THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 07-026

BEING A BY-LAW TO ENTER INTO AN AGREEMENT WITH THE CITY OF PETERBOROUGH AND LUNDHOLM ASSOCIATES ARCHITECTS TO COMPLETE PHASE 1 - THE DESIGN PHASE (DESIGN DEVELOPMENT AND SCHEMATIC DRAWINGS) OF THE EXPANSION OF THE PETERBOROUGH CENTENNIAL MUSEUM & ARCHIVES (PCMA).

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Lundholm Associates Architects in the form attached hereby as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 26th day of February, 2007

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
Canadian Standard Form
of Contract for
Architectural Services

DOCUMENT SIX
2006 Edition

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Agreement

A1 This contract made as of the 8th day of March in the year of 2007.

The contract consists of the following:
Cover and Table of Contents
Agreement
Definitions
General Conditions
Schedule B

A2 Between the client: 
City of Peterborough
500 George Street North
Peterborough, Ontario
K9H 3R9

A3 and the architect:
Lundholm Associates Architects
369-401 Richmond Street West
Toronto, Ontario
M5V 3A8

A4 For the following project:
Renovation and Addition to the Peterborough Centennial
Museum & Archives based on Functional Program dated

A5 with the following construction budget:
$10,000,000.00

A6 The anticipated construction procurement method is:
Single stipulated price contract to pre-qualified
contractors by public tender.

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 affixed to this contract:
Schedule B Architect’s Services

A8 In addition to the client’s responsibilities as described in the General Conditions, including GC1, the client shall
furnish information, surveys, reports and services as described in the following schedule affixed to this contract:
Schedule B Client’s Responsibilities
The architect shall coordinate the services of the following consultants:

1 engaged by the architect

associated architects: Lett Architects
mechanical engineers: Crossey Engineering
electrical engineers: Crossey Engineering
structural engineers: Halsall Associates Ltd.
landscape architect: Basterfield and Associates
cost consultant: Curran McCabe Ravindran Ross
sustainable design: Enermodal Engineering
lighting design: Gabriel Design
civil engineering: Wills Consulting Engineers

2 engaged by the client

geotechnical engineer: to be named by mutual agreement
environmental assessment: to be named by mutual agreement

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

For the architect's services as outlined in the Schedule B the fee shall be computed as follows:

\[
\begin{array}{ll}
\text{Schematic Design} & \$115,625.00 \\
\text{Design Development} & \$130,625.00 \\
\text{Contract Documents} & \$462,500.00 \\
\text{Contract Administration} & \$231,250.00 \\
\text{Expenses (proportionate to fees by stage)} & \$56,400.00 \\
\text{GST (proportionate to fees by stage)} & \$56,400.00 \\
\end{array}
\]

The Architect's fee is based on 9.4% of the construction value (plus expenses and GST). Should there be an increase in the construction budget then the Architect's fee will be adjusted on a proportional basis.

For supplementary services as outlined in Section A17 the fee shall be computed as follows:

\[
\begin{array}{ll}
\text{Base Drawings of Building} & \$22,500.00 \\
\text{Fee} & \\
\text{GST on fee} & \$1,350.00 \\
\text{Site Services} & \$10,000.00 \\
\text{Fee} & \\
\text{GST on fee} & \$600.00 \\
\text{Enhanced Sustainable Design Services} & \$12,200.00 \\
\text{Design Facilitation Fee} & \\
\text{Detailed Design / Simulation Fee} & \$19,700.00 \\
\text{Construction Verification Fee} & \$18,400.00 \\
\text{LEED Certification (consulting) Fee} & \$18,400.00 \\
\text{GST (proportionate to fees by stage)} & \$4,122.00 \\
\end{array}
\]
A11 An administrative charge of not applicable% shall be added to the reimbursable expenses as noted in GC12.9.

A12 The rate for calculating automobile travel costs shall be not applicable – included in lump sum amount per kilometer.

