
COMMENTARY ON **“ONTARIO ASSOCIATION OF ARCHITECTS STANDARD FORM OF** **CONTRACT FOR** **ARCHITECT’S SERVICES, DOCUMENT 600, 2008”**

GENERAL

This contract is prepared by the Ontario Association of Architects for use by its members in contracts for an *architect’s* services between *architects* and their clients. It is available on line at the OAA Web site www.oaa.on.ca.

This commentary is intended to assist both client and *architect* in completing the contract form and also to provide a better understanding of some of the more important parts of the document.

The contract is divided into multiple components:

- Cover is available in Microsoft Word for use to enter the *project* title and number
- Table of contents is available in Microsoft Word so that any alterations to contents of articles of Agreement can be similarly modified in the table of contents.
- Agreement is available in Microsoft Word for maximum flexibility permitting all fields to scroll to suit the extent of information required allowing importation of fee provisions from this Commentary, amendments to the articles of Agreement, additional articles and other terms and conditions. Inclusion of zero in a field is accepted and printing when document is partially completed is permitted by the program (These were problems that members reported in the use of Document Six, 2002).
- Definitions and General Conditions are in PDF format. These should not be altered or amended in the text. If alterations or amendments to Definitions or General Conditions are absolutely necessary, the procedure to be followed is to strike the clause or article requiring amendment in both client’s and *architect’s* hardcopy and the parties’ initials affixed thereto. Additionally, the parties may consider stating the amendments in the Other Terms of Contract article A.18. If modifications are made to the contract, seek legal counsel and advice from professional liability insurance provider prior to executing the contract.
- Schedule A is available in Microsoft Excel format and Schedule B in Microsoft Word for maximum flexibility in setting out the services to be provided by the *architect* and responsibilities of the client under this contract.
- This Commentary is available in Microsoft Word to facilitate cutting and pasting excerpts into the articles of Agreement.

Consistency between the client / *architect* contract and the construction contract is essential. This contract is intended to be used in conjunction with CCDC2, 2008 version as amended by the OAA Recommended Supplementary Conditions or other CCDC documents. If another form of contract that differs from CCDC documents is contemplated, legal advice should be considered.

COVER

ADAPTED FOR _____ (NAME PROJECT AND/OR NUMBER)

Enter project identification by name and / or *project* number. This procedure signifies that although the contract is based on the OAA standard contract document, it has been adapted to suit the specific needs of the *project* and to reflect the agreed to terms and conditions between the client and the *architect*.

AGREEMENT

A1 This contract made as of the _____ day of the _____ month in the year of _____.

Enter the operative date of the contract.

This could be:

- The date an oral agreement was reached, or
- The date an interim or letter agreement was executed,
- The date the contract was submitted to the client for signature, or
- The date the client first authorized action, or
- The date of execution of the contract.

A2 Between the client _____
A3 and the *architect*: _____

Enter the legal name and address of the client and of the *architect*. Note that this is the name and address to which legal notices will be sent in respect of this contract. Identify parties to this contract in the capacity in which the contract will be executed, including the names of the firms and the capacity of persons signing, the address of the principal offices and a designation of the legal status of both parties: sole proprietorship, partnership, joint venture, limited partnership or corporation etc. Where appropriate, a copy of the resolution authorizing an individual to act on behalf of a firm or entity should be attached.

A4 For the following *project*: _____

Enter a detailed description of the *project* and its characteristics. If applicable, make reference to an agreed to functional program or design brief. The description should provide sufficient detail to confirm the *construction budget*.

A5 With the following *construction budget*: _____

Enter the client's combined estimate of the *construction cost*, construction contingencies and GST, or if there is no client's combined estimate, enter an amount agreed to by the client and the *architect* as representing combined estimate.

A6 The anticipated *construction contract* is: _____

Enter the anticipated form of construction contract upon which the architectural services and fees are based. This is important should fees and services require adjustments due to a change in construction contract. For example, if the anticipated construction contract is stipulated sum under CCDC 2, and the client changes it to construction management, there could be considerably more services required by the *architect* in administering several trade contracts each with their own certification.

A7 In addition to the *architect's* responsibilities as described in the General Conditions, including GC2, the *architect* shall provide services as described in the following schedule(s) affixed to this contract _____.

Enter the title of schedule or schedules which describe(s) the scope of services to be provided by the *architect*.

A8 In accordance with the client responsibilities as described in the General Conditions, including GC1, the client shall furnish surveys, reports, services and additional information as described in the following schedule(s) affixed to this contract: _____

Enter the title of schedule or schedules, which describe(s) the responsibilities of the client.

A9 The *architect* shall coordinate the services of the following *consultants*:

- .1 engaged by the *architect*
- .2 engaged by the client

Identify by name and discipline the *consultants* engaged by the *architect* and / or the client. These are the *consultants* whose services the parties have agreed will be coordinated by the *architect*. Should additional *consultants* be added at a later date, the *architect* is entitled to an additional fee for the coordination of their services.

The client shall pay fees and *reimbursable expenses* to the *architect* when invoices are submitted as set forth below:

A10 For the *architect's* services as outlined in the schedule(s) identified in A7, the fee shall be computed as follows:
F1 SERVICES
F2 SERVICES

The schedules provide for identification of services that the client and *architect* have agreed will be provided by the *architect*. This is accomplished by entering in the *architect's* services column in the schedule alongside each of the services that have been so agreed the letter 'F' with a numeric subscript. See examples of schedules later in this Commentary.

The purpose of this is two fold:

- to identify the service as one that the client and *architect* have agreed that the *architect* will provide under this contract, and
- to identify the method that the fee will be calculated for each service.

Not all fees for all services can be determined at the time of executing the contract; however, the method of calculating fees for an indeterminate quantum of service can be established and agreed to. In some cases it might be appropriate to provide for the fees to be agreed to prior to the service being provided, with the default if agreement is not reached to be as set out in the agreement.

F1 could, for example, refer to a percent of *construction cost* fee, F2 a per diem or hourly rate, F3 a fixed fee and so on. The designations of F1, F2, F3 etc. reflect the methods of calculating *architect's* fees agreed to by the parties. They are specific to the *project* and do not necessarily reflect the fees set out on other projects.

Note that article GC12.5 anticipates a provision for hourly rates to be set out in article A10 for use as a default in the event that the client requires *additional services* to those agreed to and set out in the schedules, and for which a mutually acceptable fee cannot be arrived at.

Examples of fee entries under article A10:

(These can be copied and pasted directly into A10, with modification and entry of numbers to suit the specific contract)

If the agreed arrangement is for the percentage of construction fee to be applied on the final *construction cost* for the entire fee, then either party may be subject to a loss. If the final cost is significantly in excess of the last agreed to estimate of construction cost, the client may be required to pay more than was anticipated. In the alternative, if the final cost is significantly less than was expected, there could be a requirement for the *architect* to refund the client fees billed resulting in a loss to the *architect* if the changes result in a net credit.

F1 Fee for F1 services shall be computed as follows:

____% of *construction cost*, apportioned as follows:

Schematic design phase	percent (___%)
Design development phase	percent (___%)
<i>Construction documents</i> phase	percent (___%)
Bidding or negotiating phase	percent (___%)
Construction phase-contract administration	percent (___%)

Fees will be invoiced monthly as the project progresses. Final invoice will be calculated on the final total cost of construction, less fees previously billed. No fees will be charged separately for changes to the *work*.

This form of percentage fee computation is equitable to both parties. The *architect* is paid for services performed in making changes to the *work* and is paid for the actual services performed for contract administration. Neither party will gain a windfall at the expense of the other. However, more accounting is required in that changes to agreed work from inception will be accounted for and billed progressively.

