

APPENDIX A
SAMPLE FORM OF
ARCHITECTURAL SERVICES AGREEMENT

Architectural Services Agreement

Project: _____

This agreement made as of the _____ day of _____, 20_____.

BETWEEN:

The Manitoba Housing and Renewal Corporation

("Manitoba Housing"),

- And -

(The "Architect")

WHEREAS:

- A. On <Insert date of RFP>, Manitoba Housing issued a Request for Proposals for the services of an Architect to undertake the design and provide construction contract administration services (the "**RFP**") for the <Insert project description>, (the "**Project**").
- B. The Architect submitted a Proposal in response to the RFP on <Insert date of Proposal>, which Proposal has been accepted by Manitoba Housing, (the "**Proposal**").
- C. This agreement sets out the Terms and Conditions under which the Architect will undertake the design and provide contract administration services for the Project for Manitoba Housing.

Manitoba Housing and Architect agree as follows:

1.00 - DEFINITIONS

1.1 The following definitions shall apply to this agreement:

- (a) "**Additional Services**" means those professional services designated as additional services in Schedule "A" to be provided by the Architect, Architect's employees or Sub consultants, and such other professional services as Manitoba Housing and Architect may agree upon in writing.

- (b) **“Architect”** means <Insert name of Architect>.
- (c) **“Basic Services”** means those professional services designated as Basic Services in Schedule “A” to be provided by the Architect, Architect’s employees or Sub-consultants.
- (d) **“Class A Construction Estimate”** means the estimated cost of construction determined by a quantity surveyor or the Construction Manager retained by Manitoba Housing during the Construction Documents Phase based on the Contract Documents and as approved by Manitoba Housing.
- (e) **“Construction Budget”** means Manitoba Housing’s combined estimate of the Construction Cost for the Project, construction contingencies, and GST, being \$<Insert construction budget>.
- (f) **“Construction Contract”** means the contract to be executed between Manitoba Housing and the Contractor, including all the other documents identified in the said contract as the Contract.
- (g) **“Construction Cost”** is the basis on which the Architect’s fee for Basic Services is calculated for the Project, and is determined in accordance with subsection 4.2.
- (h) **“Construction Documents”** means the 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.
- (i) **“Construction Manager”** means the person, firm or corporation, if any, contracting with Manitoba Housing to provide construction management services.
- (j) **“Consultant”** means a Sub-consultant or Manitoba Housing’s Consultant, and **“Consultants”** means, collectively, any two or more Sub-consultants or Manitoba Housing’s Consultants.
- (k) **“Consultant Coordination”** consists of:
 - (i) Managing the communications between Consultants and with Manitoba Housing, and
 - (ii) Providing direction as necessary to give effect to any design decisions taken, and
 - (iii) Reviewing the product of the Work to assist in identifying conflicts and to monitor compliance with directions.
- (l) **“Contract Price”** means the total amount payable by Manitoba Housing to the Contractor under the Construction Contract.
- (m) **“Contractor”** means the entity or entities contracting with Manitoba Housing to provide labour, materials and equipment in execution of the Work.

- (n) **“Direct Personnel Expense”** means the salary of the Architect’s, Architect’s employees or the Architect’s Sub-consultants, or personnel engaged on the Project and all overtime charges authorized in advance by Manitoba Housing, 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.
- (o) **“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, and so report, in writing, to Manitoba Housing, Contractor and chief building official.
- (p) **“Manitoba Housing’s Consultant”** means a consultant, other than the Architect, engaged by Manitoba Housing to provide services relating to the Project.
- (q) **“Instruments of Service”** means the design, drawings, specifications and reports prepared by or on behalf of the Architect or Consultants, including but not limited to plans, sketches, drawings, graphic representations and specifications, computer-generated designs and materials.
- (r) **“Place of the Work”** means the designated site or location of the Work identified in the Construction Contract.
- (s) **“Project”** as described in this agreement means the project described in paragraph A of the preamble to this agreement, of which the Work may be the whole or a part.
- (t) **“Project Budget”** means Manitoba Housing’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 Manitoba Housing for the Project.
- (u) **“Reimbursable Expenses”** include the following actual expenditures, supported upon request by receipts or invoices, incurred by the Architect, the Architect’s employees and Sub consultants in the course of providing the Basic Services and Additional Services:
 - (i) Transportation in connection with the Project in accordance with subsection 4.6;
 - (ii) Communication and shipping, e.g. for long distance telephone calls and facsimile messages, courier service, postage and electronic conveyances;
 - (iii) Reproduction of Instruments of Service, photographs, and other documents, including plotting of computer-generated drawings;
 - (iv) Renderings, models, and mock-ups and web-based Project management services, specifically requested by Manitoba Housing; and
 - (v) Fees, levies, duties or taxes for permits, licences or approvals from authorities having jurisdiction.

