

Architecture and Engineering Professional Services Contract
Between Canyon County and RBA Architects, LLC

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ARTICLE 1 AGREEMENT

This Agreement is made and commences on the date it has been fully executed between the following Parties for design professional services in connection to the project ("PROJECT"):

Canyon County, a political subdivision of the State of Idaho with primary office locations at 1115 Albany St., Caldwell, ID 83605 ("OWNER");

and

RBA Architects, LLC, an Idaho limited liability company located at 508 South Pine Street, Nampa, Idaho 83686 ("DESIGN PROFESSIONAL").

The Construction Manager for the Project, Owner shall provide prompt written notice of Owner's designation of Construction Manager following the adoption of an Owner's Agreement, Construction Manager is not a party to this Agreement.

Notice to the above entities shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1 STANDARD OF CARE Design Professional shall furnish or provide architectural and engineering Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The Services shall include Basic Services plus any Additional Services which may be authorized by Owner. Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, location, scope, and complexity, during the time in which the Services are provided.

2.2 RELATIONSHIP OF THE PARTIES Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Parties agree to work together on the basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to



perform this Agreement in a timely, efficient, and economical manner. The Parties shall endeavor to promote harmony and cooperation among all Project participants.

2.3 Neither Design Professional nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or authorized in writing by Owner.

2.4 ETHICS The Parties shall each perform its obligations with integrity, ensuring at a minimum to each: (a) avoid conflicts of interest and (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants to the other Party that it has not paid or received, and shall not pay nor receive, any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, consultants, or others employed directly or indirectly by any of them, to secure preferential treatment.

2.5 CONSTRUCTION MANAGER Owner shall retain or employ a Construction Manager to be Owner's agent and to furnish construction administrative and management Services for the Project, or, alternatively, may act as its own Construction Manager. Design Professional shall coordinate its scope of Services with that of the Construction Manager so as to avoid any duplication of Services. Design Professional shall provide those Services reasonably requested by Owner and included within Design Professional's scope of Services under this Agreement, subject to the appropriate standard of care. Such Services shall be provided promptly and in accordance with time schedules agreed upon by Owner, Construction Manager, and Design Professional. Owner shall reasonably coordinate the exchange of information requested by Construction Manager or requested by Design Professional. Upon request of Design Professional, Owner shall furnish to Design Professional a copy of Owner's Agreement with the Construction Manager, from which compensation provisions may be deleted. The Agreement between Owner and the Construction Manager shall not be modified in a way that it directly impacts Design Professional without written notification to Design Professional.

2.6 DEFINITIONS

2.6.1 "Agreement" means this ConsensusDocs 840, Standard Agreement Between Owner and Design Professional (Where Owner Hires or Acts as its Own CM), as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

2.6.1.1 The following Exhibits are part of this Agreement:

EXHIBIT A: Document No. 07-103, Contract For Architectural Services Between Canyon County (Owner) and Houston-Bugatsch (Architect).

2.6.2 "Business Days" are all Days, except weekends and official federal or state holidays where the Project is located.

2.6.3 "Consultant" is a person or entity which contracts with Design Professional to provide professional architectural, engineering, or other consulting services for this Project.

2.6.4 "Construction Documents" means the plans, specifications, and other documents provided by Design Professional to Owner which delineate the design and specify other necessary requirements relating to the construction of the Project.

2.6.5 "Day" means a calendar day.



2.6.6 "Design Professional" means the person or entity identified in ARTICLE 1 and includes Design Professional's representative.

2.6.7 The "Construction Budget" is the budget prepared by Construction Manager for review by Design Professional and approval by Owner. It is prepared when Owner and Construction Manager agree that the Construction Documents are sufficiently complete and includes the sum of the estimated cost of the Work, the clarifications and assumptions upon which it is based, allowances, reasonable contingencies, and Construction Manager's compensation.

2.6.8 "Construction Manager" is the person or entity identified in ARTICLE 1 and retained by Owner to furnish construction administrative and management Services for the Project and includes Construction Manager's representative.

2.6.9 "Cost of Construction" means Owner's total cost of Project components. In the event the Project is not completed, Cost of Construction shall mean the total cost to perform all Work identified in the Construction Documents.

2.6.10 A "Hazardous Material" is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up.

2.6.11 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work and with which Design Professional must comply that are enacted as of the Agreement date.

