

Standard Form of Agreement Between

Client: City of Burnaby

and

Architect:

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Agreement Between City of Burnaby and Architect

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Agreement Between City of Burnaby and Architect

Agreement

made as of the _____ day of _____ in the year of
two thousand and _____

Between the Client:

City of Burnaby
4949 Canada Way
Burnaby, B.C.
V5G 1M2

and the Architect:

(Include name and address)

For the following Project:

(Include detailed description of project location and scope)

The Client and Architect agree as set forth in the following terms and conditions.

Project Budget	1.1	The Project Budget is the Client's estimated total expenditure for the entire project. It includes the Construction Budget and all other costs to the Client for the project such as but not limited to professional fees, costs of land, and rights of way.
Construction Budget	1.2	The Construction Budget is the Client's estimated Construction Cost including contingencies for cost increases.
Construction Cost	1.3	Construction Cost means the contract price(s) of all elements of the project designed or specified by or on behalf of the Architect, including all applicable taxes whether recoverable or not. Where there is no contract price for all or part of the project, the Construction Cost shall be the estimated cost at market rates at the estimated time of construction as determined by the Architect. Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, or other costs which are the responsibility of the Client. In the event that labour or material is furnished by the Client below market cost or when old materials are re-used, the Construction Cost for purposes of establishing the fee is to be interpreted as the cost of all materials and labour necessary to complete the Work as if all materials had been new and if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the estimated time of construction.
Construction Contract	1.4	The Construction Contract is the agreement between the Client and the Contractor for the provision of labour, materials and equipment for the execution of the Work by the Contractor and sets out their respective duties, responsibilities and obligations as prescribed in the Construction Contract Documents. The Construction Contract includes all prior negotiations, representations or agreements, either written or oral, including the bidding documents.
Construction Contract Documents	1.5	The Construction Contract Documents consist of the executed agreement between the Client and the Contractor, the general conditions of the Construction Contract, the plans, sketches, drawings, graphic representations, specifications and such other documents as are identified in the agreement and the general conditions as constituting part of the Construction Contract Documents.

Section 1		Definitions
Contractor	1.6	The Contractor is the person, firm, or corporation contracting with the Client to provide labour, materials and equipment for the execution of the Work.
Subcontractor	1.7	A Subcontractor is a person, firm, or corporation contracting with the Contractor to perform a part or parts of the Work included in the Construction Contract, or to supply products worked to a special design according to the Construction Contract Documents.
Substantial Performance	1.8	Substantial Performance of the Work is as defined in the lien legislation applicable to the place of the project. If such legislation is not in force or does not contain such definition, Substantial Performance shall have been reached when the Work is ready for use or is being used for the purpose intended and is so certified by the Architect.
Work	1.9	The Work means the total construction and related services required by the Construction Contract Documents.
Place of the Work	1.10	The Place of Work is the designated site or location of the project of which the Work may be the whole or a part.
Prime Rate	1.11	Prime Rate means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans as determined and published by the Bank of Canada.

Section 2**Responsibilities****Architect's
Basic Services**

2.1.1 The Architect's basic services consist of the five phases described in paragraphs 2.1.2 through 2.1.26 and include normal structural, mechanical and electrical engineering services.

**Schematic
Design Phase**

2.1.2 The Architect shall study the program of requirements furnished by the Client and shall study the characteristics of the site.

2.1.3 The Architect shall review and comment on the Client's Construction Budget in relation to the program of requirements.

2.1.4 The Architect shall review with the Client alternative approaches to the design of the project and the types of construction contracts.

2.1.5 Based on the Client's program of requirements and Construction Budget, the Architect shall review all applicable statutes, regulations, codes and by-laws and where necessary, review the same with the authorities having jurisdiction and then prepare for the Client's review and approval schematic design documents to illustrate the scale and character of the project and how the parts of the project functionally relate to each other.

2.1.6 The Architect shall prepare and submit to the Client an estimate of Construction Cost based on current area, volume or other unit costs (not required unless otherwise stated in the RFP document).

**Design
Development
Phase**

2.1.7 Based on the approved schematic design documents and approved estimate of Construction Cost, the Architect shall prepare, for approval by the Client, design development documents consisting of drawings and other documents appropriate to the size of the project to fix and describe the size and character of the entire project as to the architectural, structural, mechanical, and electrical systems, materials and such other elements as may be appropriate.

2.1.8 The Architect shall prepare and submit to the Client for approval a revised estimate of the Construction Cost (not required unless otherwise stated in the RFP document).

2.1.9 The Architect shall continue to review all applicable statutes, regulations, codes and by-laws in relation to the design of the project.