- (v) **“Substantial Performance of the Work”** is as defined in The Builders’ Liens Act, C.C.S.M. c.B91.
- (w) **“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 or municipal laws, statutes or regulations.
- (x) **“Work”** means the total construction and related services required by the Construction Contract.

2.00 - SCHEDULES

- 2.1 The following Schedules which are attached hereto or incorporated by reference form part of this agreement:
 - (a) Schedule “A” – Description of Services;
 - (b) Schedule “B” – Request for Proposals (incorporated by reference); and
 - (c) Schedule “C” – Proposal (incorporated by reference).
- 2.2 In the event of any conflicts or inconsistencies, the main body of this agreement, Schedules “A”, “B” and “C” will govern in that order.

3.00 - ARCHITECT SERVICES

- 3.1 The Architect shall provide the Basic Services and Additional Services specified to be provided by the Architect in Schedule “A” and such other Additional Services as may be agreed in writing by Manitoba Housing and the Architect.
- 3.2 The Architect shall maintain records of Reimbursable Expenses. These records shall be maintained to acceptable accounting standards and made available to Manitoba Housing for viewing at mutually convenient times. If Manitoba Housing requires copies of any such records, the Architect agrees to promptly provide them to Manitoba Housing.
- 3.3 The Architect agrees:
 - (a) That the Basic Services and Additional Services shall be provided by the Architect’s personnel and the Sub-consultants identified in its Proposal, unless Manitoba Housing agrees otherwise in writing;
 - (b) That the person or persons designated under paragraph 3.3(a) shall devote the time, attention, abilities and expertise necessary to properly perform the Architect’s obligations under this agreement;
 - (c) To perform all obligations and provide the Basic Services and Additional Services in a professional manner satisfactory to Manitoba Housing; and
 - (d) To comply with all reasonable directions and requests of Manitoba Housing.

- 3.4 The Architect shall engage the Sub consultants for the Project identified in its Proposal under Terms and Conditions of agreements that are compatible with this agreement. The Architect shall coordinate the services of such consultants with Manitoba Housing's Consultants, if any are required, and all others consultants, as required.
- 3.5 If prior approval has been obtained from Manitoba Housing, the Architect may retain one or more Sub consultants to perform any portion of portions of the services to be provided by the Architect under this agreement provided that the Architect shall be and will remain fully responsible for the due performance of those services. Any errors or omissions by a Sub consultant shall be deemed to be the errors or omissions of the Architect. The fees payable to the Sub consultants for their services are within the Basic Services fee payable to the Architect as set out in paragraph 4.1(a). The services of the Sub consultants are not Additional Services.
- 3.6 Without limiting the generality of subsection 3.4, the Architect shall ensure that all requirements, Terms and Conditions of this agreement shall be binding upon each of its Sub consultants, to the extent applicable to the part of the services performed by the Sub consultant. In the event of any conflict between terms of this agreement and terms of an agreement between the Architect and a Sub consultant of the Architect, the terms of this agreement shall govern.
- 3.7 If Manitoba Housing is dissatisfied with the performance of any personnel assigned by the Architect to the Project, Manitoba Housing shall have the right to request that the individual be replaced with an individual acceptable to Manitoba Housing. Manitoba Housing shall further be entitled to receive notice and must approve any purported replacement by the Architect of key personnel assigned to the Project.
- 3.8 Should the Architect become aware of any Toxic or Hazardous Substances or Materials not previously identified to the Architect in reports commissioned by Manitoba Housing, the Architect shall immediately report the discovery to Manitoba Housing in writing with as much particularity as is practicable in the circumstances.
- 3.9 The Architect shall discharge the Architect's lawful obligations to its Sub consultants and shall satisfy any claims against the Architect or Manitoba Housing or the Government of Manitoba by its Sub consultants.

4.00 - ARCHITECT FEE, INVOICES AND REIMBURSEABLE EXPENSES

4.1 The Architect's fee for the services as outlined in this agreement, including Schedule "A", shall be computed as follows:

(a) Basic Services

The fee for the Basic Services in Schedule "A" shall be _____% of the Construction Cost for the Work and shall be apportioned as follows:

(i)	Phase I %	
(ii)	Phase II	%
(iii)	Phase III	%
	Total:	100%

(b) Additional Services

The fee for Additional Services described in Schedule “A” if provided by the Architect’s principals or Sub-consultants’ principals shall be the hourly rate of \$_____ an hour.

