



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

Number 140-78

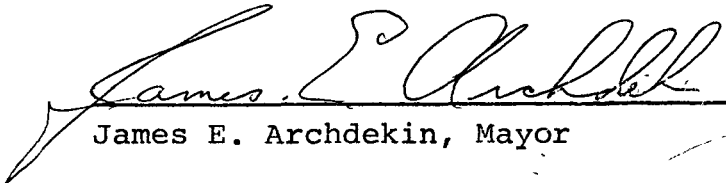
A By-law to authorize the execution of a Contract for consultant services between The Corporation of The City of Brampton and Nicholas C. Gere, Architect. (Chinguacousy Park Tennis Club House)


WHEREAS it is deemed expedient to enter into and execute a Contract with Nicholas C. Gere, Architect;

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS as follows:

1. That the City of Brampton enter into and execute a Contract with Nicholas C. Gere, Architect attached hereto as Schedule "A".
2. That the Mayor and the Clerk are hereby authorized to affix their signatures to the said Contract attached hereto as Schedule "A", with Nicholas C. Gere, Architect.

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 26th day of June, 1978.

  
James E. Archdekin, Mayor

  
R. David Tufts, Acting Clerk.

# Standard Form of Agreement between Client and Architect



## Ontario Association of Architects

Project Chinguacousy Tennis Club House

Client City of Brampton

Architect Nicholas L. Gere

October 31, 1976

THE STANDARD FORM OF AGREEMENT  
BETWEEN CLIENT AND ARCHITECT

THIS AGREEMENT (in duplicate)

made this 23rd day of June, 1978,

between the CLIENT

City of Brampton

and the ARCHITECT

Nicholas L. Gere

For the following PROJECT

(Include description of Project, location and scope)

Chinguacousy Tennis Club House, an addition to  
the Chinguacousy Curling Club, Chinguacousy Park,  
Brampton.

NOW THEREFORE the Client and the Architect for the considerations hereinafter named agree as follows:

**ARTICLE 1.**

The Architect shall perform, for the above-named project, professional services as hereinafter set forth.

**ARTICLE 2. THE ARCHITECT'S SERVICES**

2.1 **Basic Professional Services.** The Architect's basic professional services which include normal structural, mechanical and electrical engineering services, shall consist of taking the Client's instructions, including a review of the Client's program and budget, preparing the necessary preliminary and final design studies, making estimates; preparing working drawings and specifications, assisting in the drafting of forms of tender, proposals and contracts, including the actual tender call; assisting the client in attaining approvals from the authorities having jurisdiction; advising on tenders and proposals; selecting, assisting and collaborating with consultants engaged by the Client; furnishing to the Contractor necessary copies of the contract drawings and specifications and large-scale detail drawings; processing shop drawings; certifying and passing accounts; issuing Certificates for Payment; and the general administration of the construction contract.

2.2 "As-Built Drawings". The Architect agrees to provide the Contractor(s) at the commencement of the work with two complete sets of Contract Documents so that as construction work progresses, the Contractor(s) can mark thereon any changes, additions or deletions that occur during construction as a result of their work, change orders or for any reason. At the completion of the project, the Architect shall obtain from the Contractor(s) one set of Contract Documents and forward them to the Client. The Architect assumes no responsibility for the accuracy of any changes, additions or deletions recorded thereon by the Contractor(s).

2.3 **Estimates of Cost.** When drawings and specifications have been completed and are ready for tender, the Architect shall make his final estimate of cost. This estimate, when approved and accepted by the Client, shall be known as the 'Final Estimate'. If, when tenders are expeditiously called, the low tender exceeds the Final Estimate by more than 10%, then the Architect agrees, at no charge to the Client, to make changes to the drawings and specifications to reduce the over expenditure to within a suitable level. It is further understood that the fee calculation payable to the Architect shall be based on the final cost of the work, but in any event shall not be less than the tender check estimate of the Architect.

2.4 **Administration of the Contract and Inspection of the Work.** The Architect shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Client and Contractor. The Architect shall make decisions on all claims of the Client or Contractor relating to the execution and progress of the work and on all other matters or questions related thereto.

The Architect's on-site inspection shall consist of periodic attendances at the site by the Architect or his deputies for the purpose of assessing the progress and quality of the work and to determine in general that the work is proceeding in accordance with the Contract Documents. The Architect will identify to the Contractor and the Client all defects and deficiencies observed at the time of such attendances. The Architect shall not be responsible for identifying defects or deficiencies in the work which are not reasonably apparent or visible at the time of such periodic attendances and which result from the Contractor's failure to carry out the construction work in accordance with the Contract Documents.

