In my first week at Holland & Hart LLP as a summer clerk after completing my second year of law school, I was assigned a construction-related research project. At that time, I knew nothing about either construction law or jury instructions. I located the first edition of this book in our firm library and pulled it as a reference guide. I can still remember the green cover of the book and remember being thankful for the straightforward explanations of construction principles and governing rules of law in the book.

But, as pleased as I was with the guidance the book did include, I was disappointed at how much more help I wished it would have provided. After that first project, I consulted the book a number of times over the next few years—with the same result. It was a great reference, but it did not include everything I needed. In 2008, I worked with another construction attorney in Salt Lake City, Utah, to create form construction jury instructions for the Utah State Bar. We also used the book as a resource. We spent hours reviewing instructions submitted by our construction colleagues and finalizing the form templates.

My background is in broadcast journalism. I enjoy crafting jury instructions because they are one of the few categories of legal writing for which the target audience is the general population rather than an esteemed court or trained lawyers. Yet, the task of reducing complex legal issues, especially in the construction context, to straightforward instructions requires writing, thinking, and rewriting. Our team worked to make the instructions in this book as easy to understand as possible and to avoid passive-voice sentences, unnecessary technical terms, and legal jargon.

In 2010, when Ed Gentilcore, then chair of the Litigation’s Construction Litigation Committee, asked me to take the lead on the second edition of
this project, I was both excited and overwhelmed. Ed and I worked for over a year on the proposed table of contents—organizing and reorganizing. We both wanted to expand the existing book as much as possible to provide a more complete resource. Because of the overlap between many categories, separating concepts into sections with a thoughtful process required organizing and reorganizing.

To use this resource appropriately, trial counsel will need to be mindful of distinctions in the local jurisdiction, the provisions in the contract at issue, and applicable statutes. In addition, construction issues are notoriously fact-intensive. While some published cases may appear to create a divergent rule of law on first glance, many of these cases turn on specific facts rather than a legal distinction. Much like any other law, fundamental fairness and equity are guiding principles in construction jurisprudence. For example, this leads to cases in which strict requirements of notice may be overridden by acts of waiver or conduct of the parties. Even though a jurisdiction follows a principle of law outlined in an instruction, the jury should be instructed to consider factual issues to create a viable argument or waiver or exception to avoid applying the general rule.

In many states, construction jurisprudence is limited because of the number of cases that are resolved through arbitration. In my two jurisdictions, Utah and Nevada, we frequently look to surrounding states and secondary sources to provide the court guidance on areas that have not yet been addressed by our courts. We are hopeful that the instructions in this book—supported by the sophisticated practitioners who drafted them and the secondary sources and case law cited in support—will be viewed as a reliable authority for courts across the country to reduce time and bickering over jury instruction language. As nearly every author who submitted material to this book represents a variety of owners and contractors, we were all guided to provide neutral instructions that we will embrace in our own future cases, regardless of the party that we represent.

Evidence of the help that this book will provide to construction lawyers was demonstrated during the writing process. On at least three occasions, participating authors contacted me to ask if they could “preview” other chapters in the book to assist them to prepare jury instructions in one of their active cases. I, in fact, also consulted working chapters for similar guidance.
This book has been supported by a fantastic team of authors and contributors. Some authors were on board from the beginning. Other authors stepped in on short notice to finish where others left off. As the lead editor, I am extremely proud of the submissions we received and am excited for this book to provide guidance for me and my construction colleagues.