

ATLANTIC PROVINCES ASSOCIATION OF LANDSCAPE ARCHITECTS

CONSULTANT FEE SCHEDULE

FOR LANDSCAPE ARCHITECTURAL CONSULTING FEES

A GUIDELINE

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INTRODUCTION

The purpose of this document is to provide assistance in determining reasonable budgets and fee compensation when engaging consulting services of a Landscape Architect. This is intended to provide Landscape Architects, the public and clients with a comprehensive set of guidelines related to landscape architectural fees.

For the purpose of this document, a Landscape Architect is an individual proprietor or a company registered by the Atlantic Provinces Association of Landscape Architects (APALA).

This guideline is applicable only to members of the Association and describes what the Executive Council of the Association considers to be an equitable basis for establishing an appropriate fee for services related to a specific project.

APALA members are bound by a Code of Ethics to negotiate fees and services that are appropriate to each individual project.

The Guideline is not a legal document and is not intended to replace contractual arrangements that are designed for specific situations. APALA will not be responsible for any damages resulting from Guideline use or non-use on any specific project.

1.0 GENERAL AREAS OF PRACTICE

Landscape Architecture is a broad design profession practiced in both the public and private sectors. Private sector Landscape Architects provide professional advice and services on a fee for service basis. The scope of work is subject to agreement between client and consultant. Members are encouraged to practice within their range of skills, expertise and competency, while conducting themselves in accordance with good professional and best practices. Landscape Architects offer creative advice, creative design solutions and various products in the form of deliverables.

Landscape Architects may provide services in these areas of practice in which they possess competence. These services include but are not limited to:

- Landscape Design
- Land Development Planning
- Landscape Master Planning
- Park and Recreation Planning
- Site Planning
- Urban Design
- Specialty Areas of Practice

2.0 CONSULTANT SELECTION

2.1 Selecting the Consultant

The first step in the process is for a client to prepare a detailed Terms of Reference (ToR) and establish consultant and project budgets. Clients should invite prospective consultants to submit a proposal of services and fees based on the requirements of the Terms of Reference. A call for proposals is not a tender. Therefore, the lowest cost is not the primary criteria for selection of a consultant. Price is only one of the criteria in the evaluation process to determine an award.

Clients should advise the proponents of the evaluation criteria and the scoring to be used to determine the award. Typical criteria include the consultant's understanding of the client's objectives and requirements; proposed approach and methodology; scope of services, work plan and schedule; qualifications, experience and expertise of the team members and the firms; and proposed fees.

2.2 Options for Engagement

Landscape Architects may be retained through one of several procedures.

- Direct appointment or sole-source procurement
- Limited source procurement
- Expression of Interest (EOI), followed by short list and full written proposals
- Prequalifying a short list of consultants
- Request for Quotation (RFQ)
- Request for Proposal (RFP) - two stage or fixed fee
- Municipal or agency consultant roster
- Alternative Financing and Procurement (AFP)
- Design competitions
- Competitor Bid Team (DB, DBF, DBFM)

(DB = Design Build; DBF = Design Build Finance; DBFM = Design Build Finance Maintain)

2.3 Proposal Terms of Reference

When a consultant responds to a proposal they should expect a complete and well prepared Terms of Reference that includes the following:

- Context and background
- Base information and available reports /studies
(Base information to be made available to the consultant upon award)
- Project objectives and scope of work
- Approach and methodology
- Design services required and project deliverables
- Team members experience and qualifications
- Firm experience and qualifications
- Schedule, budget, submission date and other requirements
- Meetings
- Sample Client / consultant agreement
- Proposal evaluation criteria

- Proposal evaluation process and selection timing

The size and scope of a project may simplify the amount of information needed in the terms of reference, however, if any of the above bullets are not included, the consultant should ask for clarification and receive responses. Typically questions and answers are recorded and made available to all participants.

2.4 Proposal Assumptions

If the terms of reference fails to clearly describe the scope of work, the expectations of deliverables, meetings, subconsultants or all other issues that impact the consultants ability to prepare a fair and reasonable fee proposal, the proposal should include a detailed list of assumptions that specifies exactly what is and is not included in the fee. While the list of assumptions will vary with the type and complexity of the assignment, the following short list includes examples of assumptions that are commonly used in the current market place.