Construction Documents Phase	2.1.10	Based on the approved design development documents and approved estimate of Construction Cost, the Architect shall prepare, for approval by the Client, construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the project.
	2.1.11	The Architect shall advise the Client of any adjustments to previous estimates of Construction Cost indicated by changes in requirements or general market conditions (not required unless otherwise stated in the RFP document).
	2.1.12	The Architect shall advise the Client on the bidding documents. The Architect shall obtain instructions from the Client for the preparation of the necessary bidding information, bidding forms, conditions of the Construction Contract and the form of Construction Contract between the Client and the Contractor.
	2.1.13	The Architect shall review all statutes, regulations, codes and by-laws applicable to the design and where necessary review the same with the authorities having jurisdiction in order that the required consents, approvals, licences and permits necessary for the project can be applied for and obtained.
Bidding or Negotiation Phase	2.1.14	The Architect, following the Client's approval of the construction documents and of the latest estimate of the Construction Cost, shall assist and advise the Client in obtaining bids or negotiated proposals and in awarding and preparing contracts for construction.
Construction Phase - Contract Administration	2.1.15	During the construction phase - contract administration, the Architect shall be a representative of the Client, shall advise and consult with the Client and shall have authority to act on behalf of the Client to the extent provided in this Agreement, and shall at all times have access to the Work wherever it is in preparation or progress. All instructions to the Contractor shall be forwarded through the Architect.
	2.1.16	The Architect shall carry out the general review of the Work at intervals appropriate to the stage of construction which the Architect considers necessary to determine if the Work is in conformity with the Construction Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site reviews. The Architect shall keep the Client informed of the progress and quality of the Work and shall report to the Client any defects or deficiencies in the Work observed during the course of the site reviews.

It is understood that the reviews being conducted by the Architect are for the following purposes:

1. To examine, evaluate, and report to the Client upon representative samples of the Work; any comments on the balance of the Work made during the course of the site reviews are assumptions - based upon extrapolation.
2. To determine if the Work is in conformity with the Construction Contract Documents for the project.

2.1.17 The Architect shall not:

1. be responsible for deficiencies in the Work or for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work in accordance with the Construction Contract Documents.
2. have control, charge or supervision of, nor responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work.

This paragraph 2.1.17 shall not limit or release the Architect from the obligations imposed under paragraph 2.1.16.

2.1.18 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's application for payment, and shall issue certificates for payment in such amounts, proportionate to the amount of the Construction Contract, for Work performed and products delivered to the Place of the Work as provided in the Construction Contract Documents. The issuance of a certificate for payment shall constitute a representation by the Architect to the Client, based on the Architect's observations at the site as provided in paragraph 2.1.16 and on the data comprising the Contractor's application for payment, that the Work has progressed to the point indicated; that to the best of the Architect's knowledge, information and belief, the Work observed during the course of review is in conformity with the Construction Contract Documents; and that the Contractor is entitled to payment in the amount certified.

Such certification is subject to:

- (a) review and evaluation of the Work as it progresses for conformity as provided in paragraph 2.1.16.
- (b) the results of any subsequent tests required by or performed under the Construction Contract Documents.
- (c) minor deviations from the Construction Contract Documents correctable prior to completion, and
- (d) any specific qualifications stated in the certificate for payment. The issuance of the certificate for payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the contract price, or that the Contractor has discharged the obligations imposed on him by Law under the Workers' Compensation Act, or other applicable statute, non-compliance with which may render the Client personally liable for the Contractor's default.

2.1.19 The Architect shall be the interpreter of the requirements of the Construction Contract Documents and shall make findings as to the performance thereunder by both the Client and Contractor. The Architect shall render interpretations as may be required with reasonable promptness on written request of either the Client or the Contractor, and shall render written findings within a reasonable time, on all claims, disputes and other matters in question between the Client and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Contract Documents.

2.1.20 Interpretations and findings of the Architect shall be consistent with the intent of and reasonably inferable from the Construction Contract Documents and shall be in written or graphic form. The Architect shall not show partiality to either the Client or the Contractor and shall not be liable for the result of any interpretation or findings rendered in good faith in such capacity.

2.1.21 The Architect shall have the authority to reject work which does not conform to the Construction Contract Documents. Whenever, in the Architect's opinion, it is necessary or advisable for the implementation of the intent of the Construction Contract Documents, the Architect shall have authority to require special inspection or testing of the Work by others, whether or not such work has been fabricated, installed or completed.