A13 The client shall pay to the architect, upon execution of this contract, a separate retaining fee of $ not applicable.

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 based on the progress of the work unless otherwise agreed.

A15 An unpaid invoice shall bear interest, calculated monthly at the rate of 8.0% per annum, commencing 30 days after the date that the architect submits the invoice.

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.

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.

Other Terms of Contract:

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

The Architect will provide the following additional services:

(a) Base Drawings of Building
Prepare complete base drawings of the existing building including structural, mechanical, and electrical information.

(b) Site Services
Prepare a Stormwater Management Report for the entire site. Incorporate regrading of the parking lot in order to accommodate parking lot storage typically required as part of a stormwater management plan. As a result of the regrading and storm water management plan, design modifications or replacement of the storm sewer as required and provide the engineering drawings.

Confirm the need to replace the 150mm diameter watermain including a new fire hydrant near the front entrance. Provide the engineering drawings as required.

The implementation of extended site services is not necessarily to be included in the work of the project construction contract. The cost is not included in the $10,000,000. construction budget.

(c) Enhanced Sustainable Design Services
Coordinate a formal sustainable design process leading to possible LEED certification using specialist consultant Enermodal.

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

City of Peterborough
(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

Lundholm Associates Architects
(Name of architect)

(Signature)

Michael E. Lundholm  Owner

Witness (es)

(Signature)

(Name and title of person signing)
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 the contract.

Architect

The Architect is the entity identified in this contract as such and who is registered, licensed or otherwise authorized exclusively to use the title "Architect" and to practice architecture in the province or territory.

Construction Budget

The Construction Budget is the Client’s combined estimate of the Construction Cost, construction contingencies and GST or HST, or if there is no Client’s combined estimate, an amount agreed to by the Client and the Architect.

Construction Contract

The Construction Contract consists of the executed agreement between the Client and the Contractor, or between the Owner and the Design-Builder, the general conditions, the drawings, the specifications and all the other documents identified in the said agreement as Contract Documents.

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.

Where there is no contract price for all or part of the Project, the Construction Cost shall be the estimate of probable 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.

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.

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.

*Note: Value-added taxes are excluded from Construction Cost in such calculations under the Tariff of Fees for Architectural Services of the Architectural Institute of British Columbia (AIBC).*
Direct Personnel Expense

Direct Personnel Expense means the salary of the Architect's or the Architect's Consultant's personnel engaged on the Project and all overtime charges authorized in advance by the Client, plus the cost of mandatory and customary contributions and employee benefits including employment taxes and other statutory benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

Field Review / General Review

Field 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 so report, in writing, to the client, contractor and chief building official.

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.

Place of the Work

The Place of the Work is the designated site or location of the Work identified in the construction contract documents.

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 Budget

The Project Budget is the Client's estimated total expenditure for the entire Project. It includes, but is not limited to, the Construction Budget, professional fees, costs of land, rights of way, and all other costs to the Client for the Project.

Reimbursable Expenses

Reimbursable Expenses include, but are not limited to, the following actual expenditures, supported upon request by receipts or invoices, incurred by the Architect, and the Architect's Consultants in the interest of the Project:

- transportation in connection with the Project for authorized travel, e.g. for transportation, lodging and meals;
- communication and shipping, e.g. for long distance telephone calls and facsimile messages, courier service, postage and electronic conveyances;
- reproduction of Instruments of Service, photographs, and other documents, including plotting of computer-generated drawings;
- renderings, models, and mock-ups and web-based Project management services, specifically requested by the Client;
- fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction;
- 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.

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.

(NOTE: in British Columbia the term "Completion" is used as well as the term "Certification of Completion")

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, asbestos products, polychlorinated biphenyl (PCB), fungus/fungi, mildew(s), mushroom(s), yeast(s) bio-contaminants, 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.
General Conditions

GC1 Client's Responsibilities

.1 The Client shall provide all information as outlined in the schedule(s) identified in the agreement. 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.