- Base data shall be provided by the project engineers, surveyors, planners, architects and/or others, as applicable, in a digital format (typically CAD) suitable for the design requirements at no cost to the Landscape Architect.
- Specify the number of meetings included in the fee and state that more meetings are in addition to the stated fee at the hourly rate of the team member attending.
- Specify the maximum number of submissions in the fee including the final submission. Additional submissions require an extra service.
- Subconsultants, e.g. structural, electrical, civil and geotechnical engineering fees are not included unless specifically accounted for in the proposal.
- The cost of all permits is the responsibility of the Client unless stated otherwise.
- Changes to base data, by others, that require revisions to approved work shall be identified and a request for extra service will be issued to the Client in writing for consideration prior to making the revisions.
- State the terms of payment and penalty applied to late payments.
- State the terms of termination. (see Section 9.4 for more information).

2.5 Contracts

Once a client and consultant have reached a consensus on the services to be provided, an agreement is signed to create a binding contract. The contract should include the terms of reference and the proposal. The contract must match negotiated terms between the client and the consultant.

2.6 Notification

The client should notify all participants in writing in a timely manner of their choice of the award.

3.0 LANDSCAPE ARCHITECTURAL SERVICES

Professional consultant fees and expenses are the result of the level of services provided. The following provides an outline of the types of services that are commonly required in a traditional landscape architecture assignment.

For the purpose of determining an appropriate fee basis, consulting services for general Landscape Architectural projects are divided into the following categories:

METHOD FOR DETERMINING FEES	1. Advisory and Consulting Services	2. Pre-design Services	3. Design Services	4. Contract Administration and Inspection Services	5. Project Management Services	6. Post Construction Services
Time Basis	•	•	•	•	•	•
Lump Sum Fee	•	•	•	•		
Percentage Basis			•	•	•	•

3.1 Category 1- Advisory and Consulting Services

Services within this category would generally involve background research and/or preparation of recommendations in a report format to the client. These advisory and consulting services may include:

- Expert testimony,
- Appraisals and valuations,
- Investigations,
- Gathering, analysis, evaluation and interpretation of data or site specific information leading to specialized conclusions and/or selection/ assessment recommendations related to site planning and design.

3.2 Category 2- Pre-Design Services

The Landscape Architect may provide planning services to determine development strategies, policies, programs and budgets and/or physical planning services to determine arrangements and relationships of land uses and/or facilities. These pre-design services may involve:

- Consulting services including site inventory; analysis and assessment; feasibility studies; research studies; and the preparation of development programs.
- Planning services for long-range development; comprehensive plans; development phasing; and preliminary cost estimating.

- Conceptual site planning.
- Co-ordination of other consultants and sub-consultants.
- Public consultation programs. (workshops, design charrettes, stakeholder interviews, surveys, public engagement)

3.3 Category 3- Design Services

These services follow the establishment of project requirements described in Category 2, and the identification of a known development program for the specific site. Design services generally consist of the following stages of process:

3.3.1 Conceptual Design Stage

The Landscape Architect may undertake the following tasks to obtain appropriate solutions to site specific issues:

- Research, sketch studies, study modules, design synthesis, and an estimate of preliminary quantities and costs.

3.3.2 Design Development Stage

Upon Client approval of the conceptual design stage, the Landscape Architect may undertake a more detailed level of design development. This may involve the preparation of design documents which may include overall plans, perspectives, renderings, models, simulations, videos, detailed designs and opinions of probable cost. This document information is usually presented together with recommendations on tender strategy, including phasing, packaging and scheduling.

3.3.3 Detailed Design, Technical Specifications and Tender Documents Stage

Upon client approval of the design development stage, the Landscape Architect may proceed with the preparation of the construction documents for any or all phases of the proposed development.

These services consist of the preparation of detailed designs, specifications and contract documents. They may specifically include:

- Site preparation, site layout, site grading or drainage, site planting.
- Construction details of landscape architectural components and facilities including plans, sections, elevations, and details illustrating materials and method of assembly.
- Lighting and or irrigation plans or other utility plans (may include sub-consultant depending upon scope).
- The preparation of technical specifications.
- Tender document preparation, review and pre-tender reports.
- Tender services including: answering bidders' questions, issuing addenda and recommending award of contract.

3.4 Category 4- Contract Administration and Inspection Services

Varying degrees of construction administration can be undertaken by the Landscape Architect depending on the project's size and complexity; the length of the construction period; and the amount

of assurance of quality workmanship the client requires. “Periodic Inspection” is considered by the profession to be the minimum acceptable level of construction administration, providing adequate opportunities to protect the clients and/or consultants interest.