2.6.12 "Others" means other contractors, suppliers, and persons at the Worksite who are not employed by the Trade Contractors or Subcontractors. The term Others does not include Construction Manager or Design Professional.

2.6.13 "Owner" is the person or entity identified in ARTICLE 1 and includes Owner's representative.

2.6.14 "Owner's Program" is an initial description of Owner's objectives that may include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.6.15 "Parties" mean Owner and Design Professional collectively.

2.6.16 The "Project," as identified in Exhibit A, is the building, facility, or other improvements for which the Trade Contractors are to perform Work. It may also include construction by Owner or Others.

2.6.17 The "Project Schedule" is the document initially prepared by and updated by Construction Manager and approved by Owner that indicates proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the Construction Documents, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements, and the estimated date of Substantial Completion of the Project.

2.6.18 "Services" are the professional services performed by Design Professional and its Consultants as required by this Agreement, including Basic Services provided in the Design and Construction Phases Services which may be authorized by Owner. Services includes coordination of design services



of Trade Contractors or Subcontractors who may be engaged by Owner to provide both design and construction services for certain Project elements.

2.6.19 A "Subcontractor" is a person or entity retained by a Trade Contractor as an independent contractor to provide the labor, materials, equipment, or Services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.6.20 A "Trade Contractor" is a party or entity retained by Owner as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work.

2.6.21 The term "Work" means the procurement, erection, installation, construction, and Services necessary or incidental to construct the Project in conformance with the Construction Documents.

2.6.22 "Worksite" means the geographical areas of the Project location as designated by Owner where the Work is to be performed.

ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 PROJECT REQUIREMENTS Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the design documents produced pursuant to Exhibit A. Design Professional shall confirm its understanding of such requirements with Owner and shall assist Owner to refine or make clarifications to Owner's Program for the Project.

3.1.2 Design Professional shall not proceed with the development of successive design documents until receiving written approval from Owner. Design Professional shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by Owner and to which Owner has reasonable objections,

3.1.2.2 those documents identified by the Construction Manager and reasonably accepted by Owner as presenting constructability problems, and

3.1.2.3 those documents needing revisions to reflect clarifications, assumptions, and allowances on which a guaranteed maximum price is based. To the extent that any design documents approved by Owner deviate from the requirements of Owner's Program, the approved design documents shall govern.

3.1.3 Design Professional shall have reasonable access to the Worksite at all times.

3.1.4 Design Professional shall assist Owner and Construction Manager with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.

3.1.5 Design Professional shall not be responsible for the acts or omissions of Owner, Construction Manager, Trade Contractors, Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of Design Professional.



3.2 BASIC SERVICES Design Professional's Basic Services consist of any Services provided pursuant to Sections 3.1 and 3.2. Design Professional shall identify here or in a separate attached exhibit: (a) any other Services included in Basic Services; (b) the specific design disciplines included in Basic Services; (c) those portions of the Project design to be furnished by Owner, Trade Contractor, or Others; and (d) Services that are required to comply with elected green measures and green status identified in Owner's Program. If any additional services are required, such services shall be included as Additional Services. Documents generated by Design Professional shall be in a format consistent with Owner's Program, including the use of Building Information Modeling (BIM). If applicable, BIM use shall be governed by the ConsensusDocs 301 BIM Addendum or separate addenda. If professional design Services are to be furnished by Owner, Trade Contractor, or Others, Design Professional shall indicate all performance and design criteria to be satisfied in accordance with Owner's Program, and Owner, Trade Contractor, and Others shall not be responsible for the adequacy of such performance and design criteria. Design Services furnished by parties other than Design Professional shall be obtained from licensed design professionals, who shall affix their signature and seal on all drawings, specifications, calculations, and submittals prepared by them, and Design Professional shall be entitled to rely upon the adequacy, accuracy, and completeness of such design Services.

3.2.1 BUDGETS Design Professional promptly shall review and make recommendations to Owner about the budgets prepared by Construction Manager for the Project. Design Professional shall provide its Services in conformance with the budgets approved by Owner.

