

## AGREEMENT

This agreement made as of the 28 day of December 2008, by and between

Whangarei District Council, Forum North, Private Bag 9023, Whangarei, New Zealand,  
represented by its Mayor Stan GA Semenoff (hereinafter called "WDC")

and

GRUNER JANURA AG, a company duly organized and existing under the laws of  
Switzerland and located at Hauptstrasse 49, 8750 Glarus, Switzerland (hereinafter called  
"GJ AG")

## WITNESS

WHEREAS, WDC is desirous of, in response to the wishes of the City of Whangarei to  
realise the architectural designs after Master Hundertwasser for the WHANGAREI ART  
GALLERY ("Art Gallery") in accordance with this agreement and is entrusted by the City of  
Whangarei to enter this agreement on behalf of it with GJ AG.

WHEREAS, GJ AG advises and represents Master Hundertwasser's architectural archive,  
legacy and legal matters. GJ AG declares herewith to be authorised to enter this agreement on  
behalf of Master Hundertwasser's architecture and is desirous of performing the services for  
the City of Whangarei and granting the right to use the intellectual property rights to the  
designs provided after Master Hundertwasser in accordance with this agreement to the City of  
Whangarei.

Now, THEREFORE, the parties hereto agree as follows:

## ARTICLE 1. [DEFINITIONS]

In this agreement the following words and expressions shall have following meanings:

1. "The OBJECT" of the services means and includes:
  - a) The Whangarei Art Gallery
  
2. "STAGE I" means the services including the preparation of:

The preliminary plans in the scale of 1:200, based on the function and volume specifications which was previously calculated and designed by WDC in accordance with the City of Whangarei's specifications and approved by the City of Whangarei, demonstrating the architectural concept solution and design after Master Hundertwasser for the Art Gallery as more specifically described in exhibit.
  
3. "STAGE II" means the services including the preparation of the plans in the scale of 1:100, which includes all requests, changes and adaptations necessary to the preliminary plans as indicated by the City of Whangarei as more specifically described in exhibit. The City of Whangarei will pay for a professional Hundertwasser architecture model in the scale of 1:50 after concluding the drawings of the plans in the scale of 1:100, WDC will contract and commission separately with a model builder chosen by the Hundertwasser Foundation to build it on which Hundertwasser's artistically facade architecture will be visualised in addition all outlines, colours, shapes, building-materials, etc. concerning the artistical, exterior part of the design.

The fee and expenses for preparing this model will be paid directly by WDC to the model builder on the basis of a separately agreed condition between WDC and the model builder. This model will serve for presentations, reproductions, photographs etc. of the Hundertwasser contribution. Only the approved model can be used for marketing, photographs by the media, for public relation and for a tender/offer by all needed professionals who will have to carry out the work.

- 3.1. A working model in the scale of 1:50, which has the sole purpose of visualising the space solution respectively the optical forms of the design and the City of Whangarei may use to make public the contents of the object by photographs, models, pictures and other media only for the promotion of the Art Gallery.
4. "STAGE III" means the services including the artistic supervision after the completion of the construction and the needed/requested visits to the construction site by Hundertwasser's representative architect for advice, instructions and control and last but not least the acceptance of the project regarding the implementation of artistic design as more specifically described in exhibit.

## ARTICLE 2. [ENTRUSTMENTS]

1. WDC, on behalf of the City of Whangarei, who was commissioned to arrange and supervise the implementation of Master Hundertwasser's design for the Art Gallery, shall entrust GJ AG to perform the services of STAGES I, II and III for the object and GJ AG shall accept such entrustment on behalf of Master Hundertwasser's architecture archive.
2. GJ AG shall have Master Hundertwasser's architect perform the services at STAGES I, II and III for the object, in consideration of all necessary architectural, technological and functional elements as indicated by the City of Whangarei.
3. GJ AG/Hundertwasser will appoint an architect of their choice to carry out the implementations of the Hundertwasser-concept and design into the plans. GJ AG will pay all costs of their architect, WDC will have no commitment or responsibilities towards the architect of GJ AG.