3.4.1 Contract Administration

Provide administrative services on behalf of the Owner related to the conduct of the construction contract including:

- Preparation of contracts for execution
- Preparation of documentation related to site instructions, proposed changes and change orders, including assessment and review of change order values
- Management of overall project budget including tracking of progress claims, change orders, deficiency and Builder’s Lien holdbacks and releases
- Management of quality control program including the review of shop drawings and submittals, the procurement of laboratory and field tests and ensuring their review by members of the consultant team
- In complex multi-trade, multi-disciplinary projects, contract administration would include convening and documenting of construction progress meetings on a regular recurring basis

3.4.2 Periodic Inspection

The Landscape Architect may make routine (ex. Bi-weekly) site visits and/or at critical points during the course of the construction. Responsibility would normally include:

- Visual inspection of the project’s progress and workmanship to ensure that the contract requirements are followed
- Advice to the owner on proposed changes to the contract with respect to their merit, the fairness of price proposals and possible alternatives
- Advise the owner on the value of work completed for interim progress claims- based on visual inspection of the work
- Advise the owner on the completeness and adequacy of the work when the Contractor issues a claim of Substantial Performance and Total Performance. The consultant will inspect for completeness, list deficiencies and may advise the owner on qualification for substantial performance based on contract requirements and prevailing legislation, but limited by the extent of the inspection program.
- Provide one inspection of deficiencies of the contract. Subsequent inspections of deficiencies are not included in periodic inspection services.

3.4.3 Resident Inspection

Resident supervision provides on-site attendance by an employee or sub-consultant of the Landscape Architect and periodic inspection by the Landscape Architect during the entire construction period. Resident Supervision is generally recommended when complete control of all aspects of the construction is desired by the client, especially for items that will be buried or covered, and for complex

construction, or the construction site is over one hour driving time from the Landscape Architect's office.

3.5 Category 5- Project Management Services

A PMS contract is one in which the client empowers the Landscape Architect to act as an authorized agent or project manager. The project manager may be engaged to perform a wide range of activities including the responsibility for issuing, directing and coordinating:

- Design contracts with peer disciplines
- Purchase order with vendors
- Contracts with contractors

3.6 Category 6- Post Construction Services

Post-construction services and responsibilities may include:

- Periodic inspections to assess quality and adequacy of maintenance or work during guarantee or maintenance periods,
- Inspect the site for Final Acceptance,
- Preparation of 'as-built' record drawings,
- Review of operational manuals
- Inspect at end of warranty period

4.0 CONSULTANT FEES

The effort and time assigned to providing these services takes into consideration the cost of running the business including:

- Production costs associated with creating deliverables
- Comprehensive business expenses including: rent, staff medical benefits, pension plans, paid vacation time
- Insurance including; professional liability, errors and omissions, office comprehensive, WSIB and software licenses
- A reasonable expectation of profit
- Applicable taxes: Harmonized Sales Tax (HST) is not included in the base fee, but must be included in the project total in accordance with Federal and Provincial laws
- Reimbursable expenses (disbursements) are out-of-pocket expenses incurred by the consultant in the delivery of the project. Expenses may be charged in three ways:
 - Charges in addition to fees at cost plus 10 percent administration fee
 - Charges as a fixed percentage of the base consultant fee at a rate between 5.0 and 6.5 percent
 - Changes as directed by Provincial, Federal or Municipal policy

- When large disbursement items such as tender documents exceed the approved percentage, these one-time costs should be billed in addition to the fixed percentage with a copy of the invoice provided to the client for reference.

4.1 Retainer

The Landscape Architect may ask for a retainer at the time of entering into an agreement with the Client for professional services. Typically retainers are used for:

- New Clients where there is no payment history or established business relationship.
- Existing Clients where project start-up costs need to be covered in advance

4.2 Mobilization Fee

Landscape Architects may ask for a mobilization fee that is invoiced at the time of entering into an agreement for professional services. The fee is used as an advance for pending services to be initiated immediately. The fees are accounted for on the following invoice.