2.5 ~~Liability. The Architect's responsibility and liability for damages arising by reason of errors or omissions in the drawings, specifications, other Contract Documents and on-site inspection, shall be limited to the sum of \$ . . . . .~~

~~Such responsibility and liability shall be limited to a period of one year following acceptance by the Client of the Architect's final Certificate of Completion, and following such period of one year the Client shall have no claim whatsoever against the Architect with respect thereto. The Architect's liability is limited to direct damages related to the work and excludes any liability whatsoever arising out of the consequential loss.~~

2.6 **Certificates For Payment.** Based on the Architect's observations on the site as noted above, and the Contractor's Application For Payment, he shall determine the amount owing to the Contractor and shall issue Certificates For Payment in such amounts. These Certificates shall constitute a representation to the Client, based on such observations and the data comprising the Application For Payment that the work has progressed to the point indicated. By issuing a Certificate For Payment, the Architect shall also represent to the Client that, to the best of his knowledge, opinion and belief, the quality of the work is in accordance with the Contract Documents. He shall conduct inspections to determine the dates of substantial and final completion, and shall issue a final Certificate For Payment.

The Architect shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum other than to request and receive a Standard Statutory Declaration that all wages and accounts for materials, sub-contractors and suppliers have been paid up to the preceding Progress Certificate and in accordance with the General Conditions of the Contract.

### ARTICLE 3. THE CLIENT'S RESPONSIBILITIES

- 3.1 **Requirements, Surveys, Borings and Tests.** The Client shall furnish the Architect with a definitive statement of his requirements including a complete program and budget, an accurate survey of the building site, including all information and all surveyor's services required for the setting out of the structure, and giving the grades and lines of streets, pavements, adjoining properties, and structures thereon, the rights, restrictions, easements, boundaries and contours of or affecting the building site. He shall provide also, or reimburse the Architect on account of, direct costs for obtaining full information as to sewer, water, gas, electrical and other public utilities' services. The Client shall pay also for borings or test pits and for chemical, mechanical and other tests, including associated interpretation and evaluation which may be required, and for any advertising incidental to obtaining tenders, and for any permits or licences which may be required and for any applicable legal services. The Architect shall not be responsible for costs or damages arising from errors or omissions in any of this information.
- 3.2 **Client's Decisions.** The Client shall give due consideration to all matters relating to the work and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time so as not to delay the work of the Architect nor to prevent him from promptly providing documents or instructions to Contractors.
- 3.3 **Client's Site Representative.** If constant representation of the Client on the job during progress of the work is desired by the Client, a Client's Site Representative, acceptable to both the Client and the Architect, shall be retained. He shall perform under the direction and control of the Client who shall pay his salary and he shall co-ordinate his work with the Architect.
- 3.4 **Access to Site.** The Client shall at all times throughout the progress of construction permit access to the work by the Architect, his deputies or his consultants.

### ARTICLE 4. PROVISIONS AND CONDITIONS.

- 4.1 **Definition of "Cost of the Work".** "Cost of the Work" means the cost to the Client of the work and approved additions thereto including Contractor's or Construction Manager's profits and expenses but not including Architect's and Engineering Consultant's fees, or the fees of other special consultants, or reimbursement of the salary of a Client's Site Representative. "Cost of the Work" also includes all applicable taxes whether recoverable or not and any labour or materials provided directly by the Client. Should labour or material be furnished by the Client below market cost, or should old materials be re-used, cost is to be interpreted as the cost of all materials and labour necessary to complete the work if all materials had been new and if all labour had been paid for at existing market prices when the work was ordered.
- 4.2 **Abandoned, Suspended or Deferred Work.** In the case of abandoned, suspended or deferred work, in all or in part, the Architect shall be entitled to payment forthwith for all services rendered by him up to the date of such abandoned, suspended or deferred work and for all services arising therefrom based upon the lowest bona fide tender or, if no tenders have been received, then upon a reasonable estimated cost.
- 4.3 **Additional Services.**
- 4.3.1 If after a definite scheme has been approved, the Client makes a decision which for its proper execution involves additional services or expenses for changes in or additions to the drawings or specifications or otherwise; or
- 4.3.2 If the Architect is required to perform additional services or pay expenses because of delays during construction or extension of the construction contract or labour disputes or the delinquency or insolvency or death of the Client or Contractor or by litigation or arbitration proceedings, or as the result of damage to the work in progress by fire, lightning or tempest;
- then the Architect shall be paid for such additional services and expenses on a per diem or payroll basis.