F2 Fee for F2 services shall be computed as follows:

____% of *construction cost*, apportioned as follows:

Schematic design phase	percent (___%)
Design development phase	percent (___%)
<i>Construction documents</i> phase	percent (___%)
Bidding or negotiating phase	percent (___%)
Construction phase-contract administration	percent (___%)

Fees will be invoiced monthly as the project progresses; calculated on the agreed *construction budget* at the commencement of the schematic phase, on the agreed to estimate of *construction cost* at the commencement of design development, *construction documents*, and bidding phases, and on the actual final cost for the construction-contract administration phase. Fees for changes to the *work* shall be as agreed prior to the commencement of services for the change. If a specific fee for a change is not agreed prior to the performance of the services in respect of the change, the fee shall be at an hourly rate of:

Principals	\$_____ per hour
Senior staff	\$_____ per hour
Intermediate staff	\$_____ per hour
Junior staff	\$_____ per hour
Clerical	\$_____ per hour

F3 Fee for F3 services shall be computed as follows:

A fixed fee of \$_____, apportioned as follows:

Schematic design phase	percent (___%)
Design development phase	percent (___%)

Construction documents phase	percent (___%)
Bidding or negotiating phase	percent (___%)
Construction phase-contract administration	percent (___%)

Fees for changes to the *work* shall be as agreed prior to the commencement of services for the change. If a specific fee for a change is not agreed prior to the performance of the services in respect of the change, the fee shall be at an hourly rate of:

Principals	\$ _____ per hour
Senior staff	\$ _____ per hour
Intermediate staff	\$ _____ per hour
Junior staff	\$ _____ per hour
Clerical	\$ _____ per hour

F4 Fee for F4 services shall be computed as follows:

Hourly as *project* progresses at the following rates:

Principals	\$ _____ per hour
Senior staff	\$ _____ per hour
Intermediate staff	\$ _____ per hour
Junior staff	\$ _____ per hour
Clerical	\$ _____ per hour

F5 Fee for F5 services shall be computed as follows:

Hourly as *project* progresses at the following rates:

A factor of ___ times *direct personnel expense*

Hourly expressed as a factor of *direct personnel expense* typically varies between 2.5 and 3.5 times *direct personnel expense*.

Apportionment of fees to phases of services is typically in the ranges of:

Schematic design phase	percent (<u>12 to 18</u> , typically <u>12.5%</u>)
Design development phase	percent (<u>12 to 18</u> , typically <u>12.5%</u>)
Construction documents phase	percent (<u>49 to 45</u> , typically <u>45%</u>)
Bidding or negotiating phase	percent (<u>2.5 to 6.5</u> , typically <u>5%</u>)
Construction phase-contract administration	percent (<u>25 to 35</u> , typically <u>25%</u>)
<hr/> Total	<hr/> 100 %

A11 An administrative charge of ___% shall be added to the *reimbursable expenses* as noted in GC12.9.

If your contract provides for this administrative charge, enter the percentage here. In some instances, clients insist on *architects* carrying the entire cost of *reimbursable expenses*, including administrative charges within the fee, in which case after estimating the amount of *reimbursable expenses* that are anticipated, delete this article and replace it with:

"Reimbursable expenses are included in the architect's fees."

Sometimes a client will request a fixed price or limit to these

A12 The rate for calculating automobile travel costs shall be \$ _____ per kilometre.

Enter the amount per kilometre that you will invoice the client for auto travel. Many practices charge mileage only when it is beyond a stipulated distance from the architect's office. For comparison purposes, in July 2008, the standard rate on federal government projects was \$0.54 per kilometre.

A13 The client shall pay to the *architect*, upon execution of this contract, a retaining fee of \$ _____. This retaining shall be credited against the last invoice and is the minimum payment that the client must pay the *architect* under this contract.

This retaining fee is the payment to the *architect* for the retention of the *architect's* services. It is recognition that the *architect* in accepting this fee has arranged its business affairs and personnel to provide the necessary service for the project.

The retaining fee is more appropriately an advance payment on fees which is to be deducted from subsequent or final invoices. An advance payment is appropriately accounted for as a statement of credit to the client's account. However, this is the minimum payment payable under the contract and is non-refundable in the case of early termination of this contract.

A14 The client shall pay the *architect* upon receipt of invoices on account of the *architect's* fee and *reimbursable expenses*, together with such value-added taxes as may be applicable. Invoices shall be issued monthly unless otherwise agreed.

If invoices are to be issued other than monthly, replace the statement with the agreed to invoicing period. On some small, fast paced contracts, it is appropriate to invoice twice monthly or even weekly.

A15 An unpaid invoice shall bear interest, calculated monthly at the rate of _____ % per annum, commencing _____ days after the date that the *architect* submits the invoice.

Earlier versions of client / *architect* contracts set out a percentage above the prime rate charged by banks (or in some cases a specific bank). This was an additional burden on *architects* who were already disadvantaged by the situation since the percentage at the banks fluctuated and calculation became onerous. The underlying principle is that the *architect* is not in the business of funding the client's project. Accordingly, the interest paid to the *architect* should be more than the interest that the client pays to its lender. This should be reflected in the rate entered in A15. The rate while a deterrent ought not to be of usury proportions.

A16 When this contract or any documents are prepared in both English and French, it is agreed that in the event of any discrepancy between the English and the French version, the English _____ language shall prevail.

If the prevailing language is French, delete "English" and substitute "French". In some federal government projects, the requirement is that neither language will prevail. In such cases take care that appropriate safeguards have been taken in the translation of the documents to mitigate any problems that may arise.

A17 Notices in writing between the parties shall be considered to have been received by the addressee on the date of delivery if delivered to the individual, or to a member of the firm, or to an officer of the corporation for whom they are intended, by hand or by registered post; or if sent by regular post, to have been delivered 5 working days from the date of mailing. The addresses for official notice shall be as stated in A2 and A3. Notices sent electronically, by email or facsimile for example, are not considered to be reliable for the purpose of official notice.

The entering of the legal names and addresses of the client and *architect* is critical in that these are the addresses to which legal notices will be sent. It is prudent to include the name and (if appropriate) title of an individual to whom the notice is to be directed at the address.

Other Terms of Contract:

A18 The *client* and the *architect* agree as set forth in the following other terms:

Changes, if any, to the Definitions or General Conditions should be entered here, with appropriate cross-referencing to the affected articles, Definitions and General Conditions. Hard copies of the Definitions and General Conditions should be similarly altered, in ink, and initialed by the parties.

All such changes to Definitions and General conditions should be discussed with legal counsel and insurance providers to avoid unnecessary complications after the contract document has been executed.

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

Client

(Name of client)

(Signature)

(Name and title of person signing)

(Signature)

(Name and title of person signing)

Witness (es)

(Signature)

(Name and title of person signing)

Architect

(Name of *architect*)

(Signature)

(Name and title of person signing)

(Signature)

(Name and title of person signing)

Witness (es)

(Signature)

(Name and title of person signing)

Enter the appropriate information required for execution of the document.

Where appropriate, a copy of the resolution authorizing an individual to act on behalf of a firm or entity should be attached.

If the parties are not prepared to execute this agreement but services are required to commence, it is good practice for the parties to execute an interim contract to be replaced by this contract. It is highly recommended that efforts be made to replace the interim agreement with this contract at the earliest opportunity for the benefit of both parties.

DEFINITIONS

ADDITIONAL SERVICES

Additional services are those professional services which are not contemplated at the time of execution of the contract and therefore cannot be identified then as being included in the contract but which with the written consent of the client and *architect* are subsequently added to, or which adjust, the scheduled scope of services outlined in the schedule(s) listed in this contract

Unlike previous contracts, all services that were agreed to are contained in the schedules. *Additional services* may be required, but these are services that were not anticipated at the time of execution of the contract.

The mechanism to incorporate such additional services is to identify the service, negotiate the fee and have the parties sign a Change to the contract setting out the service and change to fee and time schedule. Agreed Change Form as described in OAA Bulletins is recommended for use in amending the contract to accommodate the change in the work, fee and time schedule.

ARCHITECT

The *architect* is the entity identified in this contract as such and who is the holder of a Certificate of Practice (C of P) issued by the Ontario Association of Architects.

The definition of *architect* as holder of a C of P reflects the contract being between the practice and the client rather than between an individual person and the client.

CONSTRUCTION BUDGET

The *construction budget* is the client's combined estimate of *construction cost*, construction contingencies and GST, or if there is no client's combined estimate, an amount agreed to by the client and the *architect*.