3.2.2 PROJECT SCHEDULE Design Professional shall promptly review, and make recommendations to Construction Manager and Owner about, the preliminary and updated Project Schedule prepared by Construction Manager. To facilitate the preparation of the Project Schedule by Construction Manager, Design Professional shall submit, for Construction Manager's review and Owner's approval, a schedule of Design Professional's Services. Design Professional shall provide its Services, subject to the applicable standard of care, within the times given for such Services in the Project Schedule approved by Owner.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based upon Owner's Program, including any approved refinements or clarifications, Design Professional shall prepare, for Construction Manager's review and Owner's approval, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the Worksite and structures; preliminary sections and elevations; approximate areas, volumes and dimensions; and preliminary selections of materials and systems. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Schematic Design Documents shall be provided to Owner for its review and for distribution to Construction Manager. When Design Professional submits the Schematic Design Documents, Design Professional shall identify in writing, for Construction Manager's review and Owner's approval, all material changes and deviations that have taken place from Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Construction Manager's review and Owner's approval, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. Design Development Documents shall include, as applicable, plans, sections, and elevations; criteria



and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections; and general quality levels. When Design Professional submits the Design Development Documents, Design Professional shall identify in writing, for Owner's approval, all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Design Development Documents shall be provided to Owner for its review and for distribution to Construction Manager.

3.2.5 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Construction Manager's review and Owner's approval and the approval of governmental authorities, Construction Documents, including any revisions necessary to secure such approvals, setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable Laws. When Design Professional submits the Construction Documents, Design Professional shall identify in writing, for Owner's approval, all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall describe all Work necessary to bid and construct the Project. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of the Construction Documents shall be provided to Owner for its review and for distribution to Construction Manager.

3.2.6 DESIGN COORDINATION Design Professional shall coordinate the Services of all design consultants for the Project, including those retained by Owner. Design Professional shall promptly report any known errors or omissions to Owner. However, unless retained by Design Professional or Consultant, Design Professional does not assume an affirmative responsibility to detect errors, omissions, or inconsistencies in the design consultant's services.

3.2.7 LONG-LEAD-TIME ITEMS Design Professional shall assist Owner to evaluate a schedule prepared by Construction Manager for the procurement of known long-lead-time items required to meet the Project Schedule.

3.2.8 BIDDING OR NEGOTIATION ASSISTANCE Design Professional shall assist Owner to evaluate Construction Manager's recommendations regarding the division of the Work into Trade Contractor Bid packages or proposals. Design Professional shall provide up to six (6) sets of drawings, specifications, and any addenda; attend pre-bid and pre-award meetings; provide information and explanations to clarify the scope and intent of the Construction Documents; and, if appropriate, evaluate proposed Trade Contractors, Subcontractors, and Suppliers for portions of the Work. Design Professional shall issue any required addenda or clarifications promptly in writing.

3.2.8.1 If the cumulative value of lowest bona fide bids or negotiated proposals for the Work exceeds the final approved estimate of the Cost of Construction by three percent (3%) or more, and Owner, in its sole discretion, elects not to accept such bids or proposals, or elects to rebid or renegotiate any portion of the Work, Design Professional, without additional compensation, shall work with Construction Manager and Owner to make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the sum of the final approved estimate of the Cost of Construction plus the percentage stated above. In such a circumstance, all impacted schedules shall be adjusted accordingly.



3.2.9 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the earlier of (a) the first award of or authorization for Construction Manager to award a Trade Contract and (b) such other date as the Parties agree. Such award or authorizations by Owner shall be issued with contemporaneous notification to Design Professional. If requested by Owner, Design Professional shall (i) assist the Construction Manager to review the schedule of values submitted by the Trade Contractors; (ii) prepare design documents in connection with change orders; and (iii) respond to requests for information. Design Professional shall furnish, upon request, to Owner and to Construction Manager interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda, or otherwise, as necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.9.1 SUBMITTALS Design Professional shall collaborate with Construction Manager to establish and implement procedures for expediting the processing and approval of shop drawings and samples. Design Professional shall review the Trade Contractors' submittals and make approvals of or recommendations about such submittals to Construction Manager and Owner within ten (10) Days of receiving the submittals from Construction Manager, or as soon as practicable as agreed upon by the Parties. Design Professional shall check the Trade Contractors' submittals for general conformance with the design and scope of the Project and for compliance with the Construction Documents. Design Professional shall be entitled to rely on the accuracy and completeness of any professional certifications required by the Construction Documents of Trade Contractors concerning the performance criteria of systems, equipment, or materials, including all calculations relating thereto and any governing performance requirements. Design Professional's review of submittals shall not extend to the Trade Contractors' means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by Design Professional.