The fee for Additional Services described in Schedule “A” if provided by the Architect’s employees or Sub-consultants’ employees shall be the hourly rate of \$_____ an hour.

4.2 For the purposes of subsection 4.1, where the Architect’s fee for Basic Services is based on a percentage of the Construction Cost, Construction Cost shall be calculated as follows:

- (a) Where a Class A Construction Estimate has been determined, Construction Cost is calculated using the Class A Construction Cost Estimate, and then adjusting that amount to conform to the provisions that follow.
- (b) Where Manitoba Housing has chosen not to have a Class A Construction Cost Estimate prepared, the Construction Cost shall be calculated using the amount of the Tender bids approved by Manitoba Housing, and then adjusting that amount to conform to the provisions that follow. Where the services are being provided at a time when no Class A Construction Cost Estimate has been determined and no Tender pricing has been received, Construction Cost for the Project is calculated using the Construction Budget, or the latest estimate of probable Construction Cost prepared by the Architect as approved by Manitoba Housing, and then adjusting that amount to conform with the provisions that follow.
- (c) If the costs of the building permit are not included, such amounts shall be added.
- (d) If the costs of performance, labour and materials and bid bonding are not included, the costs of such bonding (assuming that the amount of the performance and the labour and material bonds are 50% of the Construction Cost and the bid bond is 10% of the bid price) shall be added.
- (e) Only that portion of any goods and services tax or provincial sales tax for which Manitoba Housing is not entitled to a refund shall be included.
- (f) Only that portion of any cash allowances or contingency amounts which have been used shall be included.
- (g) Only the cost of change orders which increase the Contract Price and Manitoba Housing and the Architect agree are required for reasons that the Architect could not have foreseen or prevented through due diligence at the time of design shall be included.
- (h) If the amount of the Tender bids approved by Manitoba Housing exceeds the Class A Construction Estimate by more than 10%, then that portion of the amount that is in excess of 10% over the Class A Construction Estimate shall be added. If the amount of the Tender bids approved by Manitoba Housing exceeds the Class A Construction Estimate by 10% or less, then no amount shall be added. Where no Class A Construction Estimate exists, this provision does not apply.

- (i) Construction Cost excludes the following:
 - (i) The cost of any change in the Work required as a result of an avoidable error or omission by the Architect,
 - (ii) The compensation of the Architect or Consultants,
 - (iii) Other professional fees which are the responsibility of Manitoba Housing including those paid to act as the Construction Manager for the Project,
 - (iv) Contractor fees or other fees for the coordination and procurement of construction services,
 - (v) The land cost and land development charges, and
 - (vi) The cost of any construction-related insurance purchased by Manitoba Housing.
 - (j) In the event that Manitoba Housing furnishes labour or material below market cost, or recycled materials are used, the Construction Cost for purposes of establishing the Architect's 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.
- 4.3 The Architect's fee calculated under subsection 4.1 is fixed and will not increase, except in accordance with subsections 4.2 and 4.4.
- 4.4 Fees for Additional Services not described in Schedule "A", if any, shall be as agreed between the Architect and Manitoba Housing prior to the commencement of the Additional Services. If the scope of the Project or of the Architect's services is changed in accordance with subsection 6.6, the Architect's fees shall be equitably adjusted.
- 4.5 Manitoba Housing shall pay the Architect for all Reimbursable Expenses up to a maximum amount of \$ _____.
- 4.6 The rate for calculating automobile travel costs shall be \$.50 per kilometre (outside Winnipeg only) on a per vehicle basis, not per individual Architect or Architect employee or Sub-consultant basis. For clarity, automobile travel costs within Winnipeg shall not be Reimbursable Expense.
- 4.7 Any expenses not falling within the definition of Reimbursable Expenses must be approved by Manitoba Housing prior to any expenditure by the Architect. Without limiting the foregoing, Manitoba Housing must approve meals and lodging incurred by the Architect, the Architect's employees and Sub consultants in the course of providing the Basic Services and Additional Services prior to any expenditure by the Architect.
- 4.8 Fees will be invoiced by the Architect monthly for the services performed by the Architect during the prior month as the Project progresses. The invoices must set out in detail how the Architect arrived at the amount included within each monthly invoice and the Phase to which the services relate and must be accompanied by supporting documents such as vouchers, statements and receipts to support the Architect's invoice. In addition, invoices must specify who performed the services, including whether one of the Architect's principals or employees or Sub-consultants performed the services.

