THE ANATOMY OF …
A CONTRACT

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Why Contracts Matter

- You already have one
- Love and money
- Focus and front-loading problem identification
- Make projects work better
- It’s the economy, stupid. *(James Carville, 1992)*
- Proof to a stranger
What is a Contract?
A Contract is just a story about what is going to happen.

Once upon a time there was a little girl named Goldilocks who wanted to visit her grandmother. Her father said, take the main road. Don’t go through the woods because if you do bad things can happen to you. But if you take the main road you will get to your grandmother’s home in time for supper.

But goldilocks thought the main road was dull and not very pretty at all. So she decided to cut across the woods. Once in the woods Goldilocks found that it got dark very very quickly, and soon she was very very lost, and very very hungry and very very tired.

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EXPECTATIONS
MARKETING
Seriously... the real menu

- Who’s involved?
- What is each party is going to do?
- When are they doing it?
- How do you know if they did it?
- What happens if they don’t do it?
Appetizers

RECITALS

- WHO’S INVOLVED
- BACKGROUND
Main Course

- SERVICES
- ACCEPTANCE
- PAYMENT
- INTELLECTUAL PROPERTY RIGHTS
SERVICES

- REFERENCE TO STATEMENT OF WORK
- ASSUMPTIONS
- CONTINGENCIES
- CHANGE ORDERS
ACCEPTANCE

- TIME LIMITS
- DELIVERY OF ACCEPTANCE
- STANDARDS FOR REJECTION
- RIGHT TO CURE
- FAILURE TO ACCEPT OR REJECT
- USE
COMPENSATION, PAYMENT TERMS

- TIMING
- LATE CHARGES
- DISPUTES
  - WITHHOLDING PAYMENT
  - WITHHOLDING SERVICES
- EXPENSES
INTELLECTUAL PROPERTY RIGHTS

- WHEN THEY GET RIGHTS
  - WORKS IN PROGRESS
- CALIFORNIA’S POSSIBLE MAGIC BULLET *
- EXCLUDING YOUR TOOLS AND PRIOR WORKS
  - Limit what they can do TO pre-existing IP
  - Limit what they can do WITH pre-existing IP
- ASSIGNMENT OF INCLUDED PRIOR WORKS
- SECURITY INTEREST
Side Dishes Pt. 1

- PROJECT MANAGEMENT & PERSONNEL
- DISCLAIMERS AND LIMITATIONS OF LIABILITY
- INDEMNIFICATION
  - Make it mutual
  - Exclude their acts and incorporated IP
  - Watch out who or what signed the contract
- CONFLICTS OF INTEREST
Side Dishes Pt. 2

- REPRESENTATIONS AND WARRANTIES
- CONFIDENTIALITY
  - Duration
  - Mutual
- TERM AND TERMINATION
  - Why it matters
  - Grounds for termination
  - Notice
  - Payment
Side Dishes Pt. 3

- MISCELLANEOUS CLAUSES
  - Compliance with laws
  - Export Control
  - Insurance
  - Notices
  - Dispute resolution
  - Assignment
  - Attorneys’ fees
Signatures

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ABC, Inc.

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By: Nina Yablok, President
Some practical issues

- When in wonder, when in doubt, run in circles then send an email.
- Read your emails.
- The cost of prevention vs. the cost of a cure.
- Expectations, marketing and art.
Case Studies

1. Case of the difficult website,
   Carol Mattsson

2. Case of the disorganized client,
   Kim Parnell
1. Case of the difficult website from Carol Mattsson

The Situation
- Negotiated fixed-price website
- Project complete, client satisfied
- Last payment never arrived
- After repeated requests and warnings, disabled website
- Client paid but was angry and threatening

Warning Signs
- Client had a ½ finished website
- Difficulty in coming to terms on price
- Client kept asking for more features after price was set
Lessons learned:

- If payment is late, simply do no more work
- Fixed price means fixed scope
- Be clear on what is covered after the project is done
- It's probably not a good idea to disable a client's website
2. Case of the Disorganized Client from Kim Parnell

- The Client was pressing forward on a tight deadline.
- The Client updated the design during the project.
- Now the analysis needs to be repeated with the new parameters.
- This pushes the cost past the initial estimate and contract $$ $$. 

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2. Disorganized client (cont)

What should the Consultant do?

- Scope change is obvious, so push on trying to keep the schedule?

- Stop – write a message indicating the additional work needed, estimated cost, and request new PO?