**ARTICLE 3 [THE COMPLETION OF THE SERVICES]**

1. **STAGE I:**

The services at **STAGE I** shall be commenced on the date of the execution of this agreement and completed not later than eight (8) weeks afterwards from the date of the execution of this agreement.

It was already executed.

2. **STAGE II:**

The services at **STAGE II** and **III** shall be commenced on the next day of the date of written acceptance of **STAGE I** by the City of Whangarei and completed not later than six (6) weeks, thereafter provided no delays caused by consultations of the City of Whangarei which hinders the commencement of **STAGE II** as described.

3. **STAGE III:**

The dates for the commencement and for the completion of the services at **STAGE III** shall be decided by both parties, after the completion of the row construction of the Hundertwasser Whangarei Art Gallery adaptation.

**ARTICLE 4 [PAYMENT]**

1. WDC shall pay following amount to GJ AG for the services rendered by GJ AG:

a)	<b>STAGE I</b>	EURO 22,000.--	} 55 000.-- see 6.1.09
b)	<b>STAGE II</b>	EURO 33,000.--	
c)	<b>STAGE III</b>	<u>EURO 15,000.--</u>	at value of 15 000.-- ✓
	<b>Total:</b>	<b>EURO 70,000.--</b>	

2. The expenses and costs for travelling to Whangarei by Master Hundertwasser's representative architect and accommodation needed for Stage III which are not included in the above amount shall be born by WDC.

**ARTICLE 5. [TERMS FOR PAYMENT]**

1. It is agreed that WDC is liable for the payment of agreed fees as a), b) and c) in this article, a total amount of EURO 70,000.-- with commissioning STAGES I, II, and III as per this agreement, and also in the event of interruption or not proceeding with the realization of this project out of reasons not caused by GJ AG, excepting force majeure as stipulated in Article 8.
2. WDC shall pay the amount provided in Article 4 by swift bank transfer into the account of GJ AG at CREDIT SUISSE, Zürich-Seefeld, Switzerland, account number (0865-671568-91), IBAN (CH7804865067156891000), BIC: CRESCHZZ80A as follows:  
**671568925 CH5704835067156892005**

a) **STAGE I:**

The date of execution of this agreement: EURO 10,000.--

Upon delivery of the plans: EURO 12,000.--

b) **STAGE II:**

With the written acceptance of Stage I: EURO 25,000.--

Upon delivery of the plans: EURO 8,000.--

c) **STAGE III:**

The commencement of the services with  
the completion of the rough construction: EURO 15,000.--

**ARTICLE 6 [WORK SHARING]**

1. GJ AG and WDC shall assume and share the responsibility for the services as described in exhibit.
2. Upon the request by WDC, GJ AG shall have Master Hundertwasser's architect consult with WDC to implement adjustments between the plan by WDC and the new architectural plans and design by Master Hundertwasser's architect, in matters of functional and/or technical concerns.

## ARTICLE 7 [Copyright]

1. The City of Whangarei shall have the right to use and exploit copyright and intellectual property rights ("the COPYRIGHTS") to the drawings, designs, plans and other documents prepared by Master Hundertwasser's architect ("the DOCUMENTS") based on the agreement, and the buildings, landscape constructed in accordance with the DOCUMENTS ("the BUILDING") on the basis of mutual understandings between the City of Whangarei and GJ AG.
  
2. The COPYRIGHTS provided in preceding paragraph shall include the following rights:
  - a) to construct and complete the BUILDING according to the DOCUMENTS.
  - b) to make public the contents of the DOCUMENTS and the BUILDING.
  - c) to make copies of the DOCUMENTS.
  - d) to represent the BUILDING by photographs, models, pictures and other media, based only on the plans in the scale of 1:100 prepared by Master Hundertwasser's architect at **STAGE II**.
  - e) to enlarge, extend, reconstruct, repair and alter or demolish for remodeling as stipulated in this agreement.
  - f) to make copy, adaptation, alteration, change and other revisions of the DOCUMENTS by the City of Whangarei or to make third party who is entrusted by the City of Whangarei to carry out such works as far as it is necessary for enlargement, reconstruction, repair revision, maintenance, administration, management and public relations provided, however, that such works shall not injure the value of Hundertwasser's architectural works as in scaled 1:100 of **STAGE II**.
  - g) to sell the products agreed in advance with copyright holder featuring the BUILDING.
  