- 4.9 Manitoba Housing shall pay the Architect within sixty (60) days after submittal to Manitoba Housing of invoices on account of the Architect's fee and Reimbursable Expenses.
- 4.10 No deductions shall be made by Manitoba Housing 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.
- 4.11 Variance from the Construction Budget established under this agreement shall not constitute grounds for Manitoba Housing to withhold fees due to the Architect.
- 4.12 In the event that new or additional taxes in respect of the services included in this agreement are required by federal, provincial, regional or municipal legislation after the agreement is executed, the amount under this agreement shall be adjusted to include such taxes.

5.00 - MANITOBA HOUSING'S RESPONSIBILITIES

- 5.1 Manitoba Housing shall provide all information as outlined in Schedule "A". The Architect shall be entitled to rely upon such information. Contracts for the provision of information, whether arranged by Manitoba Housing or the Architect, shall be considered direct contracts with Manitoba Housing unless explicitly provided otherwise.
- 5.2 Manitoba Housing shall:
- (a) Authorize in writing a person to act on Manitoba Housing's behalf and define that person's scope of authority with respect to the Project when Manitoba Housing deems it necessary;
 - (b) Review documents submitted by the Architect and give the Architect decisions for the orderly progress of the Architect's services;
 - (c) Authorize in writing a person to act on Manitoba Housing's behalf to obtain the building permit and all other permits and development costs;
 - (d) Immediately notify the Architect in writing if Manitoba Housing observes or otherwise becomes aware of any fault or defect in the Project or any nonconformity with the requirements of the Construction Contract;
 - (e) Engage Manitoba Housing's Consultants, if any, under Terms and Conditions of agreements that are compatible with this agreement;
 - (f) Ensure that all Manitoba Housing's Consultants under their contracts are required to, and do, carry professional liability insurance coverage.
- 5.3 Manitoba Housing agrees that, should the Construction Contract or subsequent agreement include provision that any dispute between Manitoba Housing and the Contractor may be finally resolved by arbitration, then:
- (a) Manitoba Housing shall:
 - (i) Notify the Architect in writing ten (10) working days in advance of any arbitration and of any matters in dispute and the extent to which they affect the Architect; and

- (ii) If Manitoba Housing has a claim against the Architect that arises from the dispute, bring that claim against the Architect at the time of the arbitration.
- (b) Manitoba Housing shall ensure that the Construction Contract or subsequent agreement between Manitoba Housing and the Contractor provide that upon receipt of notice in paragraph 5.3(a) above, the Architect shall have the option to participate in the arbitration as a full party.
- (c) Manitoba Housing shall, in the event that paragraph 5.3(a) and 5.3(b) above are not complied with, not pursue any claim against the Architect arising from matters resolved by the arbitration.

6.00 - CONSTRUCTION BUDGET AND CONSTRUCTION COSTS

- 6.1 Neither the Architect nor Manitoba Housing has control over other professional fees, land development or other costs related to the entire endeavour of Manitoba Housing, therefore the Architect cannot and does not warrant or represent that Project costs will not vary from the Project Budget; however the Architect shall nevertheless at all times use its best efforts to meet Manitoba Housing's budget objectives.
- 6.2 Neither the Architect nor Manitoba Housing 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; however the Architect shall nevertheless at all times use its best efforts to meet Manitoba Housing's budget objectives.
- 6.3 If the construction procurement phase has not commenced within three months after the Architect submits the Construction Documents to Manitoba Housing, 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 Manitoba Housing and the date on which bids or proposals are sought.
- 6.4 If the lowest compliant bid or lowest negotiated proposal exceeds the latest agreed statement of probable Construction Cost by more than 15%, Manitoba Housing shall provide:
 - (a) Written approval of an increase in the estimate of probable Construction Cost, or
 - (b) Authorization for re-bidding or re-negotiating of the proposal, or
 - (c) Co-operate with the Architect in revising the Project scope or quality as necessary to reduce the Construction Cost, or
 - (d) Terminate this agreement in accordance with subsections 11.5 to 11.7.