It is important to establish the budget at the outset. It is the basis of fee calculation for percentage fee at the schematic design stage and the basis for comparison with the estimate of *construction cost*.

The contract does not include a condition for a fixed limit of *construction cost*. The establishment of such a limit is unsatisfactory for most projects as it tends to invite unrealistic expectations by the client and may expose the *architect* to unreasonable risks.

If the contract is amended requiring the *architect* to keep the *construction cost* within a fixed limit, i.e. with no budget flexibility to allow for cost increases, the contract shall:

- require the client to include additional contingency amounts in the *construction budget* in order to accommodate design changes, price escalation before bidding, and cost increases during construction; and

- permit the *architect* to determine what materials, equipment, component systems, and types of construction are to be included in the contract documents, to make reasonable adjustments in the scope of the *project*, and to include alternative prices in the bidding documents to adjust the *construction cost* to the fixed amount.

CONSTRUCTION COST

Construction cost is the contract price(s) of all project elements designed or specified by, or on behalf of, or as a result of, the coordination by the architect, including cash allowances, building permit fees, changes, construction management fees or other fees for the coordination and procurement of construction services, and all applicable taxes, including the full amount of value-added taxes, whether recoverable or not.

Construction cost as defined here differs from construction cost in CCDC contracts inasmuch as GST is excluded from the CCDC contracts, but included when calculating fees. Prior to the introduction of the GST there was a 'hidden' 12% Federal Sales Tax on construction materials contained in the CCDC contracts. Percentage based fees were calculated on the cost inclusive of the federal tax. When the GST was introduced, the 'hidden' tax on materials was eliminated and replaced by the overt GST applicable to the entire *construction cost*. Rather than increase the percentage and base the percentage fee calculation on the *construction cost* excluding the federal tax, it was decided to maintain the same percentage and apply it to the *construction cost* inclusive of GST. This was an important decision since a number of major client groups pre-set the percentage for fees and were unwilling to increase it.

The MBA Kit sets out costs to provide the service as well as overhead and profit. The sum of these three elements represents a fair fee for the architect to be in business. If the percentage fee is calculated on a lesser *construction cost* (by excluding the GST which replaced the Federal Sales Tax on materials) the fee is less than required to meet the costs, overhead and profit.

Where there is no contract price for all or part of the project, the *construction cost* shall be the estimate of cost of construction as determined by the *architect*, or as agreed by the *architect* if a cost *consultant* is engaged, at market rates at the anticipated time of construction. *Construction cost* excludes the following:

- the compensation of the *architect* and the *consultants*,
- other professional fees which are the responsibility of the client,
- the land cost, and land development charges.

In the event that the client furnishes labour or material below market cost, or recycled materials are used, the *construction cost* for purposes of establishing the *architect's* and *consultants'* fees includes the cost of all materials and labour necessary to complete the *work* as if all materials had been new and as 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 anticipated time of construction.

CONSULTANT

The *consultant* is a person or an entity engaged by the client or the *architect* to provide services supplementary to those provided by the *architect*.

Typically, *consultants* are professional engineers with a certificate of authorization, holders of a certificate of practice, and perhaps landscape architects, interior designers, specification writers, hardware *consultants* and cost *consultants*. There are a number of other, less commonly encountered *consultants* specializing in relatively narrow fields who may be engaged on a project and require coordination. These could include hospital *consultants*, acousticians, language translators, signage *consultants*, code *consultants*, garbage handling and removal, elevator, stage hardware, kitchen and traffic *consultants*. It is important at the outset of a project, especially if the project is large or complex, to ascertain the extent of consultancies that will be involved and the extent of the coordination services that the *architect* will be required to provide.

CONSULTANT COORDINATION

Consultant Coordination consists of:

- managing the communications between *consultants* and with the client, and
- providing direction as necessary to give effect to any design decisions taken, and
- reviewing the product of the work to assist in identifying conflicts and to monitor compliance with directions.

All *consultants* must be made aware by their client(s) as to who will be providing the coordination services and the roles and responsibilities of each *consultant* in regard to their cooperation with the coordinator.

In the event that the client retains other *consultants* in addition to those named in A9, the *architect* shall be entitled to a coordination fee for the *additional service*. In the event that the *architect* retains other *consultants* in addition to those named in A9, the *architect* shall be entitled to additional fees to cover the cost and coordination of the *consultant(s)*.

CONSTRUCTION DOCUMENTS

Construction documents consist of drawings, specifications and other documents appropriate to the size and complexity of the *project*, to describe the size and character of the entire *project* including architectural, structural, mechanical, and electrical systems, materials and such other elements setting forth in detail the requirements for the construction, enlargement or alteration of the building or buildings of the *project*.

The *Construction Lien Act* may be amended in the future to provide for the release of an architect's statutory holdback, which amount represents approximately 75% of the 10% of the total fee. Part of the lien legislation amendment being sought will set the completion of *construction documents* as the operative milestone activating total completion for services to this point. In the event that some or all of the engineering *consultants* are engaged directly by the client and the *architect* has little or no control over the completion of *construction documents* prepared by those *consultants*, a provision is recommended to be added to article A18 Other Terms of Contract, to the effect that the definition of *construction documents* is revised to exclude those *consultants* engaged directly by the client.

DIRECT PERSONNEL EXPENSE

Direct personnel expense means the salary of the *architect's* or the *architect's consultant's* personnel engaged on the *project* plus the cost of such mandatory and customary contributions and employee benefits as employment taxes and other statutory benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

See discussion earlier on the use of *direct personnel expense* (article A10 of the agreement).

GENERAL REVIEW

General review means review during visits to the *place of the work* (and where applicable, at locations where building components are fabricated for use at the *project* site) at intervals appropriate to the stage of the construction that the *architect* in its professional discretion, considers necessary to become familiar with the progress and quality of the *work* and to determine that the *work* is in general conformity with the construction contract documents, and to report, in writing, to the client, contractor and chief building official.

Refer also to OAA documents and the Canadian Handbook of Practice for recommendations report forms. It is essential for the *architect* to provide *general review* to be able to certify payments and performance responsibly. Therefore, it is in the interest of both the client and the *architect* that the substance of this service be clearly understood and respected.

INSTRUMENTS OF SERVICE

Instruments of service are the design, drawings, specifications and reports prepared by or on behalf of the *architect* or *consultant*, including but not limited to plans, sketches, drawings, graphic representations and specifications, computer-generated designs and materials.

Unless specifically contracted otherwise, the *instruments of service* do not include the *architect's* files, computations, etc., which remain the *architect's* personal files. The *instruments of service* referred to in this contract are instruments required for the application for building permit and for construction. Software programs are not considered *instruments of service*.

PLACE OF THE WORK

The place of the *work* is the designated site or location of the *work* identified in the construction contract documents.

For clarification, the *place of the work* in this contract refers to the construction site and not the *architect's* office. The *architect's* services may be performed in the *architect's* office, the construction site as well as other locations that may be required for the *architect* to fulfil its contractual obligations.

PROJECT

The *project* as described in this contract means the total enterprise or endeavour contemplated of which the *work* may be the whole or a part.

Project, as referred to in some *consultants'* offices is represented by the service contract into which the *consultant* has entered. The *project* as referenced in this contract includes not only the related services but also the construction.

REIMBURSABLE EXPENSES

Reimbursable expenses include, but are not limited to, the following actual expenditures, supported by receipts or invoices, incurred by the *architect*, and the *architect's consultants* in the interest of the *project*:

- .1 transportation in connection with the *project* for authorized travel, e.g. for transportation, lodging and meals;
- .2 communication and shipping, e.g. for long distance telephone calls and facsimile messages, courier service, postage and electronic conveyances;
- .3 reproduction of *instruments of service*, photographs, and other documents, including plotting of computer-generated drawings;
- .4 renderings, models, and mock-ups and web-based project management services, specifically requested by the client;
- .5 fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction;
- .6 premiums for additional insurance coverage or limits, including that of professional liability insurance, requested by the client in excess of that normally carried by the *architect* and the *architect's consultants*.