- 2.1.22** The Architect shall review or take other appropriate action with reasonable promptness upon the Contractor's submittals such as shop drawings, product data, and samples, for conformance with the general design concept of the Work as indicated in the Construction Contract Documents. The Architect's review of a specific item shall not indicate acceptance of an assembly of which the item is a component.
- 2.1.23** The Architect shall prepare change orders for the Client's approval and signature in accordance with the Construction Contract Documents and shall have the authority to order minor adjustments in the Work not involving an adjustment in the contract price or an extension of the contract time which are consistent with the intent of the Construction Contract Documents.
- 2.1.24** The Architect shall determine the date of Substantial Performance and shall receive from the Contractor and forward to the Client for the Client's review the written warranties and related documents. The Architect shall determine the date when the Construction Contract shall be deemed to be completed.
- 2.1.25** The extent of the duties, responsibilities and limitations of authority of the Architect as the Client's representative during construction shall not be modified or extended without written consent of the Client and the Architect.
- 2.1.26** Before the end of the period of one year following the date of Substantial Performance, the Architect shall review any defects or deficiencies which have been reported by the Client during that period, and the Architect shall notify the Contractor of those items requiring attention by the Contractor to complete the Work in accordance with the Construction Contract.

**Article 2.2
Construction Cost
and Estimates of
Construction Cost**

- 2.2.1** The Architect shall prepare a building design which is within the parameters of the Client's terms of reference and the Construction Budget. The Architect will bring to the Client's attention any variance between the building program and the Construction Budget.
- 2.2.2** If the bidding or negotiation phase has not commenced within three months after the Architect submits the construction documents to the Client, the Construction Budget shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the construction documents to the Client and the date on which tenders or proposals are sought.

- 2.2.3** If the lowest bona fide bid or lowest negotiated proposal exceeds the latest approved estimate of Construction Cost as set out in paragraph 2.1.11 by more than 10%, the Client shall:
- (a) give written approval of an increase in the Construction Budget, or
 - (b) co-operate in revising the scope or quality of the Work as necessary to reduce the Construction Cost, or
 - (c) authorize rebidding or renegotiating of the Construction Contract, or
 - (d) terminate if the project is abandoned, in accordance with paragraph 3.6.3.

- 2.2.4** If the lowest bona fide bid or lowest negotiated proposal exceeds the latest approved estimate of Construction Cost prepared as set out in paragraph 2.1.11 by more than 10%, unless there has been an increase in the Construction Budget or the project has been abandoned or terminated in accordance with paragraph 3.6.3., the Architect shall modify at no additional fee, the drawings and specifications, or provide other services as necessary to reduce the Construction Cost to within 10% of the latest approved estimate unless the excess is due to extraordinary market conditions.

The providing of such services shall be the limit of the Architect's responsibility, and having done so, the Architect shall be entitled to compensation for all other services performed, in accordance with the Agreement, whether or not the construction phase is commenced.

**Article 2.3
Client's
Responsibilities**

- 2.3.1** The Client shall provide general information regarding requirements for the project including a preliminary program, which shall set forth the Client's design objectives, constraints, and criteria, including spatial and functional requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.
- 2.3.2** The Client shall provide to the Architect a Construction Budget.
- 2.3.3** The Client shall furnish information, surveys, reports and services as set out below, the accuracy and completeness of which the Architect shall be entitled to rely on and contracts for the provision of such information, surveys, reports and services, whether arranged by the Client or the Architect, shall be considered direct contracts with the Client unless explicitly provided otherwise:

- (a) a legal description and a certified land survey of the site and adjoining properties as necessary showing the following information, as applicable: grades and lines of streets, alleys, pavements and adjoining property; rights of way; restrictions; easements; encroachments; zoning; deed restrictions; boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements, and trees; and full information concerning service and utility lines, both public and private, above and below grade, including inverts and depths;
- (b) subsurface investigation and report;
- (c) reports and appropriate professional recommendations of specialist consultants when required by the Architect and approved by the Client;
- (d) inspections, laboratory and field tests and reports as required by the Architect, the authorities having jurisdiction or the Construction Contract Documents; and
- (e) insurance services as may be necessary at any time for the project, and auditing services as the Client may require to verify the Contractor's applications for payment or to ascertain how or for what purpose the Contractor uses the monies paid by or on behalf of the Client.

2.3.4 The Client shall furnish required information, surveys, reports and services as set out in paragraph 2.3.3 and such other information as may be required from time to time, examine documents submitted by the Architect and give the Architect decisions and approvals as necessary.

2.3.5 The Client shall obtain all required consents, approvals, licences and permits from authorities having jurisdiction.

2.3.6 If the Client observes or otherwise becomes aware of any fault or defect in the project or any nonconformity with the requirements of the Construction Contract, he shall immediately notify the Architect.

2.3.7 The Client shall promptly fulfill his responsibilities for the orderly progress of the Architect's services and of the Work.

2.3.8 The Client shall authorize a person to act on his behalf with respect to the project when necessary. The authorization including the scope of authority shall be in writing.