- 6.5 If Manitoba Housing proceeds under paragraph 6.4(c), unless the excess is due to extraordinary market conditions which were not reasonably foreseeable, the Architect at no additional fee shall 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. Such modification of the Construction Documents to that extent shall be the limit of the Architect's responsibility under paragraph 6.4(c), and having done so, the Architect shall be entitled to compensation in accordance with this agreement, for all other such services performed, whether or not the construction phase has commenced.
- 6.6 Modifications, additions or deletions to the Basic Services or Additional Services may be requested by the Architect or Manitoba Housing from time to time throughout the term of this agreement.
- (a) If Manitoba Housing proposes a change to the Architect's services, Manitoba Housing will provide notice of such proposal to the Architect. Once the change (whether as to the Basic Services or Additional Services) has been agreed to by the Architect and Manitoba Housing, the Architect shall set out the change in a Change Request Document in the form provided by Manitoba Housing. Such Change Request Document shall include details and supporting information with respect to a description of the Basic Services or Additional Services to be deleted or modified or the Additional Services to be added, and the impact of the work, services, disbursements and expenses involved in the change. The completed Change Request Document shall constitute an offer by the Architect to provide the Basic Services or Additional Services as amended by the Change Request Document at the cost stated therein, or to delete the Basic Services or Additional Services or part thereof from Schedule "A", with a corresponding price reduction to Manitoba Housing stated in the Change Request Document. To be accepted, the offer contained in the Change Request Document must be approved in writing by Manitoba Housing. Any offers made by the Architect in accordance with this paragraph 6.6(a) shall be considered rejected by Manitoba Housing if it is not approved in writing within ten (10) days of receipt of the offer.
- (b) If the Architect requests a change to the Architect services to be provided under this agreement, the Architect shall initiate the request through a Change Request Document. Paragraph 6.6(a) applies to a request initiated by the Architect through a Change Request Document, with any necessary modifications.
- 6.7 Any work performed by the Architect outside the scope of Schedule "A" or outside the scope of the Basic Services and Additional Services as amended within an approved Change Request Document shall be deemed to be gratuitous on the Architect's part, and Manitoba Housing and Government of Manitoba have no liability with respect to such work.

7.00 - CERTIFICATE FOR PAYMENT

- 7.1 The issuance of a certificate for payment shall constitute a representation by the Architect to Manitoba Housing, 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; and that the Contractor is entitled to payment in the amount certified. Such certification is subject to:
- (a) Review and evaluation of the Work as it progresses for general conformity as provided in the services outlined in Schedule "A";

- (b) The results of any subsequent tests required by or performed under the Contract;
- (c) Minor deviations from the Contract being corrected prior to completion; and
- (d) Any specific qualifications stated in the certificate for payment.

7.2 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 and Health Act, C.C.S.M. W210 or The Workers Compensation Act, C.C.S.M. W200, or other applicable statute, noncompliance with which may render Manitoba Housing personally liable for the Contractor's default.

8.00 - COPYRIGHT AND USE OF DOCUMENTS

8.1 All information, documents and materials, including (without limitation) all architectural work and those Instruments of Services that are required deliverables under this agreement, and any other materials discovered or produced by the Architect, its Sub-consultants and any officers, employees, agents of the Architect or its Sub-consultants, in the performance of this agreement, and all copyright, patent and trademark rights therein, shall be the exclusive property of Manitoba Housing, and shall be delivered without cost to Manitoba Housing upon request.

8.2 The Architect waives, and shall ensure that the Architect's employees, Sub consultants and Sub consultant's employees waive, in favour of Manitoba Housing, all moral rights pursuant to the Copyright Act (Canada) in respect of all information, documents and materials described in subsection 8.1 including the architectural work and those Instruments of Service that are required deliverables under this agreement.

8.3 Deliverables required by this agreement, in both hard copy and electronic form, and including any architectural renderings, become the property of Manitoba Housing upon the earliest of their delivery to Manitoba Housing or termination of the agreement.

8.4 While this agreement is in effect, and at all times thereafter, the Architect, its Sub-consultants and any officers, employees, agents of the Architect or its Sub-consultants, shall not use, publish or disclose any information, documents and materials, including (without limitation) all data, research, reports, drawings, photographs, design, specifications and other materials discovered or produced by the Architect in the performance of, or incidental to the performance of, this agreement without first obtaining written permission from Manitoba Housing.

8.5 Any equipment, materials, and supplies provided by Manitoba Housing to the Architect for use in the performance of this agreement shall remain the property of Manitoba Housing and shall be returned without cost to Manitoba Housing upon request.

9.00 - USE OF MANITOBA HOUSING'S PREMISES

9.1 When using the premises of Manitoba Housing, the Architect, its Sub-consultants and any officers, employees, agents of the Architect or its Sub-consultants shall comply with all security regulations in effect from time to time.

- 9.2 Where the services are delivered in an occupied Manitoba Housing project or an occupied unit within a housing project, the Architect, its Sub-consultants and any officers, employees, agents of the Architect or its Sub-consultants, will respect the rights of the tenants so living there and will conduct themselves in a professional and respectful manner.
- 9.3 Manitoba Housing may require the Architect, its Sub-consultants, or any officers, employees, agents of the Architect or its Sub-consultants to undergo security screening prior to the delivery of services at specified Manitoba Housing premises. If Manitoba Housing advises the Architect that security screening is required, the Architect will provide, or will request its Sub-consultants or any officers, employees, agents of the Architect or its Sub-consultants to provide, such consents or other documents required by Manitoba Housing to carry out the security screening.