5.0 GUIDELINES FOR ESTIMATING CONSULTANT FEES

5.1 Overview

This fee guide is provided to assist all who engage landscape architectural consultant services to determine fair and reasonable professional fees. All projects differ in type, size and complexity with corresponding payment scales. The consultant must clearly identify and explain professional services in relation to:

- The knowledge and skills to deliver an appropriate design within an appropriate budget
- The knowledge and skills to secure approvals and permits from governing agencies in order to expedite the work

5.2 Fair and Reasonable Fees

Essential considerations for determining fees include, but are not limited to, the following:

- The time and effort required
- The type and scale of the project
- The uniqueness and complexity of the work
- The special skills that may be required to perform the work
- Geographic location of the site or other special site conditions
- Historical context
- The specified number of meetings with stakeholders
- The number of submissions to obtain approvals
- Familiarity with the agencies that administer the approvals process
- Requirement for and frequency of public consultation
- Expert testimony

5.3 Client Established Budgets

Budgets established by the client for planning projects should not be used as a maximum amount from which consultants provide a 10 or 20% reduction to gain a competitive advantage. Budgets are typically set in anticipation of desired level of effort and expertise.

5.4 Relationship Between Construction Budget and Fees

The budget available for the construction of a project will have a direct bearing on the fees needed to complete the work. Clients and consultants must be aware of the budget in order to determine the appropriate level of detail required. The relationship between project area (size) and budget must also be taken into account.

5.5 Fees, Tasks and Complexity

With the fee ranges provided and the levels of complexity described the last criteria to consider is the number of services that need to be performed. By selecting the number of project services and the tasks necessary to complete them, the user can progressively determine the estimated staff levels and fee range required to complete a project. Project complexity typically increases with the number of required tasks, as well as, the project category.

5.6 Levels of Complexity

Clients and consultants need to have a mutual understanding of a project's design complexity. The following definitions describe three levels of complexity to assist in establishing the scope of work and ultimately a reasonable fee for consultant services. In all levels of complexity, project deliverables are produced in digital format as a standard requirement. For all projects, the level of service to be provided includes all steps necessary to obtain approval, produce contract documents and administer construction contracts through to final acceptance of the built work. Samples of levels of complexity by project group are provided in section 6.3.2 Project Groups

5.6.1 Standard

This level of service typically applies to a single project and Client with a straight forward approval process and minor municipal and environmental constraints. It includes a one-step design process with limited underground servicing infrastructure. This level requires a basic understanding of public health, safety and welfare and some knowledge of exterior building codes. There is no public consultation required or consultation would be limited to attendance only.

5.6.2 Skilled

This level of service requires a broader range of skills and coordination to obtain approvals. The conceptual design phase often requires several conceptual solutions from which the final design is developed. Detail design can require up to 4 submissions including coordination with sub consultants in each round.

Projects typically possess unique site conditions that require a higher degree of scrutiny and approval by the municipality and other agencies, non-standard design detailing, and more difficult municipal grading

standards. The skilled level normally involves some specialization, ex. LEED, arborist or aquatic biologist input, and public consultation with multimedia presentation responsibilities.

5.6.3 Complex

This level of service applies where there are multiple stakeholders, multiple stages of approvals, numerous Client, team member and approval agency meetings, utility coordination, underground infrastructure and management of the consultant team when acting as prime consultant. Frequent and multi-faceted public consultation program with the community and multiple stakeholders.

Additional scope may include; heritage or archaeological components, site contamination, multiple sites, LEED recognized standards, and integrating the principles of sustainable development. Approvals may include National, Provincial and Municipal clearance with extensive public consultation and facilitation responsibilities during several stages of the design process. At this level, projects can span many years of design and phases of development and construction.

6.0 FEE BASIS OPTION

Landscape Architectural fees may be based on the following basis:

1. Time Basis
2. Fixed Fee Basis
3. Percentage Fee Basis

6.1 Time Basis

Hourly rates are commonly used to estimate the cost of consulting services when the scope of work is clearly defined. Staff time is estimated for the duration of the project and the total billable hours plus estimated disbursements represents the total fee. When a client agrees to an hourly rate contract he or she is basing this decision on trust and respect for the skills and reputation of the consultant. Hourly rate contracts will typically include an estimated construction value and an estimated lump sum fee from the consultant based on the hourly rates.

A Time Basis is recommended for the following services:

- Advisory and consulting services
- Pre-design services
- Resident inspection during construction
- Re-design arising from circumstances beyond Client/Consultant control
- Post construction services
- Project management services
- Project with undefined scope of work

Detail Design and **Contract Administration Services** may also be appropriate on a Time Basis and can be supplemented with a target or upset fee in circumstances where the scope of work is known.