**Article 2.4
Architect's
Additional
Services****Pre-design**

- 2.4.1** The Architect is able to provide additional services to the Client as listed below. Additional services are not included in the basic services, and shall only be provided if authorized by the Client and shall be paid for by the Client as provided in this Agreement.
- 2.4.2** Providing financial feasibility, Project Budget or other special studies.
- 2.4.3** Providing submissions required for approval by authorities having jurisdiction over the project including submission for zoning changes, variances from by-laws or site plan approvals necessary for proceeding with the project.
- 2.4.4** Providing services relating to future facilities, systems and equipment which are not intended to be constructed during the construction phase.
- 2.4.5** Providing services to investigate existing conditions or facilities such as preparing measured drawings or verifying the accuracy of drawings or other information furnished by the Client.
- 2.4.6** Providing detailed estimates of Construction Costs, inventories of material and equipment, or life cycle cost studies.
- 2.4.7** Providing interior design, graphic design, signage and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment (unless otherwise noted in the RFP document).
- 2.4.8** Providing tenant layout and design services.
- 2.4.9** Making revisions to or providing additional drawings, specifications or other documents when such revisions or additions are:
- (a) inconsistent with written approvals or instructions previously given,
 - (b) required by the enactment or revisions of statutes, regulations, codes or by-laws, or
 - (c) due to other causes beyond the control of the Architect.
- 2.4.10** Preparing models or architectural renderings specifically commissioned by the Client.

Section 2**Responsibilities****Bidding or
Negotiation**

2.4.11 Preparing documents of alternative, separate or sequential bids or providing extra services in connection with bidding, negotiation, or construction prior to completion of the construction documents phase.

Construction

2.4.12 Preparing drawings, specifications and supporting data and providing other services in connection with change orders (where such change orders are requested by the Client and are not due to the negligence or fault of the Architect or his consultants) to the extent that the adjustment in the fee for basic services resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect.

2.4.13 Providing co-ordination of work performed by separate contractors or by the Client's own forces or making investigations, surveys, valuations, or detailed appraisals of existing facilities.

2.4.14 Providing services in connection with the Work of a construction manager, or separate consultants retained by the Client.

2.4.15 Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance by either the Client or Contractor under the Contract, unless such default, defect or deficiency in the Work is due to the negligence or oversight of the Architect or his consultants.

2.4.16 Providing continuous representation at the site.

- (a) If the Client and Architect agree that continuous representation at the site is required in excess of regular on site reviews as specified in paragraph 2.1.16, the Architect shall provide one or more project representatives to assist the Architect in carrying out such responsibilities.
- (b) Such project representatives shall be selected, employed, and directed by the Architect.

**Post
Construction**

2.4.17 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings, and other data furnished by the Contractor to the Architect. The Architect shall not be held responsible for the accuracy of the information provided by the Contractor.

- 2.4.18** Providing services after expiry of the period of one year following the date of Substantial Performance, unless necessitated by the negligence or oversight of the Architect or his consultants.
- 2.4.19** Providing special assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.
- Other Services**
- 2.4.20** Providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such work.
- 2.4.21** Advising the Client and preparing to serve or serving as witness in connection with any public hearing, arbitration proceeding, or legal proceeding which does not involve a dispute between the Client and the Architect or his consultants and which has not resulted from any negligence or fault of the Architect or his consultants.
- 2.4.22** Providing or arranging for services of consultants for other than the basic architectural, structural, mechanical and electrical engineering services and landscaping, as listed in the RFP document.
- 2.4.23** Providing translation to a language other than the language of this Agreement.
- 2.4.24** Providing or arranging for any services not otherwise included in or necessarily required under this Agreement.

**Article 3.1
Living Wage**

3.1.1 The parties acknowledge and agree that the Client is a certified Living Wage Employer by the Living Wage for Families Campaign and, in connection with such certification, the Client requires the Architect and its Contracts, subcontractors and other employers with workers carrying out any portion of the Work on the Project Site (as defined in Schedule "A") to comply with the City's Living Wage Policy for Service Providers.

3.1.2 During the term of this Agreement, the Architect shall comply with the terms of the Consultant's Living Wage Obligations as set out in Schedule "A" of this Agreement. Schedule "A" of this Agreement is attached hereto and forms an integral part of this Agreement.

**Article 3.2
Copyright and
Use of Documents**

3.2.1 The Architect agrees that the Client is hereby granted an unconditional and irrevocable perpetual license to reproduce and use, in whole or in part, and for any purpose or work the Client desires at the Place of the Work, all matters contained in or set out in the Architect's proposal, and all drawings and specifications and all models furnished by the Architect, and the Architect agrees that the license granted by this clause comprises the copyright, industrial design, trademark and all other intellectual property therein.

When models or architectural renderings are specifically commissioned by the Client, the Client shall be entitled to keep the original model or architectural rendering.

3.2.2 Submissions or distribution of the Architect's plans, sketches, drawings, graphic representations and specifications to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the Architect's rights.