3.2.9.2 Upon request of Owner, Design Professional shall assist Construction Manager and Owner to evaluate and process requests for changes in the Work.

3.2.9.3 WORKSITE VISITS Design Professional shall visit the Worksite pursuant to such schedule as the Parties may establish in writing, to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Document. After each Worksite visit, Design Professional shall promptly provide Owner with a written report. If Design Professional becomes aware of any defects or deficiencies in the Work, Design Professional shall provide prompt notice, followed by written confirmation, to Owner. If, in Design Professional's opinion, special testing or inspection of the Work is needed, Design Professional shall recommend to Owner such testing or inspection procedures and appropriate consultants to Construction Manager. Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.9.4 SAFETY Design Professional shall not be responsible for the Trade Contractors' safety precautions and programs. However, if Design Professional has actual knowledge of safety violations, Design Professional shall give prompt written notice to Owner and Construction Manager. While at the Worksite, Design Professional shall comply with the safety programs of the Construction Manager and the Trade Contractors.

3.2.9.5 Upon request of Owner, Design Professional shall assist Construction Manager in processing the Trade Contractors' applications for payment.



3.2.9.6 Design Professional shall participate in regular meetings with Owner and Construction Manager upon reasonable request of Owner or Construction Manager.

3.2.9.7 Design Professional shall assist Owner and Construction Manager to conduct regular inspections to determine the date or dates of each Trade Contractor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that Owner may occupy or utilize the Work or a designated portion for its intended use or so that any subsequent Trade Contractor can commence its work.

3.2.9.8 Design Professional shall assist Owner and Construction Manager to conduct inspections to determine Trade Contractor's Final Completion of the Work as needed.

3.2.9.9 COMMISSIONING Design Professional shall assist with the implementation of formal commissioning.

3.2.9.10 If requested by Owner, Design Professional shall make up to two (2) visits to the Worksite during each Trade Contractor's one-year correction period to assist Owner in evaluating the need for any corrective measures.

3.2.10 HAZARDOUS MATERIAL To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, Design Professional shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement.

3.3 ADDITIONAL SERVICES The following Services shall be provided by Design Professional and paid for as Additional Services, if they are authorized in advance by Owner in writing and are not included in Basic Services as set forth in Sections 3.1 and 3.2:

3.3.1 Assistance with the preparation of Owner's Program and planning surveys.

3.3.2 Surveys, site evaluations, legal descriptions, and aerial photographs.

3.3.3 Soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.3.4 Document reproduction exceeding the limits provided for under section 3.2.

3.3.5 Preparing measured drawings of existing conditions.

3.3.6 Artistic renderings, models, and mockups of the Project or any part of the Project.

3.3.7 Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project.

3.3.8 Interior design and related Services, including procurement and placement of furniture, furnishings, artwork, and decorations.

3.3.9 Other than as required by subsection 3.2.8, making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by Owner, and which are due to causes beyond the control of Design Professional.



3.3.10 Design, coordination, management, expediting, and other Services supporting the procurement of materials to be obtained or work to be performed by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not otherwise required by this Agreement.

3.3.11 Estimates, proposals, appraisals, consultations, negotiations, and Services in connection with the repair or replacement of an insured loss.

3.3.12 Obtaining service contractors and training maintenance personnel or assisting and consulting in the use of systems and equipment after the initial startup.

3.3.13 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which Design Professional is not a party.

3.3.14 Preparing reproducible record drawings from marked-up prints, drawings, or other documents that incorporate significant changes made during the Construction Phase.

3.3.15 Worksite visits in excess of the number of visits provided for in subsections 3.2.9.3, 3.2.9.7-3.2.9.8 or the number of visits in a schedule established by attachment to this Agreement.

3.3.16 Attending meetings in excess of those provided for in subsection 3.2.9.6.

3.3.17 Providing Services relating to Hazardous Materials discovered at the Worksite.

3.3.18 Consultations and representations before governmental authorities or others having jurisdiction over the Project, other than normal assistance in securing building permits.