10.00 - LIABILITY AND INSURANCE

Liability of the Architect

- 10.1 The Architect shall use due care in the performance of the obligations under this agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

Liability of Manitoba Housing

- 10.2 Manitoba Housing shall not be liable for any injury to the Architect or to its Sub-consultants, or to any officers, employees or agents of the Architect or its Sub-consultants, or for any damage or loss of property of the Architect or of its Sub-consultants, or of any officers, employees or agents of the Architect or its Sub-consultants, caused by or in any way related to the performance of this agreement.
- 10.3 Subsection 10.2 does not apply if the injury, damage or loss was caused by the wrongful or negligent act of an officer or employee of Manitoba Housing while acting within the scope of his or her employment.

Insurance

- 10.4 The Architect shall ensure during the entire term of this agreement, that it obtains and maintains professional liability insurance against claims for personal and bodily injury, death or damage to property arising out of faulty design, maps, plans and specifications, or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the Architect, and provide, at minimum, limits of liability of Two Million (\$2,000,000.00) Dollars per occurrence or claim made, in a form satisfactory to Manitoba Housing. In addition, the Architect shall ensure in its contracts with its Sub-consultants that its Sub-consultants will obtain and maintain professional liability insurance at minimum limits that are satisfactory to Manitoba Housing.
- 10.5 Without limiting or restricting the generality of subsection 10.4, such insurance shall be maintained for twenty-four (24) months following completion of the Project if written on claims made basis, and shall contain clause(s) which state that the insurers will not cancel, materially alter or cause the policy to lapse without giving thirty (30) days prior notice in writing to Manitoba Housing.

- 10.6 The Architect shall submit a certificate of insurance to Manitoba Housing as written evidence of the above professional liability insurance coverage before commencing services under this agreement and thereafter on the anniversary of the policy renewal date.
- 10.7 The Architect shall not do or omit to do or suffer anything to be done or omitted to be done which will in any way impair or invalidate such policy or policies.
- 10.8 Without restricting any obligations or liabilities under this agreement, the Architect shall, at its own expense, provide and maintain the following minimum insurance coverage, placed with insurers that comply with The Insurance Act (Manitoba):
- (a) Public liability and property damage insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Contractor under this Agreement, or of any of the acts or omissions of the Contractor or of its officers, employees, Subcontractors or agents. Such insurance shall provide coverage of not less than \$2,000,000. (Two Million Dollars) per occurrence. Public liability and property damage insurance must include cross-liability and name Manitoba Housing, its officers, employees and agents as Additional Insured with respect to all operations performed under the contract.
 - (b) Errors and omissions insurance covering claims for personal and bodily injury, death or damage to property arising out of faulty design, maps, plans and specifications or any other error, omission, mistake of a professional or technical nature committed or alleged to have been committed by or on behalf of the Contractor, or its officers, employees, Subcontractors or agents. Such insurance shall provide coverage of not less than \$2,000,000 (Two Million Dollars) per claim.
 - (c) Automobile public liability and property damage liability insurance on all licensed vehicles owned or operated by the Contractor, or of any officers, employees, Subcontractors or agents of the Contractor, with minimum limits of liability of \$2,000,000. (Two Million Dollars) per vehicle.

11.00 - SUSPENSION AND TERMINATION

Suspension

- 11.1 Manitoba Housing may suspend the Architect's services on the Project with fourteen (14) days written notice to the Architect. Upon notice to suspend, the Architect will immediately stop any further work on the Project.
- 11.2 The Architect may suspend services on the Project with fourteen (14) days written notice to Manitoba Housing if construction of the Work proceeds in the absence of a building permit or without an acceptable form of permission from the authority having jurisdiction, or, if the Architect becomes aware of an action taken by Manitoba Housing which violates applicable building codes and regulations. Manitoba Housing shall not have any claim against the Architect for any loss, cost, damage or expense incurred or anticipated to be incurred by Manitoba Housing as a result of the suspended services.
- 11.3 Where the Architect suspends services on the Project pursuant to subsection 11.2, the Architect shall not be liable for delay or damage occurring as a result of the suspension. Upon suspension, the Architect shall be paid for all services performed, together with Reimbursable Expenses then due up to the date of commencement of the suspension.

The services of the Architect shall resume upon Manitoba Housing ensuring that the deficiency which resulted in the suspension has been corrected.

- 11.4 If the Architect's services are suspended by Manitoba Housing for more than sixty (60) consecutive days, the Architect shall be paid for all services performed, together with Reimbursable Expenses then due up to the date of commencement of the suspension.

Termination

- 11.5 Manitoba Housing may terminate this agreement at any time by giving seven (7) days notice in writing to the Architect.