**Article 3.3
Authorship**

3.3.1 The Architect shall be allowed, with the prior approval of the Client, and at the Architect's expense, sign the building by inscription or otherwise on a suitable and reasonably visible part of the permanent fabric of the building.

3.3.2 The Architect shall be allowed, with the prior approval of the Client, to include as part of the Construction Contract Documents a provision whereby a sign identifying the Architect may be erected on the project site at the cost of the Architect.

**Article 3.4
Arbitration**

- 3.4.1** All matters in dispute under this Agreement may, with the concurrence of both the Client and the Architect, be submitted to arbitration under the laws of the Place of the Work.
- 3.4.2** If the Client and the Architect agree to arbitration they may jointly appoint a single arbitrator, or if they fail to agree on such arbitrator, shall each appoint one nominee to a board of arbitration. These nominees shall together agree upon a third person to act as chairman; the three persons so selected shall constitute the board of arbitration.
- 3.4.3** If the Client and the Architect agree to arbitration, the award of the arbitrator or board of arbitration shall be final and binding upon the parties.

**Article 3.5
Project
Suspension or
Abandonment**

- 3.5.1** If the project is suspended or abandoned by the Client in whole or in part for more than a total of 60 days whether consecutive or not, the Architect shall be compensated within 30 days of the date that an invoice is rendered for all services performed together with reimbursable expenses then due, and all termination expenses as defined in paragraph 3.6.5., provided that such suspension or abandonment was not a result of adverse weather conditions, strikes, lockouts, pickets or any other cause beyond the control of the Client or a result of a design defect. If the project is resumed after being suspended or abandoned in whole or in part for more than a total of 60 days whether consecutive or not, the Architect's fee shall be equitably adjusted.

**Article 3.6
Termination**

- 3.6.1** Unless otherwise stated in this Agreement, the Architect's services terminate one year after certification of Substantial Performance. For services required following expiry of the period of one year after certification of Substantial Performance, the Client shall arrange with the Architect for services as provided under paragraph 2.4.18.
- 3.6.2** This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- 3.6.3** This Agreement may be terminated by the Client upon at least seven days' written notice to the Architect in the event that the project is permanently abandoned.

3.6.4 In the event of termination, the Architect shall be compensated within 30 days of the date that an invoice is rendered for all services performed to termination date, together with reimbursable expenses then due, and all termination expenses as defined in paragraph 3.6.5, unless such termination was initiated by the Client under paragraph 3.6.2 or otherwise resulted from the default or negligence of the Architects or his consultants.

3.6.5 Termination expenses include expenses directly attributable to suspension, abandonment or termination for which the Architect is not otherwise compensated, and in addition, an amount computed as a percentage of the total fee for basic and additional services earned to the time of termination, as follows:

- (a) twenty percent if suspension or termination occurs during the schematic design phase; or
- (b) ten percent if suspension or termination occurs during the design development phase; or
- (c) five percent if suspension or termination occurs during any subsequent phase.

**Article 3.7
Non-Resident
Withholding Tax**

3.7.1 If the Architect is, at any time during the term of this Agreement, a non-resident of Canada, within the meaning of the *Income Tax Act of Canada* as amended (Act), then the Client shall deduct from all monies payable under this Agreement and remit to Canada Customs and Revenue Agency (CRA) sums required to be withheld and remitted by the Act. The Client shall receive full credit under this Agreement for monies withheld as of and from the date of the withholding. The Client shall provide an information slip to the Architect in accordance with the Act for the amount of non-residence tax withheld.

Notwithstanding the foregoing, if the Architect provides the Client a non-resident tax exemption letter issued by CRA to the Client's satisfaction, then the Client will not deduct and remit such non-resident tax except in accordance with such non-resident tax exemption letter.

**Article 3.8
Law Governing
This Agreement**

3.8.1 This Agreement shall be governed by the laws of the Province of British Columbia.

**Article 3.9
Successors and
Assigns**

3.9.1. The Client and the Architect, respectively bind themselves, their partners, successors, permitted assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Except as otherwise provided herein, neither the Client nor the Architect shall assign, sublet, or transfer an interest in this Agreement without written consent of the other.

**Article 3.10
Extent of
Agreement**

3.10.1 This Agreement represents the agreement between the Client and the Architect and includes all prior referenced written representations, proposals or agreements.

**Article 3.11
Liability of
the Architect**

3.11.1 The Architect shall indemnify and save harmless the City and its directors, officers, servants, employees, volunteers, and agents from and against all claims, demands, proceedings, suits, losses, damages, costs and expenses of whatsoever kind or nature (including but not limiting the generality of the foregoing, in respect of death, injury, loss or damage to any person or property) arising in any way out of or connected with the work by the Architect under this Agreement, except to the proportionate extent that such actions, claims, demands, proceedings, suits, losses, damages, costs and expenses were caused by the indemnified parties or any of them.