3.3.19 Out-of-town travel by Design Professional in connection with the Services, except between Design Professional's office, Owner's office, and the Worksite.

3.3.20 Services requested by Owner which are not included in the Basic Services required by this Agreement and that are not normally part of generally accepted design and construction practice.

3.3.21 Furnishing services related to the suspension of Work.

3.3.22 Performing formal commissioning services.

3.3.23 Except as otherwise provided in this Agreement or required for the purpose of maximizing the scope of the Project within the budget described in the Owner's Program, preparing alternate bid documents after completion of Schematic Design Documents.

3.3.24 Other additional services as agreed to by the Parties and identified in an attached exhibit or modification to this Agreement.

3.4 QUALIFICATIONS Design Professional warrants and represents that Design Professional and its Consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.



3.5 CONSULTANTS Design Professional shall not engage the Services of any Consultant without first obtaining Owner's written approval, which approval shall not be unreasonably withheld. Such approval by Owner shall not be deemed to create any contractual relationship between Owner and any such Consultant, except that Owner shall be considered the intended third-party beneficiary of the performance of their Services. Except for the waiver required under Subsection 7.3.2, Design Professional shall not include any limits of liability in its agreements with any Consultants without the prior written approval of Owner.

3.6 DESIGN PROFESSIONAL'S REPRESENTATIVE Design Professional's representative is Rick Bugatsch, who shall possess full authority to receive and act on instructions from Owner. If Design Professional changes its representative or their authority, Design Professional shall immediately notify Owner in writing.

3.7 KEY PROJECT PERSONNEL The key Project personnel whom Design Professional shall assign and the time percentage each shall devote to Design Professional's Services. Such personnel shall not be changed without the written approval of Owner, which approval shall not be unreasonably withheld.

3.8 FINANCIAL INFORMATION Prior to commencement of Services, and thereafter, Design Professional shall have the right, upon written request, to receive from Owner evidence of Owner's financial ability to pay for Design Professional's Services. Evidence of Owner's financial ability to pay for Services shall be a condition precedent to Design Professional commencing or continuing Services. Design Professional shall be notified prior to any material change in Owner's ability to pay for Services.

3.9 ROYALTIES, PENALTIES, AND COPYRIGHTS Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design Professional and incorporated in the design documents of Design Professional. Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by Design Professional and incorporated in the design documents of Design Professional. Design Professional shall defend and hold Owner, Construction Manager, Trade Contractors, and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.10 CONFIDENTIALITY Design Professional shall treat as confidential and not disclose to any third parties, except as necessary for the performance of this Agreement or as required by Law, or use for its own benefit, any of Owner's confidential information, know-how, discoveries, production methods, and the like that are so identified in writing and disclosed to Design Professional or which Design Professional acquires in performing the Services required by this Agreement. Except for information Owner obtains through ownership of the copyright, Owner shall treat as confidential information all proprietary design systems and methods that may be disclosed to Owner in connection with the performance of this Agreement. Owner and Design Professional shall each specify those items to be treated as confidential and shall mark them as "Confidential."

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 To the extent Owner has obtained the information and Services identified below, Owner shall provide them to Design Professional in a timely manner. Design Professional shall be entitled to rely on the completeness and accuracy of such information and Services.



4.1.1.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

4.1.1.2 Inspection reports and testing Services conducted during construction as required by law or as mutually agreed.

4.1.1.3 Unless otherwise provided in this Agreement, documentation evidencing any necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy, or renovation of permanent structures.

4.1.2 The information required by subsection 4.1.1 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work.

4.1.3 Owner shall promptly report to Design Professional any errors, inconsistencies, and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve Design Professional of responsibility for its own errors, inconsistencies, and omissions.

4.1.4 Approvals by Owner shall not be deemed to be an assumption of responsibility by Owner for any error, inconsistency, or omission in the drawings, specifications, or other documents prepared by Design Professional, its employees, agents, or Consultants. Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 OWNER'S REPRESENTATIVE Owner's representative is Rick Britton, Canyon County Facilities Director. Owner's Representative:

4.2.1 shall be fully familiar with the Project;

4.2.2 shall furnish the information and Services required of Owner pursuant to section 4.1 in a timely manner; and

4.2.3 shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice, but not authority to modify the Agreement. If Owner changes its Representative or the authority of its Representative, Owner shall immediately notify Design Professional in writing.