- 4.4 **Translations.** Where an Architect is required by the Client to translate drawings and specifications into another language an additional per diem fee shall be paid to the Architect.
- 4.5 **Fees for Consultants (other than Multiple Housing, where Consultants are retained separately).**
- 4.5.1 The cost of structural, mechanical and electrical engineering, which by professional experience and opinion is considered normal to a specific building type, shall be borne by the Architect, other than in the provision of services for work in Category 1 (Multiple Housing). Where structural, mechanical and electrical engineering is in excess of normal, the Architect's fees may be increased by an amount to be agreed upon by the Client and Architect to cover the additional engineering services involved.
- 4.5.2 Where the work is of such a nature as to require the services of specialized consultant(s) the Client, in agreement with the Architect, shall engage and pay for such consulting services. The Architect shall assist and collaborate with the specialized consultant(s). An additional fee shall be paid by the Client to the Architect, which shall be agreed mutually, for the inclusion of the requirements of the specialized consultant(s).
- 4.6 **Construction Emergencies.** While the work is in progress the Architect may on behalf of and as Agent of the Client, give orders and cause to be performed such conservatory or remedial work, or work necessary to life or safety, as in his discretion seems necessary or expedient in the Client's interest in the case of a construction emergency. The cost of such work shall become part of the "Cost of the Work" [Article 4(1)].
- 4.7 **Deductions.** No deductions shall be made from the moneys payable to the Architect because of any penalties, liquidated damages, statutory holdbacks, or other sums withheld from payments to the Contractor or other persons engaged on the work.
- 4.8 **Ownership of Documents.** All drawings, specifications and documents prepared by the Architect are instruments of service for use in carrying out the project and are the property of the Architect. The Architect retains his copyright in these documents which may not be used for any other project without his written consent.

**ARTICLE 5. PROFESSIONAL CHARGES**

5.1 **Fee for Basic Services.** The Client shall pay the Architect for his basic services a fee of

.6.5% of the full contract cost... The basic services of the Architect shall include the fees of structural, mechanical and electrical consultants; specifications; working drawings, tender documents, tender evaluation, periodic inspection of construction and advice on progress payments.

Insert

..... plus such additional amounts as are herein expressly provided for.

5.2 **Fee for Additional Services Over Basic Services.** The following additional services have been authorized by the Client which the Architect agrees to undertake for the additional fee as noted.

(If no additional services are requested insert "not applicable").

Not applicable.

Insert where applicable

Total fee for above-noted additional services . not. applicable.....

5.3 **Changes to the Contract Documents.** Fees based upon time rates shall be charged in addition to the agreed upon percentage fee structure for changes to the Contract Documents. However, where additions to the scope of the work are the major result of the change, the agreed upon percentage fee structure shall apply.

5.4 **Client's Requirements.** If the Architect prepares a program of the Client's requirements, fees based upon time rates shall be charged for this work in addition to the fee for basic services.

5.5 **Public Participation.** If the Architect is required to provide extra services, specifically related to the understanding and approval of public groups or committees, fees based on time rates shall be charged for this work in addition to the fee for basic services.

5.6 **Disbursements.** The Client shall reimburse the Architect for the following disbursements, in addition to other disbursements herein provided for:

5.6.1 The cost of printing or reproduction of documents.

Insert  
Insert

5.6.2 The cost of transportation and living expenses incurred by him or his assistants while travelling in discharge of duties connected with the work beyond .50. . . . miles from the Architect's office, computed on the actual cost of travel by rail or air, and at . . .25. . . .¢ per mile for travel by automobile.

5.6.3 The cost of telegrams and long distance calls made in the interests of the Client.

5.6.4 The cost of all tender and legal advertising and all required statutory inspection fees.

5.6.5 The cost of any other disbursement approved in advance by the Client.

5.7 **Time Rate Charges.** As required by this Agreement per diem time rate charges shall be:

Insert

5.7.1 Principals: Principals of the Architect shall be charged at \$ .38.00 . . . . per hour.

5.7.2 Other personnel shall be charged on the basis of payroll costs plus 150% (to cover overhead and profit). Payroll costs shall include salary, statutory holidays, vacation with pay, unemployment insurance, Workmen's Compensation, Canada Pension Plan, medical plans, plus any other statutory deductions required by law.