Fees on a Time Basis are determined by multiplying the number of hours each member of the consultants' staff expends on the project by; their respective hourly billing rates and adding the disbursements listed in Section 8.0 Reimbursable Expenses

Hourly billing rates are based on the individual's qualifications and level of expertise. A payroll cost factor is used by the Consultant to determine hourly billing rates for a project. A payroll factor typically ranges from 2.5 to 3.25 times the payroll cost, depending on the number of person hours and the continuity of the person hour commitment to the project.

6.1.1 Hourly Rate Guide

The consultant fees in table 6.1 are presented as a recommended minimum range of rates currently found within the profession based on title, expertise, experience, and responsibility. These rates are exclusive of taxes and expenses.

Table 6.1: Range of Typical Hourly Rates (2018 dollars)

Staff Level	Experience	Billable Hourly Rate
Partner/ Principal		\$150-225
Project Manager		\$125-150
Senior Landscape Architect	10+ years	\$125-165
Intermediate Landscape Architect	5-10 years	\$100-150
Project Coordinator		\$80-110
Junior Landscape Architect (Intern/ Associate)	0-5 years	\$75-110
Technical (CADD technicians)		\$55-90
Graphic Support and administration		\$45-60

The recommended method of payment is by monthly invoicing by the Landscape Architect for payment within thirty (30) days of the billing date. Late payments may be subject to interest charges at the prevailing rates.

6.2 Fixed Fee Basis

This Fixed Fee Basis is applicable only to projects or components of projects where the scope of work is clearly defined and where construction, if applicable, will be completed over a known schedule. The number of submissions should be specified along with a clear description of the deliverables. The Fixed Fee for such assignments should be negotiated following preparation of a comprehensive estimate of the consulting person hours and overhead costs. The consultant assumes the risk to perform the work within the fixed fee offered.

An agreement defining the services is to be provided in detail and all categories of cost included in the Fixed Fee is essential. The agreement should cover schedule, time limits, inflation and other identifiable items that influence costs. Changes in the scope of work after the Fixed Fee has been established should be compensated for on a Time Basis or by a negotiated Fixed Fee adjustment for each change.

6.3 Percentage Fee Basis

The percentage of final construction costs, or estimate of final construction costs, may be an appropriate fee basis for specific design services.

The table of guideline percentage rates below is intended as a guide, based on the typical range of project complexity described for each project group in Section 3.0 Guidelines for Estimating Consultant Fees. This percentage fee guide should be seen as complimentary to – but not a substitute for- a detailed services proposal, especially in large multi-disciplinary projects. During rapidly changing market conditions, or where extended project delays are likely, another fee basis may be appropriate.

6.3.1 Calculating Cost of Work

For the purpose of calculating a percentage fee, the ‘Cost of Work’ means the total cost to the client for the project, including all materials, equipment, labour, bonding, insurance, overhead, duties and sales tax necessary to complete the work indicated in the contract documents, excluding consultant fees and expenses. Where the client furnishes labour or used material, the fair market value of that labour or material will be used to determine the Cost of Work.

In some cases, the Cost of Work cannot be accurately estimated when the Landscape Architect is selected, and therefore the fee should be expected to vary. The client should be aware of this possibility when finalizing a percentage fee agreement.

Services provided as a percentage fee basis would normally include:

- Conceptual design
- Design development
- Detailed design- preparation of construction drawings, specifications and tender documents
- Periodic site inspection services

Percentage fees do not include specialized services. Fees for these services should be negotiated separately, preferably at hourly rates.

Examples include:

- Project scoping
- Public consultation services
- Regulatory submissions
- Report preparation
- Reimbursable Expenses
- Integrated Design Process meetings
- LEED documentation
- Resident supervision services
 - Post-construction services

Percentage fees would include the cost of services provided by the Landscape Architect and his/her staff, and the services of normally anticipated sub-consultants including:

- Mechanical, structural, civil and electrical engineering: irrigation designers, architects, planners, scientists, artists and specialists.

Percentage fees would not include the cost of specialist consultants such as:

- Hydrologists
- Geotechnical engineers
- Cost consultants
- Exhibit designers
- Lighting designers
- LEED consultants
- Other specialists

Percentage fees would not include the cost of:

- Public consultation services
- Regulatory submissions
- Reimbursable expenses (section 8.0)
- Contract administration (section 3.4.1)
- Resident supervision (section 3.4.3)
- Post construction Services (section 3.6)

6.3.2 Project Groups

A normal range of project complexity for landscape architectural projects is defined by the following categories:

Group I: Standard Rate

Considered a 'normal' development project involving general site preparation work and grading; planting, regular hard surface treatments, single conceptual design scheme, standard details, and technical specifications, cost estimating, and period inspections.