Reimbursable expenses is an area that can be costly to an *architect* if the records of expenses are not meticulously maintained and the invoicing routinely submitted. It is good practice to invoice for *reimbursable expenses* separately from fees invoicing to avoid fee payment from being delayed due to a client's accounts department questioning a relatively minor expense item.

SUBSTANTIAL PERFORMANCE OF THE WORK

Substantial performance of the work is as defined in the lien legislation applicable to the place of the *work*. In the absence of such legislation, it shall mean the date the *work* is ready for the purpose intended.

For most applications in Ontario, this will be governed by the Ontario *Construction Lien Act* (CLA) and will be computed on the basis of the improvement to the property being ready for the purpose intended AND the mathematical formula for the amount left in the contract for completion AND for the correction of deficiencies.

Remember also that under the provisions of the CLA, if you are not the payment certifier, you may not issue the certificate of substantial performance. In the absence of a payment certifier, the client and contractor may jointly issue the certificate. When issuing certificate of substantial performance under the CLA use only the CLA Form 6, and be sure to enter the information requested on the form. Be particularly careful to enter the legal description of the property and not the street address at the bottom of the form.

TOXIC OR HAZARDOUS SUBSTANCES OR MATERIALS

Toxic or hazardous substances or materials means any solid, liquid, gaseous, thermal or electromagnetic irritant or contaminant, and includes, without limitation, pollutants, moulds, asbestos, biocontaminants, biohazards and nuclear, and hazardous and special wastes whether or not defined in any federal, provincial, territorial or municipal laws, statutes or regulations.

WORK

The *work* means the total construction and related services required by the construction contract documents.

The construction industry through the CCDC documents has adopted *work* (italicized) to reflect the whole of the construction contract requirements and work (not italicized) to reflect components of the *Work*, such as a trade contractor's work. This contract employs the same distinction.

GENERAL CONDITIONS

GC1 CLIENT'S RESPONSIBILITIES

- .1 The client shall provide all information as outlined in the schedule(s) identified in this contract. The *architect* shall be entitled to rely upon such information. Contracts for the provision of information, whether arranged by the client or the *architect*, shall be considered direct contracts with the client unless explicitly provided otherwise.

The schedules should be sufficiently comprehensive that the respective responsibilities of the parties are clearly understood by both parties to the contract. One of the very best investments of an *architect's* time is to 'walk' the client through the contract in general and the Schedule of Services and Responsibilities in particular. Not doing so at the outset can cause grief and hardship later when it is discovered that the parties have wildly different understandings as to the terms and conditions of the contract and what was included and excluded.

- 2 The client shall:

- .1 authorize in writing a person to act on the client's behalf and define that person's scope of authority with respect to the *project* when necessary. In the absence of such naming of an authorized representative, the signatory to this contract is deemed to be the representative;

It is essential for the success of the *project* that the client be represented by one individual through whom communications between the client and the *architect* are channeled. This is particularly important when the client is represented by a group of individuals (such as a church board, post secondary school building committee, a board of directors, etc.) with differing ideas as to what the building program is to achieve. It is not uncommon to experience major redesign and substantial delays as well as costs when several individuals with disparate views officially represent the client.

- .2 review documents submitted by the *architect* and give the *architect* timely decisions for the orderly progress of the *architect's* services;

It is prudent to arrange with the client at early stages when approvals will be required for smooth flow of services and to meet production schedules. Different clients will have varying abilities to read and understand drawings, and some may require more assistance than others for the *architect* to be satisfied that the client understands the information contained in the documents needing client's approval prior to proceeding to the next phase of the architectural services.

- .3 obtain and pay for the building permit and all other permits and development costs;

Although the client officially is the recipient of the building permit, the *architect* may assist the client in this role and may be the entity that submits the application for permit on the owner's behalf.

- .4 immediately notify the *architect* in writing 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;

The more eyes that review construction in progress, the better the chance of success. Unless on site full time, *architects* and engineering *consultants* review construction on a random sampling basis and extrapolate the rest of the *project's* qualitative aspects based on that sampling. If clients observe anything that may be covered up by the time the *consultants* will next be on site, it is to the client's great advantage to so inform the *architect* as soon as possible. Standard CCDC construction contracts provide for **all** communications between client and contractor to flow through the *architect*. Accordingly, it should be made clear that the client should not separately and independently instruct the contractor or the contractor's personnel, especially when changes are to be made. Changes to one element although seemingly inconsequential to the client, may have far reaching effects on other aspects resulting in inadvertent code infractions, unanticipated increased costs and delays. The personnel of the contractor may not understand that the suggestion by the client is not always an instruction to proceed with the change regardless of the costs and affect on other parts of the *work*.

- .5 engage specialist *consultants* to provide relevant information about existing conditions of the client's property, such as geotechnical, topographical, toxic and hazardous material.

It is the client's responsibility to provide the *architect* with the relevant information about the existing condition of the client's property. Further, the *architect* (and the *architect's* sub-consultants involved in the design) must have the right to rely upon the accuracy of the information provided.

This information is provided by "specialists", each involved in an area of professional expertise beyond an *architect's* professional competence.

It is possible for the *architect* (and its *consultants*) to assist in defining the scope of the information required for their purposes, at the outset of the project or as it evolves. However, that assistance should not be construed as changing the underlying principle that the client is responsible for information about the existing condition of the property; the *architect* is responsible for the changes it designs to the client's property.

The requirement for the *architect* to retain these "specialists" is an inappropriate transfer of the client's risk onto the *architect*.

- .6 engage *consultants* identified in article A-9 of this contract under the terms and conditions of other contracts that are compatible with this contract;

The *architect* should reinforce to the client the importance of this article, particularly if the *architect* is, as is often the case, required to co-ordinate the services of consultants engaged directly by the client.

- .7 ensure that all consultants engaged by the client under other contracts carry professional liability insurance coverage.

Unlike *architects* in Ontario, not all consultants are required by legislation to carry professional liability insurance. Bill 124 will require from July 1, 2005 onward that most consultants carry professional liability insurance if their documents will be included in an application for building permit and if they will be performing *general review* of related construction. There will be some exceptions for certain specific services. Notwithstanding these exceptions, the client will be best advised to ensure that all *consultants* carry adequate insurance for their services.

- .8 ensure that the client's *construction budget* includes a contingency for cost escalation, design issues in the *construction documents* and unforeseen circumstances that arise or become apparent during the course of the *project*.

This clause requires that the client, as part of his/her responsibilities, ensures that the *construction budget* includes a contingency amount. Although this may appear self evident, recent procurement programs initiated by some clients have attempted to eliminate contingencies for issues arising during construction from the client's funding responsibilities. The clause makes what was once considered simple "good business" into a contractual requirement.

- .3 The client agrees that, should the construction contract include provision that any dispute between the client and the contractor may be finally resolved by arbitration, the construction contract shall include provisions satisfactory to the *architect* that:

- .1 require the client and contractor to notify the *architect* in writing of any arbitration and of any matters in dispute that affect the *architect*;
- .2 provide that, upon receipt of the notice in GC 1.3.1 above, the *architect* shall have the option to participate in the arbitration as a party;
- .3 provide that, in the event that GC1.3.1 and GC 1.3.2 above are not complied with, the client and contractor agree to not pursue any claim against the *architect* arising from matters resolved by the arbitration.

The section above addresses issues relative to requirements under the construction contract that deal with alternative dispute resolution and the role and liability of the *architect* in that process. The OAA and Pro-Demnity Insurance Company advise modification to CCDC 2 (and other CCDC series documents) by Supplementary Conditions. Refer to OAA documents for recommended changes to CCDC 2 and CCDC 3. The words "provisions satisfactory to the architect" would mean the recommended language provided in these current practice bulletins or as prepared by the *architect's* own lawyer.

GC2 ARCHITECT'S RESPONSIBILITIES

- .1 The *architect* shall provide professional services as outlined in the schedule(s) identified in this contract.

As was stated for the client's responsibilities, and well worth repeating here, the schedules should be sufficiently comprehensive that the respective responsibilities of the parties are clearly understood by both parties to the contract. One of the very best investments of an *architect's* time is to 'walk' the client through the contract in general and the Schedule of Services and Responsibilities in particular. Not doing so at the outset can cause grief and hardship later when it is discovered that the parties have wildly different understandings as to the terms and conditions of the contract and what was included and excluded.