3. GJ AG shall permit the City of Whangarei to construct and complete the BUILDING, according to the DOCUMENTS, make public the contents of the DOCUMENTS and the BUILDING, make copy of the DOCUMENTS, represents the BUILDING by photographs, models, pictures and other media, after the effective date of this agreement notwithstanding paragraph 1. above this article.

## ARTICLE 8 [FORCE MAJEURE]

Neither party shall be liable to the party for failure to perform its obligations due to the occurrence of any event beyond the control of such party and affecting its performance including, without limitation, restriction by order, regulation, ordinance, demand or requirement of national or local government, outbreak of the state of emergency, acts of god, war, warlike conditions, hostilities, civil commotion, riots, epidemic, fire, strikes, lockouts or any other similar cause or causes.

If the performance under this agreement is wholly suspended for a period of three (3) months, either of the parties shall have the right to terminate this agreement by the other party at least thirty (30) days prior notice in writing to that effect.

## ARTICLE 9 [TERMINATION]

1. If the following event shall occur:  
any non-performance and/or violation by either party of the provisions of this agreement and such event not being cured within thirty (30) days after the date of notice being dispatched by the other party.

The other party shall have the right to terminate this agreement by giving a written notice to the party without prejudice to the other rights and remedies which it may have. All correspondence will be sent to the declared addresses of this agreement.

2. In the event of termination of this agreement by WDC before the completion of STAGES I, II or III, WDC will pay 50 % of the unperformed activities by GJ AG at the time of termination by WDC.

#### **ARTICLE 10 [ASSIGNMENT]**

Neither party shall assign and/or transfer this agreement in whole or in part to any individual, firm or corporation without the prior written consent of the parties.

#### **ARTICLE 11 [NOTICE]**

All notice to be given under this agreement shall be made by airmail, e-mail or fax to each party at its office above written or at such other address as is has furnished in writing to the other parties. Such notices shall be deemed to have been given on the day of their dispatch.

#### **ARTICLE 12 [GOVERNING LAW]**

The formation, validity, construction and performance of this agreement shall be governed by the laws of New Zealand.

#### **ARTICLE 13 [ARBITRATION]**

All disputes, controversies or differences which may arise between the parties, out of or in relation to or in connection with this agreement, or the breach thereof, shall be settled amicably through good faith discussions between the parties. In the event that the parties fail to resolve, any such dispute shall be finally settled by arbitration according to the Rules of Conciliation and Arbitration of International Chamber of Commerce. If arbitration is demanded by GJ AG, such arbitration shall be held and take place in Whangarei, New Zealand and if demanded by WDC, in Vienna, Austria.

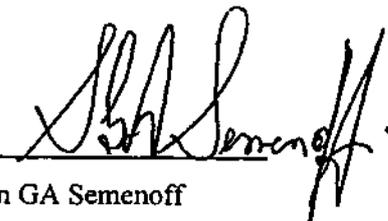
**ARTICLE 14 [HEADING]**

The headings in this agreement are for the purpose of convenience only and shall not limit or otherwise affect any of the terms or provisions thereof.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

WHANGAREI DISTRICT COUNCIL

GRUENER JANURA AG

By   
Stan GA Semenoff

Title: Mayor

Date: 23/12/2008

By   
HP. ZENTNER, VR

Title: President

Date: 26.01.09

Witness:

JORAM HAREL MANAGEMENT

By \_\_\_\_\_

Joram Harel

Title: President

Date: \_\_\_\_\_