Examples:

- schools
- Recreational facilities
- Commercial and industrial developments

Group II: Skilled Rate

All projects which require unique site planning and a high degree of non-standard detail design work and/or involve extensive planning and/or collaboration with other affiliated professional consultants or groups, soils investigation and testing coordination, surveyor coordination, appraisals for tree conservation, heritage or wetland/water courses, custom details, single form at tender, front end

specifications and general conditions, tendering services, construction administration, substantial completion inspection and certificate.

Examples:

- Health care facilities
- Urban design/streetscape
- Golf Courses
- Waterfronts
- Large Scale Housing

Group III: Complex Rate

Highly complex project requiring specialized materials and technologies, and extensive research, coordination, collaboration, and reporting; design for LEED, Green Globe, Sustainable Sites or related certifications; design for green applications such as green roof and green walls, low impact development (LID); arborist, rare and endangered species reports; irrigation plans; phased contract documents with multiple tenders; warranty inspection; final acceptance certification; commissioning; and as-built drawings.

Examples:

- Remote and international work
- Sensitive sites
- Green roofs
- Historic Restoration

6.3.3 Guideline Percentage Rates

Less than \$50,000 hourly basis recommended

A smaller construction budget ex. \$100,000 will demand a higher percentage fee than a project with a budget of \$1,000,000. This is because the effort to design, administer and manage a project is not proportionate to the construction budget or a project’s complexity.

Estimated Construction Budget	Recommended Percentage for Consulting Fee (By Project Type)		
	Group I	Group II	Group III
	Rates %	Rates %	Rates %
\$50,000- \$75,000	11.5	12.5	15.0
\$75,000- \$100,000	10	11.5	14.0
\$100,000- \$150,000	9.0	10.5	13.0
\$150,000- \$500,000	8.5	10.2	12.0
\$500,000- \$1,000,000	8.0	10.0	11.0
\$1,000,000- 2,000,000	7.5	8.5	10.0
Over \$2,000,000	6.0	7.5	9.0

The recommended payment schedule for projects over \$100,000 in construction value is based on the following:

Recommended Payment Schedule	
On completion of conceptual design stage	10- 15%
On completion of Design Development stage	15- 25%
On completion of Working Drawings, Technical Specifications and Tender Documents stage	40- 50%
On Completion of Construction Administration stage (based on 'periodic monitoring' level of service)	<u>20- 25%</u>
	100%

All invoicing is to be based upon a pre-determined estimated cost of construction until the exact costs are known after contract 'Substantial Performance' acceptance.

Projects with an estimated construction value over \$250,000 or projects where each stage of services involves an extensive period of time, the recommended method of payment is monthly invoicing by the Landscape Architect for payment within 30 days of the billing date.

7.0 SPECIAL SERVICES AND CONDITIONS

The Consultant responsible for the design of a project should normally be retained to provide Contract Administration and Inspection Services during construction. In circumstances where a Consultant is retained to perform these services on a project for which the drawings and specification were prepared by others, it is recommended the fee be on a Time Basis.

For all services and conditions the Consultant and Client should mutually determine the appropriate fee basis to be used. The following guidelines reflect the principle described in Section 2 that the Time Basis should be used in circumstances where the scope of the assignment is not well defined. In circumstances where the amount of work involved in the special services can be accurately predicted, the Fixed Fee Basis is also appropriate.

7.1 Extra Work

Services required beyond the agreed scope of assignment regardless of the original basis of fee should be negotiated on a Time Basis as described in Section 2.

7.2 Re-Use of Drawings and Specifications

The design represented by drawings and specifications prepared under the supervision and control of a Landscape Architect and stamped by that person is their responsibility indefinitely. Fees for the use of the design by the original client are intended to cover one project only. Use of the design on subsequent projects by the same or other Client requires permission by the Landscape Architect who stamped the drawings.

Payment for modifications to a design to accommodate different conditions encountered on subsequent projects should be made on a Time Basis. Fees to cover professional responsibility resulting from subsequent use of the design should be the subject of negotiation for each use. The Fixed Fee negotiated should reflect the complexity of the design and the exposure to risk that arises from the subsequent use.

