiving party is entirely responsible for an impact such as a delay, do not just say the party caused a delay. State that the delay “is solely attributable” to the party. This clearly addresses who is at fault and potentially refutes issues of concurrency.
- Plan your letter or response in accordance with your company’s position and strategy. Strategically thinking ahead helps you consider likely next steps. You need to anticipate where things are going and the ramifications of what you write. What response is likely? Are you prepared to follow the issue through? How far do you take it? What are the risks? Draft and peer review each letter for compliance with the overall tactical framework of senior management and the organization. Planning is crucial to managing a specific contract issue, particularly if it has become a dispute. If your communication is reactionary, without consideration of a plan of action, you may put yourself in a position that is difficult to escape. Accordingly, discuss and review all key contract correspondence with senior management before issuance.
- When drafting a document, if you are unsure of something, never assume or guess. Seek help from those within your organization who know the facts. Peer reviews do not always correct factual errors or mistakes, particularly if the reviewers are not aware of the facts involved. It is therefore essential that the author manages each item of correspondence using the applicable organizational resources to support content and optimize its effect.



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5. SUMMARY

Writing effective contract correspondence takes time, effort, and, most importantly, experience. Crafting a good contract letter or change order sometimes requires input from several personnel across multiple disciplines to acquire correct facts, figures, data, and comprehension of an issue. Take no shortcuts in this regard. Including wrong information can take credibility away from information and facts that are correct.

Establishing and sustaining a process of peer review by factual, contractual, and, if needed, legal experts facilitate documentation that supports your position in a resolution forum. While there are no guarantees of success, it is far better to have a database of clear, concise, precise, and consistent correspondence than to have lacking, inconclusive, or contradictory records.

There is no loss of face if a peer review returns your document covered in comments, edits, and redlines. The most important thing is to have the document right before transmittal. Not everyone on a project team can draft productive contract correspondence. It takes a combination of knowledge, dedication, and experience. However, even the less-experienced drafter can improve by applying the guidelines in this article, which are summarized below:

- Communicate clearly and precisely.
- Protect your rights.
- Be strategic. Think ahead before you write.
- Be factual. Never assume or guess.
- Understand and reference the contract.
- Be timely.
- Be professional. Do not take things personally.
- Peer review everything, including final review and signature by the appropriate authority.
- Do not threaten or be overly aggressive.
- Avoid emails for important matters.
- Always cross reference.
- Write as if anyone and everyone will read what you say and how you say it.
- Seek help whenever you are unsure.

It is not difficult to author effective contract correspondence. Difficulties may arise, however, when you do not communicate effectively. If you end up in litigation or arbitration, your main weapon is your contract and contract correspondence. Take the time to do it right.



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About the Author



Michael Harris, PMP, is a Senior Principal with Long International and has over 35 years of construction project and claims management experience. His comprehensive consulting and management background includes risk evaluation and managing and resolving complex claims and contract disputes on major construction projects throughout the U.S. and globally for a wide range of industries, including the power, water, petrochemical, industrial, commercial, healthcare, and general building sectors.

Mr. Harris has extensive expertise in key construction disciplines including project design, project management, construction management, contract management, risk and claims analysis, on-site risk management, claims resolution, claims avoidance management, cost management, and expert witness report preparation and testimony.

As well as his extensive project execution background, he also has considerable experience in various types of dispute resolution forums such as arbitration, litigation, and mediation proceedings in North America, Europe, the Middle East, and the Far East. Mr. Harris has also been appointed as a mediator and arbitrator on various international projects. He has been responsible for the management of numerous major projects, both from a construction and dispute perspective, ranging in size from US\$100,000 to over US\$500 million.

A strong and rounded project execution background in many countries, together with expansive experience in dispute resolution processes, has allowed Mr. Harris to be thoroughly versed in the management of construction risks and claims for any type of project or problem in any location/country. He is skilled at contract analysis, claims strategy and preparation, claims defense, and the negotiation of settlements. For the 10 years prior to joining Long International in 2009, Mr. Harris has held positions as Executive Vice President and Corporate Director of Claims with two Fortune 500 construction companies. In these roles, he has had responsibility for the management, strategy development, implementation, and resolution of numerous construction disputes and contract claims for major projects on four continents.

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