4.3 TRADE CONTRACTS Owner shall provide Design Professional with copies of all executed Trade Contracts.

4.4 ROYALTIES, PATENTS, AND COPYRIGHTS Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems specifically required by Owner to be incorporated in the design documents of Design Professional. Owner warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems required by Owner to be incorporated in the design documents of Design Professional. Owner agrees to defend and hold Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights



arising out of any patented or copyrighted materials, methods, or systems required by Owner or used by the Trade Contractor but not required by Owner or Design Professional.

ARTICLE 5 TIME

5.1 TIME FOR SERVICES Time is of the essence. Subject to the applicable standard of care, Design Professional shall provide the Services required by this Agreement in a timely manner and in conformance with the most recent Project Schedule approved by Owner. If completion of Construction Documents is not achieved within this time through no fault of Design Professional, Design Professional's Fee shall be equitably adjusted.

5.2 DELAYS BY DESIGN PROFESSIONAL If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of Design Professional which deviates from its standard of care, Design Professional shall compensate Owner for and indemnify it against all damages that may accrue as a result of negligent delay. In addition, Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay. Owner shall provide prompt written notice to Design Professional of such delay after Owner first recognizes the delay.

5.3 DELAYS BY OWNER If Design Professional is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Design Professional's control, or by a delay authorized by Owner pending dispute resolution, then the time allotted in the Project Schedule for Design Professional's Services shall be extended for the period of such delay or Owner shall authorize Design Professional to work overtime to make up such lost time, and Design Professional's compensation shall be equitably adjusted. Design Professional shall provide prompt written notice to Owner of such delay after Design Professional first recognizes such delay.

ARTICLE 6 COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR BASIC SERVICES

6.1.1 For Basic Services as described in Sections 3.1 and 3.2, the Owner shall compensate the Design Professional the amount of 8.5 % (eight and one half percent) of the cost of the Work.

6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 Design Professional shall be compensated for Additional Services as described in Section 3.3 on the following basis: hourly rate reimbursement as provided by the Design Professional prior to commencement of additional services, or as approved by Owner.

6.2.2 Design Professional shall be compensated for the Reimbursable Expenses at actual cost, or as agreed upon by the Owner and Design Professional.

6.3 PAYMENTS

Design Professional shall submit to Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. Owner shall pay approved amounts no later than thirty (30) Days after Design Professional has submitted its applications for payment. Upon receipt of payment from Owner, Design Professional shall promptly make payment to its Consultants as appropriate.



6.3.1 Prior to final payment to Design Professional, Design Professional shall furnish evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by Design Professional for compensation for its Services.

6.3.2 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from Design Professional's Services, the Design Professional shall reimburse Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to Design Professional in accordance with the terms of this Agreement.

6.3.3 Should Design Professional or its Consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.4 Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

6.3.5 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 7 INDEMNITY, INSURANCE, AND WAIVERS

7.1 INDEMNITY

7.1.1 INDEMNITY To the fullest extent permitted by Idaho law, Design Professional shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees; the Construction Manager; Trade Contractors; Subcontractors; and Others (the Indemnitees) from and against all claims, losses, damages, and liabilities, including reasonable attorneys' fees, costs, and expenses, for bodily injury, sickness, or death, and property damage (other than to the Work itself), that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of Design Professional, Consultants, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design Professional shall be entitled to reimbursement of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for under subsection immediately below.

7.1.2 To the fullest extent permitted by Idaho law, Owner shall indemnify and hold harmless Design Professional, its officers, directors, members, Consultants, agents, and employees from all claims for bodily injury and property damage, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the negligent acts or omissions of Owner or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under the subsection immediately above.

7.1.3 CONSTRUCTION MANAGER AND TRADE CONTRACTOR INDEMNITY Owner shall cause Construction Manager and Trade Contractors to agree to indemnify and hold harmless Owner and



Design Professional from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Section 7.3, that may arise from Construction Manager's Services or the Trade Contractors' Work, but only to the extent that such claims result from the negligent acts or omissions of Construction Manager or the Trade Contractors, respectively, or anyone for whose acts or omissions Construction Manager or the Trade Contractors, respectively, are liable.