- .2 The *architect* shall maintain records of *reimbursable expenses*, and for any services for which the fee is computed as a multiple of *direct personnel expense*. These records shall be maintained to acceptable accounting standards and made available to the client at mutually convenient times.

It is good business practice to maintain records that may have a bearing on the approval of remuneration for out of pocket expenses incurred by the *architect* on the client's behalf. If there is any doubt as to generally accepted

accounting principles in this regard, seek advice from your accountant. The absence of good practice in this regard could lead to significant loss of revenue rightfully owing to the architect.

GC3 CONSTRUCTION BUDGET AND CONSTRUCTION COSTS

.1 *Construction Budget and Construction Cost*

Neither the *architect* nor the client has control over the cost of labour, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions and therefore the *architect* cannot and does not warrant or represent that bids or negotiated prices will not vary from the estimate of *construction cost*.

Care should be exercised not only in the preparation of estimate of *construction cost*, but also in all communications about estimates. The term "estimate of *construction cost*" is used in this contract because inevitably it is the term that will be used in discussion with the client. It must be remembered, however, that to many people the word "estimate" means "quotation". This article makes it clear and *architects* should inform their clients that the "estimate of *construction cost*" is neither a quotation nor a guarantee.

2 *Estimate of Construction Cost*

If the construction procurement phase has not commenced within three months after the *architect* submits the *construction documents* to the client, the agreed estimate of *construction cost* shall be adjusted to reflect changes 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 bids or proposals are sought.

Direction from the client to the *architect* at the end of each phase of the *project* to proceed with the next phase is deemed acceptance of both the documents generated to date which include the latest estimate of *construction cost*.

Fluctuations in the economic climate of the construction industry, particularly in the sector represented by the project, should be discussed with the client. If the work is plentiful, some bidders will bid higher than normal anticipating overtime and having to import trades from elsewhere, not knowing the extent of supervision that will be required with these unknown factors. All this tends to increase the cost of construction. When construction work is scarce, as in recessionary economies, prices are unrealistically low and some contractors take on projects at break even or at a small loss in order to keep the personnel and office running until better times. The availability of trades and materials may dramatically affect pricing. Both scarce and plentiful scenarios occur in the cyclical nature of the construction industry. Difficulties are less in identifying them when they occur than they are in predicting the climate when the project will be ready for bidding. There is no easy answer to this age-old problem. *Architects* are encouraged to keep abreast of developments in the economy generally and the industry specifically, and watch for trends that may affect the bidding climate. Apprise the client of these uncertainties to avoid surprises when and if the fluctuations occur.

In their review of the client's *construction budget* and *architect's* estimate of *construction costs*, the client and *architect* should include reasonable contingencies for fluctuations in *construction costs*. This contingency is in case the lowest acceptable bid is higher than the mutually agreed latest estimate of *construction cost*, for changes in the *work* (because they are unpredictable and to some degree inevitable) and for other costs due to unforeseen and indeterminate conditions (such as subsoil conditions which were not anticipated since the need for special inspection and testing is unpredictable and may not become known until the project is under construction). This is most frequently encountered in renovation work, but also occurs in new work.

.3 If the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed estimate of *construction cost* by more than 15%, the client shall provide:

- .1 written approval of an increase in the estimate of *construction cost*, or
- .2 authorization for re-bidding or re-negotiating of the proposal, or
- .3 co-operate with the *architect* in revising the project scope or quality as necessary to reduce the construction cost, or
- .4 termination of this contract in accordance with GC8 if the *project* is abandoned.

.4 If the client proceeds under GC3.3.3, and the extent to which the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed estimate of *construction cost* by more than 15% and is not due to extraordinary market conditions or other factors not reasonably foreseeable by or under the control of the *architect*, then the client may require the *architect* to modify the *construction documents* or provide other services necessary to reduce the *construction cost* to within 15% of the latest agreed estimate of *construction cost* for no additional fee. Such modification of the *construction documents* to that extent shall be the limit of the *architect's* responsibility under GC3.3.3, and having done so, the *architect* shall be entitled to compensation in accordance with this contract, for all other such services performed, whether or not the construction phase is commenced.

Obviously it is very important for the parties to agree on the estimate of *construction cost* before bids are sought. The 15% variation from agreed estimate of *construction cost* has been the norm for new *work* in several of the standard contracts between client and *architects* for many years. It is appropriate to seriously revisit this percentage in light of the size and complexity of the *project* as well as the bidding climate. Alterations to existing *work*, which may have a number of unforeseen conditions, may require a larger variance.

Some clients insist on this percentage being revised to a smaller number or even zero. If clients insist on reductions to the percentage of variance, *architects* are well advised to confer with their insurance provider and legal counsel. A highly volatile bidding climate in an unstable economy combined with a large or complex project could cause financial difficulties for an *architect* if the percentage variance is not considered in conjunction with these risk factors and the client enforces this contractual provision. If the client is insistent on a smaller number or zero, then the estimate of construction cost should be adjusted to provide a contingency amount to cover the potential variance.

GC4 CERTIFICATE FOR PAYMENT

.1 The issuance of a certificate for payment shall constitute a representation by the *architect* to the client, based on the *architect's general review* and on review of the contractor's schedule of values and application for payment, that the *work* has progressed to the value indicated; that to the best of the *architect's* knowledge, information and belief, the *work* observed during the course of *general review* is in general conformity with the contract documents; and that the contractor is entitled to payment in the amount certified. Such certification is subject to:

- .1 review and evaluation of the *work* as it progresses for general conformity as provided in the services outlined in the schedule(s) described in this contract;
- .2 the results of any subsequent tests required by or performed under the contract documents;
- .3 minor deviations from the contract documents being corrected prior to completion; and
- .4 any specific qualifications stated in the certificate for payment.

.2 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 the contractor by law, or requirements of the Workplace Safety Insurance Board, or other applicable statute, non-compliance with which may render the client personally liable for the contractor's default.

The *architect's* role in the certification for payment process is to ascertain the extent of the construction that has been completed in accordance with the construction contract documents.

At the beginning of the *project*, the *architect* and client review the schedule of values prepared and submitted by the contractor. The schedule of values is intended to be an accurate and fair representation of the percentage that each component is of the total *construction cost*.

The process generally entails a review on site of the applications for payment submitted by the contractor. An application for payment is divided into multiple components, each describing the percentage completion of trade contractor's work and presented in a similar format as the schedule of values. The schedule of values is used by the *architect* to translate the percentage completion by each trade into an amount due to the contractor in respect of each trade. The total of the amounts due to the components of the application is the amount to be certified as representing the extent of the contract completed to the date of the certificate. The payment due on the certificate is the amount of the certificate less statutory holdbacks retained and less amounts certified for payment on previous certificates. Refer to OAA Documents for additional information. and standard forms.

Using the standard form for certificate for payment as recommended by the OAA facilitates the process and serves as a reminder of the elements required to be entered onto the certificate, as well as a summary of the contract as amended by change orders and change directives to date.

GC5 COPYRIGHT AND USE OF DOCUMENTS

.1 Copyright for the *architect's instruments of service* belongs to the *architect*. The *architect's instruments of service* shall remain the property of the architect whether the project for which they are made is executed or not, and whether or not the *architect* has been paid for the services. Their alteration by the client or any other person is prohibited.

.2 Submissions or distribution of the *architect's instruments of service*, including all software and electronic media, 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* reserved rights.

.3 The client may retain copies, including electronic or digital and other reproducible copies, of the *architect's instruments of service* for information and reference in connection with the client's use and occupancy of the *project*. Copies may only be used for the purposes intended and for a one-time use, on the same site, and for the same *project*, by this client only and may not be offered for sale or transfer without the express written consent of the *architect*. Except for reference purposes, the *architect's instruments of service*, including all electronic or digital files and information, shall not be used for renovations, additions or alterations to the *project* or on any other project without a written licence from the *architect* for the limited or repeat use of the documents.