- 11.6 In addition to its rights under subsection 11.5, and without restricting any other remedies available, Manitoba Housing may, at its sole option, immediately terminate this agreement in writing if:

- (a) In the opinion of Manitoba Housing, the services provided by the Architect are unsatisfactory, inadequate, or are improperly performed; or
- (b) In the opinion of Manitoba Housing, the Architect has failed to comply with any term or condition of this agreement; or
- (c) The Architect is adjudged bankrupt or files for bankruptcy, becomes insolvent, makes a general assignment for the benefit of its creditors, or has a receiver or liquidator appointed in respect of its assets; or
- (d) The Architect fails to comply with any Acts or regulations or municipal by-laws relating to the Project or services provided by the Architect under this agreement.

- 11.7 In the event of termination of this agreement, the Architect shall cease to perform any further work, and shall deliver to Manitoba Housing any finished work which has not been delivered and accepted prior to termination, together with any materials and work in progress relating to this agreement. Manitoba Housing shall be under no obligation to the Architect other than to pay, upon receipt of an invoice and supporting documentation satisfactory to Manitoba Housing,

- (a) Such compensation as the Architect may be entitled to receive under this agreement for work completed to the satisfaction of Manitoba Housing up to the date of termination; and
- (b) If the termination is under subsection 11.5, termination expenses directly attributable to termination for which the Architect is not otherwise compensated.

12.00 - DISPUTE RESOLUTION

- 12.1 Differences between Manitoba Housing and the Architect as to the interpretation, application or administration of this agreement or any failure to agree where agreement between Manitoba Housing and the Architect is called for ("disputes"), shall be settled in accordance with subsections 12.2, 12.3 and 12.4.

- 12.2 If Manitoba Housing and the Architect so agree, the dispute may be submitted to arbitration in accordance with The Arbitration Act, C.C.S.M. c. A120 (Manitoba).

- 12.3 Manitoba Housing and the Architect may jointly appoint a single arbitrator, or if they fail to agree on an arbitrator, shall appoint one person to an arbitral tribunal. These persons shall together appoint a chairman; the three persons so selected shall constitute the arbitral tribunal.
- 12.4 If Manitoba Housing and the Architect do not agree on arbitration, then either party may submit the dispute to such judicial tribunal as the circumstances may require.

13.00 - CONFIDENTIAL INFORMATION

- 13.1 While this agreement is in effect, and at all times thereafter, the Architect and its Sub consultants, and all officers, employees and agents of the Architect and its Sub consultants:
- (a) Shall treat as confidential all information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, plans, photographs and other materials, acquired or to which access has been given in the course of, or incidental to, the performance of this agreement;
 - (b) Shall not, without first obtaining written permission from Manitoba Housing,
 - (i) Use, or permit use of, the information, documents and materials described in paragraph 13.1(a) except for the proper performance of the Architect's obligations under this agreement, or
 - (ii) Disclose, or permit disclosure of, the information, documents and materials described in paragraph 13.1(a) to any person, corporation or organization; and
 - (c) Shall comply with any rules or directions made or given by Manitoba Housing with respect to safeguarding or ensuring the confidentiality of the information, documents and materials described in paragraph 13.1(a).

14.00 - INDEPENDENT CONTRACTOR

- 14.1 The Architect is an independent contractor, and this agreement does not create the relationship of employer and employee, or of principal and agent, between Manitoba Housing and the Architect or Manitoba Housing and a Sub consultant, or between Manitoba Housing and any officers, employees or agents of the Architect or of a Sub consultant.
- 14.2 The Architect is responsible for any deductions or remittances which may be required by law.
- 14.3 In the event it is determined that the Architect is not an independent contractor and that this agreement creates the relationship of employer and employee between Manitoba Housing and the Architect, the Architect agrees to be solely responsible and to save harmless and indemnify Manitoba Housing, its officers, employees and agents from and against all claims, liabilities, orders, costs and demands resulting from such a determination, to the extent that such an indemnity is not prohibited by law. Should such a determination be made, the Architect agrees that the amount Manitoba has paid to the Architect under this agreement shall constitute an all-inclusive payment of the Architect's wages, vacation pay, overtime pay, benefits or other remuneration whatsoever, regardless of the day of the week on which the services were performed or the number of hours worked in a day or week.

- 14.4 The Architect shall not incur any expenses or debts on behalf of, nor make any commitments for, Manitoba Housing without first obtaining written permission from Manitoba Housing.