**Professional
Liability Insurance**

3.11.2 The Architect shall maintain Professional Liability insurance in a form reasonably acceptable to the City with the following minimum limits:

- | | |
|----------------------|-------------|
| (a) Each claim | \$1,000,000 |
| (b) Annual Aggregate | \$2,000,000 |

The policy shall provide that it cannot be canceled, lapsed, or materially changed without at least thirty (30) days notice to the City by registered mail. Prior to commencement of services the Architect shall file with the City a suitable Certificate of the insurance. This insurance shall be maintained until final completion of the services.

**General
Liability Insurance**

3.11.3 The Architect shall maintain Commercial General Liability insurance including, Premises and Operations liability; Consultant's Contingency Liability with respect to the operations of sub-contractors; Completed Operations Liability; Contractual Liability; and Non-Owned Automobile Liability insurance.

The limits of the liability insurance shall be not less than the following:

Bodily Injury Liability	\$5,000,000 \$5,000,000	each occurrence aggregate products and/or completed operations
Property Damage	\$5,000,000 \$5,000,000	each occurrence aggregate products and/or completed operations
Non-Owned Auto	\$2,000,000	each occurrence/accident

The Commercial General Liability shall include a provision for Cross Liability and be extended to include the City of Burnaby as additional insured. The policies shall provide that they cannot be cancelled, lapsed, or materially changed without at least thirty (30) days prior notice to the City by registered mail.

Prior to commencement of the services hereunder, the Architect shall file with the City a copy of the liability insurance policies or a properly executed Certificate of insurance to evidence that the insurance is in full force and effect. All such insurance shall be maintained for a minimum of twelve (12) months thereafter.

Should the Architect neglect to obtain and/or maintain insurance as aforesaid, or deliver such policy or policies to the City, then it shall be lawful for the City to obtain and/or maintain such insurance and the architect hereby appoints the City its true and lawful attorney to do all things necessary for this purpose. All monies expended by the City for insurance premiums under the provisions of this clause shall be charged to the Architect.

**Architect not
Liable for failure
of manufactured
products**

3.11.4 It is agreed that the Architect shall not be liable for damages, interest, costs or any other expenses arising out of the failure of any manufactured product or any manufactured or factory materials assembled system of components to perform in accordance with the manufacturer's specifications, advertising, product literature or written documentation on which the Architect relied reasonably and in good faith in the preparation of the design, construction or supplementary documents.

3.11.5 It is agreed that the Architect shall not be liable for any claim, action or suit arising out of or in connection with the inappropriate use of the project by the Client, the owner, any tenant or their respective agents, employees or consultants.

4.1 The Client shall pay fees and reimbursable expenses to the Architect monthly when invoices are rendered as set forth in this article.

4.2 The fee for the Architect's basic services shall be computed as follows:

(delete (a) or (b) as applicable)

(a) Fees shall be a fixed fee of _____ dollars (\$_____).

(b) Fees shall be _____ (____%) of Construction Cost, as defined in paragraph 1.3.

The fee for the Architect's basic services when based on a stipulated sum or a percentage of Construction Cost shall be apportioned to the phases of service as follows:
(include any additional phases as appropriate)

Schematic Design Phase	percent (> %)
Design Development Phase	percent (> %)
Construction Documents Phase	percent (> %)
Bidding or Negotiation Phase	percent (> %)
Construction Phase - Contract Administration	percent (> %)

When the fee for the Architect's basic services is based on a percentage of the Construction Cost, the basis for the apportioning of the applicable percentage of the fee for the phases of services stated above shall be calculated on the following:

Schematic Design Phase: the mutually agreed Construction Budget at the commencement of the phase.

Design Development Phase: the approved estimate of Construction Cost at the commencement of the phase.

Construction Documents Phase: the approved estimate of Construction Cost at the commencement of the phase.

Bidding or Negotiation Phase: the approved estimate of the Construction Cost at the commencement of the phase.

Construction Phase - Contract Administration: the actual Construction Cost.

- 4.3** When revisions or additions are made to the program of requirements or previously approved documents prepared by the Architect in any of the phases of services stated above and such revisions or additions require basic services beyond those already provided in this phase or any previous phase, and such revisions or additions are not the result of any design defect or other fault of the Architect or his consultants, the fee for such services shall be increased based on additional services or as otherwise mutually agreed for any of the applicable phases.
- 4.4** Fee payments during any phase of the Architect's services shall be invoiced monthly in proportion to the services performed within that phase. For the Architect's basic services relative to the portions of the project that are designed but then deleted or otherwise not built, the fee shall be in proportion to the extent of such services in accordance with paragraph 4.3 and shall be based on the lowest bona fide bid or negotiated proposal or, if no such bid or negotiated proposal is received, the most recent estimate of Construction Cost approved by the Client. For the Construction Phase - Contract Administration invoices shall be based on the percentage of the Work actually completed by the Contractor.
- Fees for Additional Services**
- 4.5** Fees for the Architect's additional services, excluding those provided by the Architect's consultants, shall be computed as follows:
- (>Here, insert basis of fees, including rates and/or multiples of direct personnel expenses for officers, directors, partners, principals and employees, and identify officers, directors, partners, principals, and classify employees, if required. Identify specific services to which particular fee calculations apply, if necessary.)*
- 4.6** Fees for additional services provided by the Architect's consultants shall be as invoiced by the consultant according to the hourly fee rates or multiples of direct personnel expense set out below.
- (>Identify specific types of consultants in Article 5, if required)*