7.3 Delays

Delays beyond the Consultant's control that cause an increase in required services provided by the Consultant, should be compensated for on a Time Basis.

7.4 Abandonment of Project

If a project is abandoned or suspended, through no fault of the Consultant, services provided by the Consultant should be determined on a Time Basis to reflect an appropriate allowance for costs resulting from the suspension.

7.5 Alternative Design

When a Client requests the Consultant to prepare design for alternatives that are beyond the originally agreed scope of work, the fees for extra work should be on a Time Basis.

Landscape Architectural fees generally include minor allowances to complete normally anticipated revisions to designs during the course of a project. Where revisions requested by the client are significant, and beyond the control of the Landscape Architect, the client shall compensate the Landscape Architect for completing such revision on a Time Basis, supplementary to the original consulting agreement.

7.6 Travel Time

Payment for Travel Time should be negotiated and based on the following guidelines:

1. Payment for Travel Time should be covered in the agreement.
2. The agreement details with respect to Travel Time should take into account individual project circumstances and include economics, convenience and special considerations.

7.7 Limitation of Liability

It is recommended that the Agreement also include a mutually agreed upon Limitation of Liability clause that defines an equitable allocation of risk in accordance with current industry standards.

8.0 REIMBURSEABLE EXPENSES

Unless otherwise agreed between the Consultant and the Client, disbursements incurred by the Consultant in completing an assignment are chargeable to the Client. Following are categories of expenses that are reimbursable in all Fee Basis options at cost multiplied by an agreed disbursement factor:

1. Reproduction of drawings and documents beyond those specified in the Agreement to be included within a Fixed Fee (cost plus 10%)
2. Travel expenses (at provincial or federal standardized rate)
3. Other transportation, lodging, meals and miscellaneous out-of-pocket expenses (cost plus 10%)
4. Telecommunications expenses (cost plus 10%)
5. Advertising for tenders on the Client's behalf (cost plus 10%)
6. Courier Services (cost plus 10%)
7. Specialized computer equipment and computer services, including provision of digital files (cost plus 10%)
8. Any other proper expenses paid out by the Consultant on the Client's behalf, and not covered by the agreed fee (permit fees, inspections and testing fees, topographic or legal survey and other items of documented base information) (cost plus 10%)

9.0 FISCAL RESPONSIBILITIES OF THE LANDSCAPE ARCHITECT AND CLIENT

These guidelines are opinions of APALA and do not necessarily represent specific contractual obligations. APALA recommends written agreements be executed between parties and that they be prepared with the assistance and advice of a lawyer familiar with the type of work to be undertaken and with the regions where the work is to take place.

9.1 Landscape Architect

The responsibility of the Landscape Architect is to properly account for their time and prepare an orderly invoice for remittance. Invoices for work are normally issued on a monthly basis or at key pre-agreed milestones and represent the value of work completed to date. Invoices also include amounts for reimbursable expenses as prescribed in the contract, as well as, applicable taxes.

The invoice should be addressed to the Client for whom the work has been prepared and clearly communicate a breakdown of the services provided along with the total amount charged in Canadian dollars (unless other currency is stipulated in the agreement). Direct deposit between banks is now a common and preferred method of payment that allows both Client and consultant to track the payment history and frequency. Terms of payment, recommended at 30 days, to no longer than 45 days, should be stated on all invoices. Carrying charges for late payment may be applied as a contract condition. Ex: 1% per month for payments received later than agreed to in the contract.

9.2 Client

The responsibility of the Client is to agree and approve the value of the invoice relative to the work performed and pay the invoice in a timely manner. It is important to establish in the agreement that fees, including reimbursable expense, will be paid within a specified time after receipt of the invoice.

9.3 Disputes

The cause of disputes between Clients and Landscape Architects is most often the result of a lack of clarity in the proposal and the signed agreement relating to the cost of services for the specified scope

of work. When consultants identify a service request that is not included in the specified scope of work, the Client should be notified in writing that extra services will apply. The consultant should prepare a firm quotation for the extra service and receive written authorization from the Client to proceed before the work is initiated.

In the event that a financial dispute remains unresolved, an arbitrator acceptable to both parties should be retained to assist in resolving the dispute quickly and fairly. Legal action to resolve a dispute should be viewed as a last resort given the high cost of litigation. However, in circumstances where there is no opportunity to resolve a dispute fairly, a Small Claims Court action may be considered.