.4 As a condition precedent to the use of the *architect's instruments of service* for the *project*, all fees and *reimbursable expenses*, including all fees and expenses of suspension or termination, due to the *architect*, are required to be paid in full.

.5 The client shall be entitled to keep original models or architectural renderings which the client specifically commissioned and paid for.

In some instances, clients require that copyright in the *instruments of service* be assigned to them. In some cases this occurs because the client has been led to believe that it is in its interest to do so for a specific reason or reasons.

In many instances the reasons cited can be resolved without the assignment of copyright, but rather a licence specifically stating the purpose of the licence and the related terms and conditions for its use. If exclusivity of the façade is of concern, this can be written into this contract under article A18 of the contract.

In some rare cases it may actually be necessary to assign copyright to the client. If this does occur, it must be done in writing. As well, the *architect* should take care to ensure that *consultants* engaged by it are also bound to the same terms and conditions and will arrange for transfer of their copyright in a similar fashion. The Canadian Handbook of Practice for Architects provides useful information on electronic transfer and assignment of copyright. Legal advice should be sought in effecting such assignments and whether the *consultants* should transfer their copyright to their client (the *architect*) in the first instance or directly to the *architect's* client.

GC6 PROJECT IDENTIFICATION

- .1 The *architect* shall be entitled to sign the building by inscription, or otherwise, on a permanent, suitable and reasonably visible part of the building.

This has traditionally been accomplished by way of a commemorative bronze cast plaque listing key participants and date of the construction, and installed in a conspicuous place, usually in the lobby of churches, schools or other public buildings. In some cases it may be a cornerstone with the *architects* name inscribed in it, and installed in masonry near the corner of the principal façade of a masonry building. Such cornerstones on occasion contain a small time capsule with commemorative information. Plaques and cornerstones generally are part of a ceremony involving building committees (e.g. churches and schools) and key participants.

- .2 The *architect* shall be entitled to include as part of the contract documents a provision to erect a sign identifying the *architect* and the *architect's consultants* on the *project* site.

These signs may be the *architect's* personal sign that it had prepared for the purpose, standard signs purchased from the OAA or inclusion on a major construction sign identifying the contractor, key sub-contractors, *architect* and *consultants*.

In some instances the client may also be represented on the sign. Graphics on the construction sign may also include a reproduction of a rendering of the project.

GC7 LIABILITY OF THE ARCHITECT

- .1 The *architect* carries professional errors and omissions liability insurance coverage, and the policy is available for inspection by the client at all times, upon request.

This provision reflects the statutory obligation for *architects* in Ontario to carry professional liability insurance.

- .2 The client agrees that any and all claims, whether in contract or tort, which the client has or hereafter may have against the *architect* in any way arising out of or related to the *architect's* duties and responsibilities pursuant to this contract, shall be limited to coverage and amount of professional liability insurance carried and available to the *architect* for the payment of such claims at the time the claim is made. Prior to the date of execution of this contract, if the client wishes to increase the amount of the coverage of such policy or to obtain other special insurance coverage, then the *architect* shall cooperate with the client to obtain such increased or special insurance at the client's expense.

- .3 The *architect* shall be entitled to rely upon product information published by manufacturers and shall not be held liable for relying on information or representation which it reasonably believes to be accurate.

Reputable manufacturers go to lengths in obtaining necessary approvals (UL, CSA, ULC, etc.) for their products. *Architects* have neither the expertise nor resources to duplicate these tests. The client is generally unprepared to pay for the additional cost of specific research and examination of products. Due diligence is, however, expected to be exercised by *architects* on a client's behalf in the selection of materials and methods for the client's projects.

- 4 The *architect* shall not:

- .1 be required to make exhaustive or continuous on-site reviews;
- .2 be responsible for acts or omissions of the contractor, subcontractors, suppliers or any other persons performing any of the *work*, or for failure of any of them to carry out the *work* in accordance with the contract documents;
- .3 have control, charge, or supervision, or responsibility for construction means, methods, techniques, schedule, sequences or procedures, or, for safety precautions and programs required in connection with the *work*, and

These responsibilities are relegated to the contractor in a standard client / contractor contract such as CCDC 2. The *general review* by the *architect* is a periodic review and one that relies on random sampling and extrapolation of findings with a view toward assessing general rather than specific compliance with the construction contract documents.

.4 be responsible for any and all matters arising from *toxic or hazardous substances or materials*.

.5 The client acknowledges that either the *architect* or the client may engage *consultants* on behalf of and for the benefit and convenience of the client; and agrees that the *architect* shall not be liable to the client, in contract or in tort, for the acts, omissions or errors of such *consultants* whether retained by the *architect* or the client. Nothing in this clause shall derogate from the *architect's* duty of coordination.

Architects are not expected to have the expertise that engineers have in their specific engineering discipline. In fact, even if they did they would not be permitted to perform engineering services without qualification from the PEO, and then only within the regulatory rules of engineering practice. Accordingly, it is inappropriate for *architects* to be liable for the specialized services of *consultants* engaged by them on the client's behalf.

Due diligence in the selection of *consultants* by *architects* is good practice, and the formation of a team of *consultants* who work together with mutual respect and professionalism is to everyone's benefit. On occasion a client will insist on the *architect* engaging specific *consultants* who are unknown to the *architect*. This is not a recommended practice since the composition of the team of *consultants* is critical to the harmonious functioning of the design team. Similarly, clients are to be cautioned when directly engaging *consultants* separately and independently from each other and that the terms of engagement are clear as to who will be coordinating the services and where the respective liabilities and responsibilities lay.

Architects are, however, held to have sufficient knowledge of the consultants' disciplines to be able to properly coordinate the services of the team of *consultants*.

.6 The client shall not commence any claim or proceeding in contract, tort, breach of statutory duty or otherwise against any current or former employee, officer or director of the *architect* arising out of acts, omissions or errors of such person pursuant to this contract.

This provision recognizes that the contract is between two entities -- the client and the *architect*. Employees in the architectural practice are responsible to the employer who in turn is contractually responsible to the client. The client under this provision in the contract agrees not to sue employees directly.

.7 The client agrees that the *architect* shall not be responsible in contract or in tort for any changes made to the *architect's* design or the *construction documents* without the *architect's* knowledge and approval.

This clause has been included to help protect the *architect* in circumstances where changes are made without his / her knowledge or consent. The *architect* should also be sure that in such circumstances, he / she does not routinely process change orders implementing changes made without his / her approval or concurrence without advice to the client that he / she is **NOT** in agreement with the client's or contractor's decision. Refer to Pro-Demnity Insurance Company's April, 2007 Bulletin Protecting Yourself – What can you do when your client doesn't follow your advice found on the OAA Web site under *Services and Resources>Resources for Architects*.

GC8 SUSPENSION AND TERMINATION

SUSPENSION

.1 If the client lacks the financial ability or authority to proceed, the client may give seven days written notice to the *architect* that the client elects to suspend the *architect's* services.

Contractors have become more diligent in requiring clients to demonstrate financial capability for funding the *project*. This is reflected in the CCDC contracts as a contractual provision. Prudent *architects* similarly exercise good practice and satisfy themselves that their clients will meet financial commitments to the *project* and the *architect*.

This article pertains to an event occurring after this due diligence has been performed, causing a change in the client's ability to financially proceed.

.2 If any invoice submitted by the *architect* remains unpaid by the client for forty-five days or more from the date the invoice was submitted, then the *architect* may give seven days written notice to the client that the *architect* will suspend services.

.3 The *architect* may suspend services on the *project*:

.1 if within seven days of delivery of the notice in GC8.2, the client has not paid the *architect's* invoice, or the *architect* and the client have not agreed in writing on terms for payment of the invoice, or

Clients should understand that *architects* are in business and have business expenses to meet as well as expenses directly attributable to the client's *project*. Architects are not in the business of funding clients' projects.