Reimbursable Expenses**4.7**

Reimbursable expenses are the actual expenditures of the Architect, employees, and the consultants in the interest of the project. They include expenditures for the following:

- (a) communication and shipping, e.g., for long distance telephone calls or faxes, courier service and postage;
- (b) reproduction of plans, sketches, drawings, graphic representations, specifications and other documents, excluding reproductions for the Architect's and the consultant's office use;
- (c) preparation of renderings, models, and mock-ups requested by the Client;
- (d) fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction;
- (e) data processing and photographic services relative to additional services of the Architect;
- (f) overtime work authorized in advance by the Client to the extent that the cost of such work exceeds normal direct personnel expenses;
- (g) insurance requested by the Client in excess of that required of the Architect and the consultants in this Agreement.

Reimbursable expenses shall not include automobile mileage claims, cellular telephone or other office or business equipment charges, or any other charges that are, in normal industry practice, considered to be included in the Architect's or consultant's overhead.

The Client shall not be required to pay for receipt or transmittal by the Architect or his consultants of facsimile transmittals (except for long distance facsimile transmittals sent by the Architect at the actual rates charged to the Architect) or for in-house photocopying by the Architect or his consultants.

Interest**4.8**

Unpaid accounts shall bear interest at 2% per annum above the Prime Rate 30 days after the date that the invoice for fees and reimbursable expenses has been rendered by the Architect to the Client.

(Federal and Provincial statutes and regulations at the Client's and Architect's principal places of business, the locations of the project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers).

Section 4**Fees and Reimbursable Expenses**

- Deductions** **4.9** No deductions shall be made from amounts payable to the Architect on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Architect is responsible.
- Changes and Adjustments**
- 4.10** If the scope of the project or of the Architect's basic services is changed materially the fees shall be equitably adjusted.
- 4.11** It is acknowledged and agreed that the Architect's basic services and fees for basic services are related to the scope of the project and not to the time initially established in the Construction Contract for completion of the project. If the time initially established in the Construction Contract for completion of the project is significantly exceeded through no fault of the Architect resulting in material increases to the Architect's basic services then the fees shall be adjusted but only to the extent that the basic services of the Architect are materially increased over what they would have been had the project been completed within the time initially established in the Construction Contract.
- 4.12** If the Architect's services for the schematic design phase, the design development phase, and the construction documents phase have not been completed within _____ months after the date of this Agreement, or for the remaining phases with in _____ months after the date of this Agreement, through no fault of the Architect, the amounts, rates, and multiples set forth in this article applicable to the respective phases of service shall be subject to review and adjustment.
- 4.13** Hourly rates of fees in paragraphs 4.5 and 4.6 are subject to review and adjustment annually or as follows:
(Here, insert effective dates or time periods for periodic adjustments in hourly rates or multiples, along with any limitations)
- 4.14** The fees and reimbursable expenses are subject to adjustment to include new and additional taxes imposed in respect of the services included in this Agreement.
- Accounting Records** **4.15** The Architect shall maintain, by generally accepted accounting methods, records of reimbursable expenses, expenditures pertaining to the Architect's additional services and

services for which the fee is computed as a multiple of direct personnel expense. These records shall be available to the Client at mutually convenient times.

This Agreement entered into as of the day and year first above written.

Client

City of Burnaby

(Seal)

by

Architect

(Seal)

by

Witness

SCHEDULE "A"

