

TCAA 2026 SUMMER CONFERENCE • JUNE 24, 2026

The Long and Winding Road

A City's Path to Resolving Construction Disputes in 2026

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THE SCENARIO

A New City Hall

- Soaring ceilings, efficient windows, terrace
- A state-of-the-art HVAC system
- A proud ribbon-cutting for a modern building



That was **seven months ago.**

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THE SCENARIO

What Went Wrong

- Warm and humid — even on mild days
- Storms bring wet spots on ceiling tiles
- The contractor's fixes never work



THE SCENARIO

The Standoff



THE CONTRACTOR

"Installed per the architect's design. As far as we're concerned, it's closed."



THE ARCHITECT

"The design is sound. If something's wrong, it's the installation."

Two parties pointing fingers — and a Council asking questions.

THE SCENARIO

What Now?

- Time for a road trip
- Which road: vertical or horizontal?

THE SCENARIO

What Now?



VERTICAL =

- **BUILDINGS**
- **ARCHITECT**

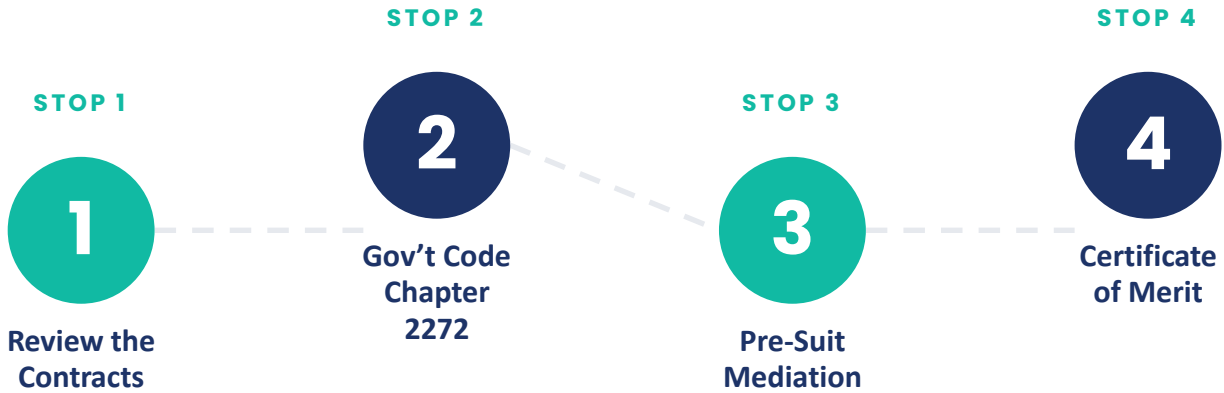


HORIZONTAL =

- **INFRASTRUCTURE**
- **ENGINEER**
(AKA CIVIL WORKS)

THE ROAD AHEAD

Vertical: Four Stops on the Road



THE ROAD AHEAD

Horizontal: Three Stops on the Road



STOP 1



Review the Contracts

The starting line — before you touch a shingle or file a pleading.

STOP 1 • THE CONTRACTS

Read First

- The contract is the road map — read it first.
 - Base Contract (A101)
 - General Conditions (A201)
 - Supplemental Conditions
 - Performance Bond



Notice Next

- Most construction contracts require:
 - Written notice +
 - Opportunity for contractor to fix
- If the contractor doesn't fix, city can fix **and** claim costs.
- Self-help too soon can forfeit recovery.



Pro Tip — Formal Written Notice



PRO TIP

- **Written** notice of each defect.
- To the named **person**, by the named **method**.
- Formal notice starts the cure clock — keep copies.

Dispute Resolution Provisions

Review construction and design contracts for three things:

- Same forum — arbitration or litigation?
- Is mediation required before suit?
- An initial decision maker (often the architect) or other negotiations?



Dispute Resolution Provisions



PRO TIP

- Align dispute-resolution clauses before signing — same forum and same pre-suit steps.