.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;
   .2 review documents submitted by the Architect and give the Architect timely decisions for the orderly progress of the Architect’s services;
   .3 obtain and pay for the building permit and all other permits and development costs;
   .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 contract;
   .5 engage Consultants identified in article A-9 of the agreement under terms and conditions of agreements that are compatible with this contract;
   .6 ensure that all Consultants engaged by the Client under the agreement carry professional liability insurance coverage.

GC2 Architect’s Responsibilities

.1 The Architect shall provide professional services as outlined in the schedule(s) identified in the agreement.

.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 for viewing at mutually convenient times.

GC3 Construction Budget and Construction Costs

.1 Project Budget
   Neither the Architect nor the Client has control over other professional fees, land development or other costs related to the entire endeavour of the Client, therefore the Architect cannot and does not warrant or represent that Project costs will not vary from the Project Budget.

.2 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 probable Construction Cost.

.3 Estimate of Probable 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 probable 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.

.4 If the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed statement of probable Construction Cost by more than 15%, the Client shall provide:
   .1 written approval of an increase in the estimate of probable 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.

.5 If the Client proceeds under GC3.4.3, and the extent to which the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed estimate of probable 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 probable 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 the above mentioned clause, 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.

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 Field Review / 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 Field Review / 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 the agreement;
.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 Workers Compensation Boards, or other applicable statute, non-compliance with which may render the Client personally liable for the contractor’s default.

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 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 as a result 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.

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.

.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. 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.

.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 published product information published by manufacturers and shall not be liable for relying on information or representation which it reasonably believes to be accurate.

.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, sequences, or procedures, or, for safety precautions and programs required in connection with the Work; and
.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.

.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.

.7 See Endorsement 3 attached.

**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.

.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,
   .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,
   .3 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.

.4 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.

.5 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 Reimburseable Expenses and applicable taxes then due. Before resuming services, the Architect shall be entitled to payment, within 30 days of the date that the invoice for suspension of services is submitted, for all suspension expenses as defined in GC6.6 and for all expenses for recommencement of services. The Architect’s fees for the remaining services and time schedules shall be adjusted accordingly.

.6 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.

**Termination**

.7 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 7 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 (In Ontario the term ‘Total Completion’ is used and defined in the Construction Lien Act.)

.8 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.

.9 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.

.10 If the Project is suspended or abandoned in whole or in part for more than a total of 60 days it shall be deemed to be abandoned and treated in accordance with article 8.9.

.11 In the event of termination, the Architect shall be paid, within 30 days of the date that an invoice is submitted, for all services performed to the effective termination date, together with Reimburseable Expenses and applicable taxes then due, and for all termination expenses as defined in GC8.12.

.12 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 Agreement

.1 This contract shall be governed by the law of the province or territory of Canada which is the principal place of business of the Architect.

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 agreement 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 the agreement 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 the agreement.

.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 the agreement, 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 the agreement 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 the agreement.

.10 All Reimbursable Expenses not defined shall be approved by the Client prior to any expenditure by the Architect.

GC13 Dispute Resolution

.1 Disputes shall be resolved according to the provisions of the applicable provincial or territorial legislation.

GC14 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.
Schedule B to Document Six, 2006 Edition
Services of the Architect and Responsibilities of the Client

Architect: Lundholm Associates Architects
Client: City of Peterborough
Project: Renovation & Addition to Peterborough Centennial Museum & Archives

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Architect’s Services

1.0 Architect’s Services

1.1 The Architect’s services consist of those services performed by the Architect, the Architect’s employees, and the Architect’s Consultants set forth herein and any other services included in Article A.18. They include the provision of normal structural, mechanical and electrical engineering services by professional engineers when these Consultants are engaged by the Architect.