- .2 if construction of the *work* proceeds in the absence of a building permit and without the chief building official dispatching building officials to the site or, if the *architect* becomes aware of an action taken by the client which violates applicable building codes or regulations, then,

The *architect* cannot proceed with a contract that is not legal. The performance of *general review* by an *architect* on a building which does not have a legally required building permit contravenes the *Architects Act* as well as the *Building Code Act*

- .4 In either of these events the client shall not have any claim whatsoever against the *architect* for any loss, cost, damage, or expense incurred or anticipated to be incurred by the client as a result of the suspended services.
- .5 The rights of the *architect* given by GC8.3 are in addition to and not in substitution for any other rights the *architect* may have under this contract or otherwise for non-payment of the *architect's* invoices by the client.
- .6 In the event of a suspension of services, the *architect* shall not be liable for delay or damage as a result of the suspension of services. Upon suspension, the *architect* shall submit an invoice for all services performed to the effective suspension date, together with *reimbursable expenses* and applicable taxes then due. Before resuming services, the *architect* shall be entitled to payment, within thirty days of the date that the invoice for suspension of services is submitted, for all suspension expenses as defined in GC8.6 and for all expenses for recommencement of services. The *architect's* fees for the remaining services and time schedules shall be adjusted accordingly.
- .7 Suspension expenses include expenses directly attributable to suspension of the *project* for which the *architect* is not otherwise compensated, including costs attributed to suspending the *architect's* contractual and employee commitments.

The suspension and resumption of services have costs attached in time, money and morale of the design team members. Reassignment of personnel or staff leaving for positions in other venues all contribute to a less efficient and productive service which can be avoided by proper financial management by the client.

TERMINATION

- .8 If the *project* results in construction, this contract is terminated on the earliest of;
- .1 the date of receipt of letter of termination from the client, or
- .2 seven days from the abandonment of the *project*; or
- .3 one year from the date of certification of *substantial performance of the work*; or
- .4 one year from the date of total completion.
- .9 This contract may be terminated by either party upon not less than 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.
- .10 This contract may be terminated by the client upon at least seven days written notice to the *architect* in the event that the project is abandoned.
- .11 If the *project* is suspended or abandoned in whole or in part for more than a total of sixty days, it shall be deemed to be abandoned and treated in accordance with article 8.9.
- .12 In the event of termination, the *architect* shall be paid, within thirty days of the date that an invoice is submitted, for all services performed to the effective termination date, together with *reimbursable expenses* and applicable taxes then due, and for all termination expenses as defined in GC8.13.
- .13 Termination expenses are expenses directly attributable to abandonment of the *project* or termination of this contract for which the *architect* is not otherwise compensated, and in addition, an amount for anticipated loss of earnings computed as a percentage of the total fee earned to the time of termination for the *architect's* services and *additional services*, as follows;
- .1 twenty percent if termination occurs during the schematic design phase; or
- .2 ten percent if termination occurs during the design development phase; or
- .3 five percent if termination occurs during a phase subsequent to the design development phase.

GC9 LAW GOVERNING THIS CONTRACT

- .1 This contract shall be governed by the law of the Province of Ontario.

Dispute resolution may be achieved via the parties agreeing to settlement by negotiation, mediation, arbitration or litigation subject to the laws of the Province of Ontario.

GC10 SUCCESSORS AND ASSIGNS

- .1 The client and the *architect* respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this contract. Except as otherwise provided herein, neither the client nor the *architect* shall assign, sublet, or transfer an interest in this contract without the written consent of the other. Consent to such assignment or transference shall not be unreasonably withheld.
- .2 The contract documents are for the purpose of construction of the *project* contemplated by this contract and shall not be used by the client for any other purpose.

GC11 EXTENT OF CONTRACT

- .1 This contract represents the entire and integrated contract between the client and the *architect* and supersedes all prior negotiations, representations, or contracts, either written or oral. This contract may be amended only in writing signed by both the client and the *architect*.

GC12 PAYMENTS TO THE ARCHITECT FEES

- .1 An invoice submitted by the *architect* under this contract is due and payable when submitted to the client. Payments for the *architect's* services shall be made on account for invoices as described in article A14 of this contract and, where applicable, shall be in proportion to services performed within each phase of the service.
- .2 No deductions shall be made by the client 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 proven to be legally responsible or has agreed to pay.
- .3 Variance from the *construction budget* established under this contract shall not constitute grounds for the client to withhold fees due to the *architect*.
- .4 When a percentage-based fee is used as the method for determining the *architect's fee*, the basis for calculating the applicable portion of the fee for each phase of the *architect's* services shall be based on article A10 of this contract.
- .5 If the scope of the *project* or of the *architect's* services is changed, the fees shall be adjusted accordingly. For *additional services* or when revisions or additions are made to the program of requirements or previously approved documents prepared by the *architect* and such revisions or additions require services beyond those already provided, the fee for such *additional services* shall be based on the rates in article A10 of this contract, or as otherwise mutually agreed with the client.
- .6 If and to the extent that the contract time initially established in the construction contract is exceeded or extended through no fault of the *architect*, fees for services required for such extended period of the contract administration shall be adjusted and computed as set forth in article A10 of this contract or as otherwise mutually agreed with the client.
- .7 In the event that new or additional taxes in respect of the services included in this contract are required by federal, provincial, territorial, regional or municipal legislation after the contract is executed, the amount under this contract shall be adjusted to include such taxes.
- .8 Fees and *reimbursable expenses* may be subject to such value-added taxes as the Federal Goods and Services Tax or Harmonized Sales Tax. The client shall pay to the *architect*, together with, and in addition to, any fees and *reimbursable expenses* that are, or become, payable as required by legislation, any value-added taxes that become payable in relation to the fees and *reimbursable expenses*.

REIMBURSABLE EXPENSES

- .9 The client shall pay the architect for all *reimbursable expenses* as defined plus an administrative charge as identified in article A11 of this contract.
- .10 All *reimbursable expenses* not defined shall be approved by the client prior to any expenditure by the *architect*.

GC13 SEVERABILITY

- .1 If any provision of this contract is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this contract and the other provisions shall remain in full force and effect.

SCHEDULES

Schedules have been designed for ease of comprehension between the client and *architect*. The earlier OAA Document Seven format of schedules, preferred by many members, has been upgraded and reintroduced to set out respective responsibilities. It is intended that these schedules be modified by OAA members, as required to suit their particular project, and then appended to the client/*architect* contract (i.e. the Schedules are not intended to stand-alone). They are provided such that members have the greatest freedom in modifying them.

Schedule A

Schedule A (similar in format to the earlier OAA Document Seven) is fairly straightforward and identifying a service at each line item and noting who will be responsible for the service (*architect* or client). If neither the *architect* nor client are responsible for the service, the third column, "not applicable", should be marked to confirm that the service is not part of the contract.

The schedule lists typical services most commonly encountered in design-bid-build projects followed by a collection of services related to various government authorities and which contain such services as application for building permit.

Schedule B

As an alternative to setting out the scope of services in the tabular format of Schedule A, members may consider using a text format as set out in Schedule B which is a derivative of the architect's services and client's responsibilities as set out previously in Document Six, 1997.

Custom Schedules

Members may prefer to design their own standard schedules or make modifications to the Document 600 Schedule, incorporating descriptions of the services that they have contracted to perform and the obligations of their clients. When doing so, members are advised to confer with their insurer and legal counsel.

FEES DESIGNATION IN SCHEDULE A

The schedule anticipates the entering of an alphanumeric designation (e.g. F1, F2, etc. or Fee1, Fee2, etc.) for services to be performed by the *architect* in the appropriate ("Fee Class") column of Schedule A. These designations are intended to be described in detail in the Agreement portion of the contract.

The services are typically of two types:

- Those for which fees are determined before the contract is signed by the parties.
- Those for which the fees are indeterminate at the time of execution of the contract. Typically these could be on a per diem or hourly basis, unless otherwise agreed.

It is not uncommon to have different fees for different phases of services, e.g. hourly rate for schematic design, fixed fee for design development and *construction documents*, and percentage of *construction cost* for bidding and contract administration. Fees for indeterminate services are usually on a per diem basis but may be negotiated once the scope is known. *Additional services* are services that are not listed as being the responsibility of the *architect* and are at some point during the contract requested by the client. These too could be noted in the agreement articles as per diem or hourly unless otherwise agreed.