## ARTICLE 6. PAYMENT TO THE ARCHITECT

6.1 **Schedule.** The Architect shall have been deemed to have earned on account of his fee and payment shall be made as follows:

6.1.1 Upon completion of the schematic design phase, a sum equal to one sixth (1/6) of his basic fee computed upon a reasonable estimated cost;

6.1.2 Upon completion of design development and sketch drawings, a further sum sufficient to increase payments on the fee to one quarter (1/4) of his basic fee computed upon a reasonable estimated cost;

6.1.3 Upon completion of approximately one half of the working drawings and specifications, a further sum sufficient to increase payments on the fee to one half (1/2) of his basic fee computed upon a reasonable estimated cost.

6.1.4 Upon completion of approximately three-quarters of the working drawings and specifications, a further sum sufficient to increase payments on the fee to five eighths (5/8) of his basic fee computed upon a reasonable estimated cost;

6.1.5 Upon completion of Contract Documents to a point where they might be submitted for tender, a sum sufficient to increase payments on the basic fee to three-quarters (3/4) of the basic fee computed upon a reasonable estimated cost or, if tenders are received, then computed upon the tender or tenders approved by the Client. If no tender has been approved by the Client then the fee shall be computed upon the lowest bona fide tender or tenders received or, if sequential tenders are required, then the aggregate of the accepted or lowest tenders, or as modified by Article 2.3.

6.1.6 From time to time during the execution of the work, having regard to the total services to be rendered by the Architect in connection therewith and the extent to which such services have been rendered, payments shall be made until the aggregate of all payments made on account of the basic fee shall equal the total fee;

6.1.7 Payments on account of the Architect's fee within the limits above-mentioned may be made to the Architect in the course of preparation of preliminary studies or working drawings or specifications, monthly or otherwise, as may be agreed upon between the Architect and the Client.

6.1.8 Payments for additional work over basic services shall become due and payable immediately upon completion of the work, or as otherwise mutually agreed, in writing, between the Architect and the Client.



6.2 **Accounts.** Accounts for payment are due and payable when rendered. Overdue accounts are subject to interest charges at bank rate plus two percent per annum commencing thirty days after the date of invoicing.

#### **ARTICLE 7. GENERAL**

- 7.1 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, and except as hereinafter otherwise provided, their executors, administrators, successors and assigns.
- 7.2 If the Architect Party hereto is an individual and dies or becomes incapacitated before his services hereunder have been completed, this Agreement shall be terminated as of the date of his death or incapacity, and the Client shall pay for the services rendered and disbursements made to the date of termination.
- 7.3 If a Party to this Agreement who is an individual should desire to bring in a partner or partners, or if a Party which is a partnership should desire to bring in a new partner or partners to share the benefit and burden of this Agreement, he or they may do so and he or they shall promptly notify the other Party of such action.
- 7.4 Except as aforesaid neither Party may assign this Agreement without the consent in writing of the other.
- 7.5 This Agreement may be terminated by either party, without penalty, upon seven days' written notice by registered mail, should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

#### **ARTICLE 8. ADDITIONAL TERMS**

The following additional terms are added and shall become a part of this Agreement.

Insert (If no additional terms are added insert "not applicable").

Not applicable.

**ARTICLE 9. ARBITRATION**

9.1 All matters in dispute under this Agreement shall be submitted to arbitration at the request of either party.

9.2 No one shall be nominated or act as arbitrator who is in any way financially interested in the conduct of the work or in the business affairs of either party.

Insert 9.3 The laws of the Province of . . . Ontario . . . shall govern the arbitration.

9.4 The award of the arbitrator or arbitrators shall be final and binding upon the Parties and this covenant to submit to arbitration is to be construed as an integral part of this Agreement between the parties.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

*James E. Archiblin*  
MAYOR

*A. David Sp. ACTING CLERK*

Client

*Nicholas L. Gere*  
Architect

PASSED June 26th 19 78

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# BY-LAW

No. 140-78

A By-law to authorize the execution of a Contract for consultant services between The Corporation of the City of Brampton and Nicholas C. Gere, Architect.

(CHINGUACOUSY PARK TENNIS CLUB HOUSE)