1.2 The Architect’s services include Consultant Coordination required to integrate all parts of the services.

2.0 Schematic Design Phase

The Architect shall:

2.1 review the program of requirements furnished by the Client and characteristics of the site;
2.2 review and comment on the Client’s Construction Budget in relation to the Client’s program of requirements;
2.3 review with the Client alternative approaches to the design of the Project and the types of construction contracts;
2.4 review applicable statutes, regulations, codes and by-laws and where necessary review the same with the Authorities Having Jurisdiction;
2.5 based on the mutually agreed upon program of requirements, schedule and Construction Budget, 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; and
2.6 prepare and submit to the Client an estimate of probable Construction Cost based on current area or volume unit costs.

3.0 Design Development Phase

Based on Client approved schematic design documents and agreed estimate of probable Construction Cost, the Architect shall:

3.1 prepare for the Client’s review and approval, design development documents consisting of drawings and other documents appropriate to the size of the Project, to describe the size and character of the entire Project including the architectural, structural, mechanical, and electrical systems, materials and such other elements as may be appropriate;
3.2 prepare and submit to the Client for approval a revised estimate of probable Construction Cost, and
3.3 continue to review applicable statutes, regulations, codes and by laws as the design of the Project is developed.

4.0 Construction Documents Phase

Based on the Client approved design development documents and agreed estimate of probable Construction Cost, the Architect shall:

4.1 prepare, for the Client’s review and approval, Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project
4.2 advise the Client of any adjustments to the estimate of probable Construction Cost, including adjustments indicated by changes in requirements and general market conditions;

4.3 obtain instructions from and advise the Client on the preparation of the necessary bidding information, bidding forms, conditions of the contract and the form of contract between the Client and the contractor; and

4.4 review 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 Client may apply for and obtain the consents, approvals, licences and permits necessary for the Project.

5.0 Bidding or Negotiation Phase

5.1 Following the Client’s approval of the Construction Documents and the latest estimate of probable Construction Cost, the Architect shall assist and advise the Client in obtaining bids or negotiated proposals and in awarding and preparing contracts for construction.

6.0 Construction Phase – Contract Administration

6.1 The extent of the duties, responsibilities and limitations of authority of the Architect as the Client’s representative during construction shall be modified or extended only with the written consent of the Client and the Architect.

6.2 During the construction phase – contract administration, the Architect shall:

   .1 be a representative of the Client;
   .2 advise and consult with the Client;
   .3 have the authority to act on the Client’s behalf to the extent provided in this contract and the construction contract documents;
   .4 have access to the Work at all times wherever it is in preparation or progress;
   .5 forward all instructions from the Client to the contractor;
   .6 carry out the Field Review / General Review of the Work;
   .7 examine, evaluate and report to the Client upon representative samples of the Work;
   .8 keep the Client informed of the progress and quality of the Work, and report to the Client defects and deficiencies in the Work observed during the course of the site reviews;
   .9 determine the amounts owing to the contractor under the construction contract based on the Architect’s observations and evaluation of the contractor’s application(s) for payment;
   .10 issue certificates for payment in the value proportionate to the amount of the construction contract, of Work performed and products delivered to the Place of the Work;
   .11 in the first instance, interpret the requirements of the construction contract documents and make findings as to the performance thereunder by both the Client and contractor;
   .12 render interpretations in written and graphic form as may be required with reasonable promptness on the written request of either the Client or the contractor.
   .13 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 performance of the Work or the interpretation of the construction contract documents;
   .14 render interpretations and findings consistent with the intent of and reasonably inferable from the construction contract documents; showing partiality to neither the Client nor the contractor; but shall not be liable for the result of any interpretation or finding rendered in good faith in such capacity;
   .15 have the authority to reject Work which does not conform to the construction contract documents, and whenever, in the Architect’s opinion, it is necessary or advisable for the implementation of the intent of the construction contract documents, have the authority to require special inspection or testing of Work, whether or not such Work has been fabricated, installed or completed;
   .16 review and take other appropriate action with reasonable promptness upon such contractor’s submittals as shop drawings, product data, and samples, for conformance with the general design concept of the Work as provided in the construction contract documents;
   .17 prepare change orders and change directives for the Client’s approval and signature in accordance with the construction contract documents;
   .18 have the authority to order minor adjustments in the Work which are consistent with the intent of the construction contract documents, when these do not involve an adjustment in the contract price or an extension of the contract time;
furnish supplemental instructions to the contractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Architect and the contractor;