Example

The following example of a portion of Schedule A illustrates the method of identifying which services the *architect* will be providing, the corresponding fee classification, services that are the client's obligations and those which are not required for this *project*. Article A10 of the contract elaborates on the fee classifications (refer to article A10 discussed earlier in this Commentary).

One of the three columns at the right of the schedule must be filled in at each row.

	ITEM	ARCHITECT'S SERVICES: FEE CLASS	CLIENT'S RESP.	N/A
PRE-DESIGN SERVICES				
	Assist client re Toxic and Hazardous Substances and Materials information required - Assist client, in the engagement of a <i>toxic and hazardous substances and materials consultant</i> . Coordinate with <i>toxic and hazardous substances and materials consultants</i> and engineering <i>consultants</i> as to identification of information required from the report.	FEE 1		

GENERAL SERVICES, ALL APPLICABLE PHASES	Engagement of Structural Engineering Services - Engage services of a structural engineer for services commensurate with architectural services under this contract.	FEE 2		
	Engagement of Mechanical Engineering Services - Engage services of a mechanical engineer for services commensurate with architectural services under this contract.	FEE 2		
	Engagement of Electrical Engineering Services - Engage services of an electrical engineer for services commensurate with architectural services under this contract.	FEE 2		
	Engagement of Landscape Architect Services - Engage services of a landscape architect for services commensurate with architectural services under this contract.	FEE 2		
	Engagement of Civil Engineering Services - Engage services of a civil engineer for services commensurate with architectural services under this contract.		X	
	Engagement of Commissioning Agent Services - Engage services of a commissioning agent for services over and above the takeover of the project at completion of construction.			X
	Engagement of Cost Estimating Services - Engage the services of a <i>construction cost consultant</i> and coordinate the services with the services of the other <i>consultants</i> .		X	
	Engagement of Security Systems Services - Engage services of security systems <i>consultant</i> and coordinate with the architectural and services of the other <i>consultants</i>		X	
	Provision of Interior Design Services - Provide or engage the services of an interior designer to provide interior design services commensurate with other architectural services under this contract.		X	
	FF& E Selection and/or Installation - Provide services for the selection and installation of furniture, fixtures and equipment (FF&E), including re-use of client's inventoried FF&E.		X	
	Graphic Design, Signage and Similar Services - Provide services for design, selection, procurement and installation of graphics, corporate logos, signage and similar elements for interior and exterior application.	FEE 3		

OPTIONAL SERVICES

Schedule B

The following is a list of optional services offered by some architectural practices. For those that apply to your scope of work on a project, develop a detailed description of each service and add it to the Schedule. If you offer a service but do not have the necessary expertise within your practice, engage an appropriate *consultant*.

The publication of the following list of services does not constitute an acknowledgement that all of these services are in every instance a usual and customary practice of architecture. Your professional liability insurance provider may NOT offer coverage for all services on this list. Some of the items may be specifically excluded from your policy and some others, although not specifically excluded in your policy, may be not covered if the service is outside of the scope of architectural services normally covered.

The detailed description and actual service provided as well as the wording of the insurance policy, not the title of the service, will determine whether the service is covered.

You are advised to review your insurance policy and confirm with your insurer your understanding regarding coverage of the addition of any of these services to your contract with your client prior to executing the contract.

Pre-Design Services

- Analysis of Land Use Regulations
- Building Code and Fire Safety Analysis
- Feasibility Studies
- Flexibility and Expandability Studies
- Functional Programming
- Landscape Surveys
- Marketing Research
- Master Planning
- Organizational Development and Preparation of Strategic Plans
- Preparation of As-found or Measured Drawings
- Preparation of Documents for Site Plan Agreement
- Preparation of Space Schematics and Flow Diagrams
- Project Budgeting
- Project Financing
- Requests for Proposals-analysis and preparation
- Review of Geotechnical or Soils Engineering Reports
- Review of Real Estate Appraisal
- Review of Site Surveys and Legal Surveys
- Selection of Consultants/Proposal Evaluation
- Services for Rezoning or Amendment to Land Use
- Site Analysis and Selection
- Site Development Planning
- Site Utilization Studies
- Spatial Relationship Studies
- Special Equipment and Systems Planning
- Study of Off-Site Utilities
- Survey of Existing Facilities / Building Audit
- Traffic and Parking Studies

Design and Contract Administration Services

- Acoustical Design and Testing
- Building Code Equivalency
- Building Envelope Services
- Commissioning
- Computer Analysis and Mock-ups
- Fire Protection Services
- Life Cycle Cost Analysis
- Security System Design
- Value Analysis/Value Engineering

Project Administration and Construction Management Services

- Administration of Testing and Inspection
- Consulting with and assisting in obtaining Approval of Authorities having Jurisdiction
- Coordination and Document Checking
- Coordination of Mock-ups
- Detailed Cost Estimates and Quantity Surveys
- Full-time Project Representation
- Life Cycle Cost Analysis
- Owner's Advisor for a Design- Build Project (Refer to separate schedule.)
- Owner-supplied Data Coordination
- Project Accounting
- Project Administration
- Project Scheduling
- Schedule Development and Monitoring
- Submittal Services
- Web-Based Project Management Services

Post-Construction Services

- Building Maintenance
- Commissioning
- Facility Management
- Maintenance and Operating Programming
- Post-occupancy Evaluation
- Project Takeover by Client
- Tenant Improvements

Alternative Dispute Resolution

- Arbitration
- Mediation

Architectural Conservation

- Conservation Reports
- Heritage Conservation District Studies
- Historic Building Documentation
- Special Material and Product Research, Specifications and Procurement

Documentation Services

- Aerial Site Photography
- Architectural Photography of Completed Building or Site
- Area Calculations
- As-Built-Drawings and Computer Database Preparation
- Building Inspection and Reporting
- Computer Database
- Construction Progress Photographs
- Electronic Communication and Distribution
- Inventories of Equipment, Materials and Furnishings
- Periscope Photography of Models
- Photography of Existing conditions
- Preparation of Measured Drawing and As-Found Drawings
- Presentation Photography of Renderings or Models
- Video Camera Site Monitoring with Internet Distribution
- Videotaping

Environmental Services

- Application of Rating and Labeling Systems to Architectural Projects
- Coordination of Environmental Surveys of Existing Buildings or Sites
- Life Cycle Assessment
- Life Cycle Cost Analysis
- Energy Analysis

Expert Witness

- Preparation and Testimony at Court or Mediation or Arbitration Hearing
- Professional Opinion

Interior Design and Design Services

- Adaptation of Mechanical and Electrical Systems to Tenant Requirements
- Coordination of Delivery and Installation of Furniture and Equipment
- Custom Furnishing Design
- Design of Interior and Exterior Signage and Symbols
- Documentation of Requirements and Procurement of Graphics Work
- Field Review/General Review, Construction Administration etc.
- Furniture and Equipment Selection and Layout
- Furniture and Finishing Specifications
- Graphic Design
- Interior Partition Location
- Preparation of Requirements for Furniture and Equipment
- Selection of Interior Materials, Finishes and Colours
- Selection or Acquisition of Fine Arts or Crafts
- Space Planning
- Tenant-related Services

Promotion and Public Relations

- 3-D Computer Presentations and Simulations
- Computer Presentations
- Condominium Documentation
- Preparation of Leasing Materials
- Preparation of Models
- Preparation of Press Releases
- Preparation of Promotional Brochures
- Preparation of Renderings
- Presentations at Public Meetings
- Web-site Design and Services

Research

- Research of Construction Materials and Methods
- Building Envelope Investigation

Specialist Expertise

- In British Columbia- Enhanced Building Envelope Services (Refer to AIBC Bulletin No. 34)
- In British Columbia- Basic Services for the Market Multiple Residential Services (Refer to AIBC Bulletin No. 55.)
- Owner's Advisor on Design-Build Project

Urban Design

- Design Reports
- Streetscape Design
- Drafting of Zoning By-laws and Regulations
- Shadow Studies
- Subdivision Architectural Control
- Transportation Studies