The Performance Bond

- Required on public projects over \$100,000.
- Assures the contractor performs.
 - May cover contractual warranty obligations.
- Leverage. **Not** a magic wand.
 - Not insurance
 - Surety entitled to contractor's defenses +
 - Independent defenses



The Performance Bond

- Preserve any bond claim.
 - Follow all notice requirements in bond **and** contract.
 - Conflict: Do both or follow stricter.
- Understand & calendar limitations.



The One-Year Clock



- Runs from final completion, abandonment, or termination
- “Final Completion” = undefined, fact/K-specific
 - Substantial (ready for use)
 - Final (all work & paperwork done)
 - Warranty period over
- The City moved in seven months ago
 - The clock could be running
 - Maybe ~5 months left to sue the surety

Pro Tip — Calendar the Deadline



PRO TIP

- Mark one year from earliest possible date (substantial completion).
- Set reminders well before the anniversary.
- Prepare for suit before Chapter 2272 process is complete.

STOP 2



Government Code 2272

The pre-suit inspection and report requirement.



STOP 2 · CHAPTER 2272

What It Is

- Created in 2019 (HB 1999)
- Amended in 2023 —non-waivable
- Notice & cure condition precedent to filing suit



When It Applies

- Claim by governmental entity +
- For design and construction defects +
- To public buildings/public works
- Exceptions:
 - Civil Works (Horizontal)
 - Personal Injury
 - Residential Construction
 - TXDOT Contracts
 - Project with state or federal highway money



The Written Report

1

Identify the specific defects

2

Describe present physical condition

3

Describe repairs since occupancy

Who Prepares It?



- Statute is silent
- No court has decided
- City staff may qualify, but risk
 - Completeness
 - Credibility
- Recommend an independent design professional
- Consider certificate of merit



PRO TIP

Before destructive testing for report, give written notice and let contractor/design reps attend.

Sending Report

- Copy to each party City has contract with
 - Contractor
 - Architect
 - Others?
- Send CMRRR
- Contractor & Architect send to subs < 5 days of receipt



Inspection & Repair Period



30 + 120 days
to inspect, then correct/agree

- 30 days to inspect
- 120 to fix or agree
- City may deny repair in limited cases
 - Prior failed Chapter 2272 repairs
 - No bond or insurance
 - Previous termination
 - Felony

The Insurance Reality

- § 2272.009: insurer must treat notice like suit
- Professional-liability carriers may engage
- CGL carriers rarely do before a suit is filed



Consequences of Non-Compliance

- 1st Time — dismissed without prejudice
- 2nd Time — dismissed with prejudice*
- No penalty if contractor or architect ignores



Report Costs

- Reasonable costs recoverable if:
 - Defect fixed; or
 - Damages recovered
- By party responsible for that defect
- Multiple defects? Segregate



STOP 3

3 Pre-Suit Mediation

- Check both contracts — mediation required?
- If only one, will parties all agree to:
 - Mediate
 - Waive



STOP 3 · PRE-SUIT MEDIATION

Whether to Mediate

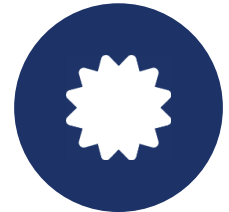
- Pre-suit sessions rarely settle the case
- Too little information — no discovery yet
- CGL carriers often won't fund a pre-suit deal
- Odds improve after experts weigh in
- Use it to open a dialogue for later



STOP 4

4 Certificate of Merit

- Required for suit against design-professional
- Affiant: same license, same area of practice
- Filed with the original petition
- Must be specific — no conclusory language



STOP 4 · CERTIFICATE OF MERIT

COM Challenges

- 2272 Report as Certificate of Merit?
 - Who prepared report
- Expensive
- Frequent challenges & immediately appealable



THE ROAD AHEAD

Marathon, Not a Sprint

QUESTIONS?

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