15.00 - REPRESENTATIONS AND WARRANTIES

- 15.1 The Architect represents and warrants to Manitoba Housing that:
- (a) The Architect is duly registered and entitled to perform architectural services within the Province of Manitoba;
 - (b) The Architect is competent and shall perform the services under this agreement in accordance with the standard reasonably to be expected in Manitoba of a professional architect entitled to perform the scope of services contemplated by this agreement, and the Architect has the necessary skills, expertise and experience to perform the services in accordance with the provisions of this agreement;
 - (c) The services provided with respect to specifying equipment, systems, devices or products that accept date or time input or provide date or time output or perform calculations on dates or portions of dates or times (the "Date-influenced Products"), shall require that such Date-influenced Products be able to accurately, unambiguously and consistently manage, process and store date and time information without interruption, loss of performance or functionality or degradation in quality, and without requiring a change in operations; and
 - (d) The Architect understands Manitoba Housing's requirements under this agreement and will be able to satisfy these requirements.

16.00 - RESTRICTION ON ADVERTISING

- 16.1 The Architect agrees that it shall not refer to, or permit any references to the services or the agreement in any advertising or promotional material except with the prior written authorization of Manitoba Housing.

17.00 - MANITOBA HOUSING'S RIGHT OF REVIEW

- 17.1 The Architect shall permit Manitoba Housing to review, comment upon, and critique the Architect's deliverables.
- 17.2 If Manitoba Housing directs the Architect to change a deliverable, the Architect shall promptly make the change, unless in the Architect's opinion, the change will compromise the Architect's legal or ethical obligations, in which case the Architect shall notify Manitoba Housing accordingly, in writing.
- 17.3 If Manitoba Housing directs the Architect to change a deliverable and the change is contrary to the Architect's best professional judgment, the Architect may notify Manitoba Housing accordingly, in writing, and thereby be relieved of any responsibility for the change.
- 17.4 Changes directed by Manitoba Housing under the provisions of this section 17.00 are not Additional Services.
- 17.5 Manitoba Housing may, at the completion of this agreement, review and evaluate the Architect's performance of the services and review the results of the evaluation with the Architect.

18.00 - ERRORS AND OMISSIONS

- 18.1 If there is an error or omission in the Architect's services, the Architect shall perform any remedial services requested by Manitoba Housing as a result of that error or omission. These remedial services are not Additional Services.

19.00 - HOLD HARMLESS

- 19.1 The Architect shall indemnify and hold harmless Manitoba Housing and Government of Manitoba from all third party claims, demands, actions or costs (including legal costs on a solicitor basis) for which the Architect is legally responsible, including those arising out of negligence or willful acts by the Architect or the Architect's employees or agents. This hold harmless provision survives this agreement.
- 19.2 Manitoba Housing shall indemnify and hold harmless the Architect from all third party claims, demands, actions or costs (including legal costs on a solicitor basis) for which Manitoba Housing is legally responsible, including those arising out of negligence or willful acts by Manitoba Housing or Manitoba Housing's employees or agents. This hold harmless provision survives this Agreement.

20.00 - SUSTAINABLE DESIGN SERVICES

- 20.1 The Architect acknowledges that the Government of Manitoba has established a "Green Building Policy for Government of Manitoba Funded projects. The Policy applies to all new buildings with a building area of 6,458 sq. ft. or more. Whether the Project is larger or smaller than this size, the Project will follow the requirements of the Green Buildings policy.
- 20.2 The services provided by the Architect under this section 20.00 are included within the Architect's fee for Basic Services and are not Additional Services.

21.00 - NOTICES

- 21.1 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 five (5) working days from the date of mailing. Notices sent electronically, by email or facsimile, for example, are not considered to be reliable for the purpose of official notice. The addresses of the parties for notice are as follows:

Manitoba Housing:

<Insert address>

Architect:

<Insert address>

22.00 - GENERAL

- 22.1 This agreement shall be governed by the law of the Province of Manitoba.

- 22.2 Manitoba Housing and the Architect respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. Except as otherwise provided herein, neither Manitoba Housing nor the Architect shall assign, sublet, or transfer an interest in this agreement without the written consent of the other.
- 22.3 This agreement represents the entire agreement between Manitoba Housing and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only in writing signed by both Manitoba Housing and the Architect.
- 22.4 If any provision of this agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this agreement and the other provisions shall remain in full force and effect.

SAMPLE



This agreement is signed on the day and year written above.

Signed in the presence of:

The Manitoba Housing and Renewal Corporation

Witness

(Signature)

Name and Title of Person Signing

Witness

(Signature)

Name and Title of Person Signing

Date: _____

Signed in the presence of:

<Insert name of Architect>

Witness

(Signature)

Name and Title of Person Signing

Witness

(Signature)

Name and Title of Person Signing

Date: _____