ARCHITECT'S LIVING WAGE OBLIGATIONS

1. **Living Wage Schedule** - The Architect shall comply with the terms and conditions of the City of Burnaby's Living Wage Schedule as set out in Appendix 1 - Living Wage Schedule.
2. **Subcontract Terms** - Where the Architect enters into a contract with a Contractor or Subcontractor, the Architect shall incorporate the requirements of the Living Wage Schedule into the contract and require the Contractor or Subcontractor, as applicable, to incorporate the requirements of the Living Wage Schedule into any further contract with a Subcontractor or other employer with workers carrying out any portion of the Work in or on City-owned or City-leased land, buildings, roadways, parks and public rights of way (the "**Project Site**").
3. **Work Records** - On request of the Client, the Architect shall provide the Client with a copy of the records required to be maintained by the Architect, Contractor or Subcontractors under the Living Wage Schedule.
4. **Living Wage Schedule Enforcement** - Notwithstanding any other provision of the Agreement, if the Architect or any Contractor, Subcontractor or other employer with workers carrying out any portion of the Work in or on the Project Site fails to comply with any form or condition of the Living Wage Schedule, the Client may do one or more of the following:
 - (a) terminate this Agreement prior to the expiry date;
 - (b) suspend any or all payments due to the Architect until the Architect, Contractor or Subcontractor or employer is in compliance with the Living Wage Schedule;
 - (c) withhold payment from the Architect of a sum equal to the difference between the amount paid as wages or other compensation and the amount that should, pursuant to the Living Wage Schedule, have been paid as such wages or other compensation until the Architect, Contractor or Subcontractor or employer has demonstrated, to the Client's satisfaction, compliance with the Living Wage Schedule;
 - (d) deduct and retain from any payments due to the Architect under this Agreement any amounts which in the opinion of the Client should have been paid as wages or other compensation under the Living Wage Schedule; or
 - (e) if all payments under this Agreement has been paid to the Architect, seek recovery as a debt owing to the Client the sum equal to the difference between the amount paid as wages or other compensation and the amount that should, pursuant to the Living Wage Schedule, have been paid as such wages or other compensation.

APPENDIX 1

LIVING WAGE SCHEDULE

1. This Living Wage Schedule shall constitute and shall form part of the Agreement. The purpose of this Schedule is to implement the City's Living Wage Policy for Service Providers.
2. For the purposes of this Schedule, "**Living Wage**" shall be the living wage rate for Metro Vancouver published by the Living Wage for Families Campaign, or any successor entity.
3. Subject to section 4 below, any Architect, Contractor, Subcontractor or employer doing or contracting to do the whole or any part of the Work shall, during the continuance of the Work, pay its workers carrying out any portion of the Work in or on City-owned or City-leased land, buildings, roadways, parks and public rights of way (the "**Project Site**") not less than the Living Wage.
4. If the Living Wage is increased during the continuance of the Work, the Architect, Contractor, Subcontractors or other employer shall within six (6) months increase wages for its workers carrying out any portion of the Work in or on the Project Site to not less than the increased Living Wage.
5. Upon request by the Client, the Architect shall continuously display in a conspicuous location at the Project Site a copy of this Living Wage Schedule in its entirety.
6. The Architect shall maintain up-to-date records and accounts which clearly document its satisfaction of the requirements under this Schedule, and obligate its Contractor, Subcontractors and other employers doing or contracting to do the whole or any part of the Work to do the same, during the continuance of the Work and to retain such records and accounts for a period of two (2) years after expiration or earlier termination of this Agreement.
7. Upon request by the Client, the Architect will produce, or cause its Contractor, Subcontractors or other employers with workers engaged at the Project Site to produce, all records and accounts maintained and retained pursuant to section 6 of this Living Wage Schedule.
8. If the Client receives a complaint from a worker or other person about non-compliance with this Living Wage Schedule, the Architect will cooperate, or cause its Contractor, Subcontractor or other employer that is the employer of the complainant to cooperate, fully with any investigation in respect to the complaint. The Client may deduct from any payment to the Architect under this Agreement all applicable staff, consultant and other costs required to investigate and resolve issues pertaining to non-compliance with this Living Wage Schedule.
9. Upon request by the Client, the Architect shall prepare and submit to the Client, in a format established or acceptable to the Client, before January 31st of each calendar year of the term of this Agreement and within thirty (30) days of expiration or earlier termination of this Agreement, a Living Wage report in the form or substantially in the form attached to this Living Wage Schedule.
10. It is the Architect's responsibility to ensure the Architect, its Contractor, Subcontractors or other employers with workers carrying out any portion of the Work in or on the Project Site comply with this Living Wage Schedule.



Living Wage Reporting Form

Please provide the information on this form for the following agreement with the City of Burnaby:

1. Architect Name

2. Architect Description/Number

3. Are you a certified Living Wage Employer?

Yes

No

4. For the period _____ to _____, number of employees and workers (including employees and workers of Contractors and Subcontractors) who would have been paid less than a Living Wage rate if the City of Burnaby did not have a Living Wage Policy:

5. I declare that all employees and workers at the Project Site (as defined in the Living Wage Schedule in the Agreement), including Contractors' and Subcontractors' employees and workers, have been paid a Living Wage rate or greater.

Architect Signature:

Date:

Submit form to:

City of Burnaby, Purchasing Department
West Building-1st Floor
6161 Deer Lake Avenue
Burnaby, BC, V5G 4A3
purchasing@burnaby.ca