determine the date of Substantial Performance of the Work;

receive from the contractor and forward to the Client for the Client's review the written warranties and related documents;

verify the validity of the contractor's application for final payment and issue a certificate of final payment; and

prior to the end of the period of one year following the date of Substantial Performance of the Work, review any defects or deficiencies which have been reported or observed during that period, and notify the contractor in writing of those items requiring attention by the contractor to complete the Work in accordance with the construction contract.

7.0 Construction Budget and Estimate of Probable Construction Cost

7.1 The Architect shall review and comment on the Client's Construction Budget and shall prepare the estimate of probable Construction Cost as set out in this contract.

Client's Responsibilities

1.0 The Client shall provide:

1.1 full information regarding the requirements for the Project including a program setting forth the Client's Project objectives, constraints, schedules, and criteria, including:

   .1 spatial and functional requirements and relationships,
   .2 flexibility and expandability,
   .3 special equipment and systems, and
   .4 site requirements;

1.2 a Construction Budget for the Project; and

1.3 information, surveys, reports and services as set out below, the accuracy and completeness of which the Architect shall be entitled to rely upon and such contracts for the provision of information, surveys, reports and services, whether arranged by the Client or the Architect, shall be considered direct contracts with Clients unless explicitly provided otherwise:

   .1 surveys describing physical characteristics, legal limitations and utility locations for the Project site, and a written legal description of the site and adjoining properties as necessary showing the following survey and legal information, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; 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 information concerning utility services, both public and private, above and below grade, including invert and depths;
   .2 subsurface investigation and reports which include but are not limited to test borings, test pits, determination of soil bearing values, percolation tests, a list of and evaluations of toxic and hazardous substances and materials present at the Place of the Work, ground corrosion and resistively tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations;
   .3 reports and appropriate professional recommendations of specialist Consultants when required by the Architect;
   .4 air and water pollution tests, tests for toxic and hazardous substances and materials, structural, mechanical, chemical, and other laboratory and environmental tests, inspections, laboratory and field tests and reports as required by the Architect, the Architect's Consultants, the authorities having jurisdiction or the construction contract documents; and
   .5 all legal, accounting and insurance counselling services as may be necessary at any time for the Project, including such 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.
   .6 environmental assessment as required by funding agencies.
It is recorded that:

The City of Peterborough

is added as a NAMED INSURED for CLAIMS made against The City of Peterborough and/or Lundholm Associates Architects by persons or entities who are not NAMED INSUREDs provided that such CLAIMS arise solely out of Lundholm Associates Architects’ performance or non-performance of or failure to perform services in respect of the project known as “Expansion of the Peterborough Centennial Museum & Archives” for which The City of Peterborough is alleged to be wholly or partially responsible.

The rights and obligations conferred upon THE INSURER in the POLICY at Part I, Claim Expense and Part II, item 2, DEFENCE, include the right to direct that all NAMED INSUREDs subject to a CLAIM(s) and seeking coverage under this POLICY be jointly represented by the same lawyer appointed by THE INSURER, provided that should a conflict exist between the interests of Lundholm Associates Architects and those of The City of Peterborough no coverage is provided by the POLICY to The City of Peterborough.

ALL OTHER DEFINITIONS, OBLIGATIONS, PROVISOS, EXCLUSIONS, GENERAL CONDITIONS OF THE POLICY REMAIN UNCHANGED.