9.4 Termination of Contract

Both the Client and the consultant are obligated to conform to the terms of the signed agreement. If either party chooses to terminate a contract at any stage of its execution, working in the agreement needs to speak to the terms of dissolution of the agreement.

The following wording example can be included in the agreement to establish a clear resolution of payment obligations if a binding agreement is terminated:

“The Landscape Architect shall be entitled to full compensation for all services performed on the Client’s behalf at the approved hourly rates, or approved percentage of completion, up to the time of notification in writing to discontinue services.”

Under these circumstances a Client will need to retain the services of another Landscape Architect to complete and certify the work. In order to satisfy themselves that proper legal closure of the original agreement has been completed, the new Landscape Architect should request a copy of a signed written release from the dismissed Landscape Architect that acknowledges:

- Full payment has been received
- That all original drawings and all other data as instruments of service completed to date by the dismissed Landscape Architect, are now the legal property of the Client.
- That the Client has unrestricted use of these instruments and does not need permission from the dismissed Landscape Architect to copy, modify or sue them in any way to complete the project.
- That both the Client and dismissed consultant have no further claim whatsoever against the other with respect to the project or site.

Any formal release of this nature should be prepared by a lawyer and executed with legal representation by both parties.

Either party may terminate the agreement with 14 days’ written notice to the other if:

- a) modifications are proposed and the parties cannot agree on revised fees and delivery date;
- b) either party is bankrupt, insolvent, seeks creditor protection or abandons the project; or

c) an event of force majeure prevents timely completion of the services.

Either party may terminate the agreement with 10 days' written notice to the other if the other party is in breach of its obligations and, if such breach can be remedied, fails to take action to remedy same within 10 days. The consultant shall be paid in full for services rendered up to the termination date.

9.5 Copyright and Ownership of Documents

The Copyright Act protects authors, of whom a Landscape Architect is one, whose expression of original work is made manifest in permanent form. The Act gives the original author the exclusive right to make copies of such work. The Act also gives the original author moral right in the work, that is the protection of the integrity of the work and, as well as, the right to be reasonably associated with the work, ex: get credit.

The ownership of all unused or unsuccessful proposals shall remain the property of the Landscape Architect and must be available upon request after 30 days from the date of submission.

Where the work is prepared by an employee or under a contract of service, ex: as agent of the Landscape Architect, then the employer or principal of the landscape architectural firm is deemed to be the original owner and author of the work. The owner of copyright may assign the right or license it to others if there is a specific written document to such effect. The owner may also waive, but not assign moral rights, if there is a specific written document to such effect.

Ownership of original drawings, specifications and other data as instruments of service, whether or not the work for which they were made has been executed, remain the property of the Landscape Architect. The drawings, after payment, become instruments of service in connection with the completion of the project designed. Implied is the right to make copies for such purpose only, but not for use on other projects.

Reproducible copies of final 'As Constructed' plans, or the original contract drawings should not be issued in any form until the client has paid all outstanding fees in full. Using PDF as the only means of sharing the final 'as-constructed' digital information with clients is the preferred method as it technically protects the author's Rights under the Copyright Act.

The decision of the Landscape Architect to release original digital drawings bearing their seal (stamp) and signature to the final owner raises several concerns. Digital changes can be made and the revised plans can be used without the author's knowledge. In the event of a lawsuit, the original author would be forced to defend themselves by producing the drawings that demonstrate they were not responsible for the alleged claims cause by the modifications. In addition, design solutions specific to one site could be copied and applied to another location where the site variables render the solution inappropriate and potentially dangerous to the public. The reuse of digital information prepared by others is contradictory to the moral and ethical behaviour of APALA members.

If a Client demands digital plans to be issued upon completion of an assignment, the author technically loses their rights under the Copyright Act. To avoid the potential consequences described above, the

digital drawings should not be sealed (stamped) or signed by the Landscape Architect and the corporate identity of the author should be removed. A PDF copy of the original approved sealed and signed drawings could be issued along with the generic CAD files so there is a record of both. Any reuse or changes to the digital files by others would, therefore, fall under the seal and signature of the consultant and organization using the plans for their own purpose. The new author would also assume the liability associated with copying or using the information.

9.6 Agreement

A written Agreement should be prepared which covers as a minimum the scope of assignment, schedule of execution, basis of fee and payment conditions.