7.1.4 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Design Professional, anyone directly or indirectly employed by Design Professional or anyone for whose acts Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design Professional under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

7.2 DESIGN PROFESSIONAL INSURANCE

7.2.1 Before commencing its Services and as a condition of payment, Design Professional shall purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by Design Professional or by any of its Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 Design Professional shall maintain in effect all insurance coverage required under this Section 7.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to Owner:

7.2.2.1 Workers' Compensation and Employers' Liability Insurance in accordance with Laws and wherever Design Professional's Services are being performed.

7.2.2.2 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in Subsection 7.1.1, with at least the following limits of liability:

- a. \$1,000,000 Per Occurrence.
- b. \$2,000,000 General Aggregate
- c. \$2,000,000 Products/Completed Operations Aggregate
- d. \$1,000,000 Personal and Advertising Injury Limit.

7.2.3 Design Professional shall require its Consultants to maintain Commercial General Liability and Business Automobile Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

PROFESSIONAL LIABILITY INSURANCE Design Professional shall maintain Professional Liability Insurance with a company satisfactory to Owner, whose approval shall not be unreasonably withheld, for claims arising from the negligent performance of professional Services under this Agreement, which shall be written for not less than \$2,000,000 (two million) per claim and in the aggregate. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by Design Professional for this Project. The deductible shall be paid by Design Professional.

7.2.4 Consultants retained by Design Professional for this Project shall maintain Professional Liability Insurance with a company for claims arising from the negligent performance of its professional Services, which shall be either:



☒ Practice Policy, or
☐ Project Specific Coverage

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by Consultants for this Project.

7.2.5 Design Professional shall furnish to Owner certificates of insurance evidencing the required coverages listed in this section and a copy of its Professional Liability policy. No policy shall be cancelled or modified without thirty (30) Days prior written notice to Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. Design Professional and its Professional Liability insurance carrier shall notify Owner within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. Owner shall have the right to directly notify Design Professional's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for two (2) years following final payment to Design Professional.

7.3 PROPERTY INSURANCE

7.3.1 Owner shall provide, or cause Construction Manager to provide, property insurance that names Design Professional and its Consultants as named additional insureds. Owner shall furnish to Design Professional certificates of insurance evidencing such coverage.

7.3.2 Owner and Design Professional waive all rights against each other and the Trade Contractor, Subcontractors, and Subsubcontractors for loss or damage to the extent covered by property insurance, except such rights as they may have to the proceeds of such insurance. Owner and Design Professional shall require similar waivers from all of their consultants retained for the Project.

ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, Owner may, without cause, terminate this Agreement with Design Professional. If this Agreement is terminated pursuant to this section, Design Professional may recover from Owner (a) payment for Services performed to the date of termination, in accordance with this Agreement; and (b) any proven loss, cost or expense in connection with the Services, including those resulting from the termination, but not including lost profits on unperformed Services.

ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

9.1 CONTINUANCE OF SERVICES AND PAYMENT Unless otherwise agreed in writing, Design Professional shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Design Professional continues to perform, Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

9.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who



shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Business Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

9.3 MEDIATION If direct discussions pursuant to Section 9.2 do not result in resolution of the matter and no dispute mitigation procedure is selected, the Parties shall endeavor to resolve the matter by mediation. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties. The Parties may mutually agree to forego mediation based on a written agreement that other methods, including binding dispute resolution, are more likely to be effective, or that mediation would not be beneficial to either party.

9.4 BINDING DISPUTE RESOLUTION If the matter remains unresolved after submission of the matter to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☐ Arbitration. [The Parties do not agree to binding arbitration in this document, but leave open the possibility to arbitration if agreed to in writing by all involved parties.]

☒ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

9.4.1 COSTS The costs of any binding dispute resolution processes and reasonable attorneys' fees shall be determined according to Idaho law.

9.4.2 VENUE The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

9.4.3 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

9.5 MULTIPARTY PROCEEDINGS The Parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.

9.6 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design Professional that Design Professional may have under lien laws.

ARTICLE 10 MISCELLANEOUS

10.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by Design Professional or by Consultants retained by Design Professional and distributed to Owner for this Project, upon the making of final payment



to Design Professional or in the event of termination under ARTICLE 8, upon payment for all sums due to Design Professional pursuant to ARTICLE 8.

10.1.1 COPYRIGHT The Parties agree that Owner [x] shall/ [] shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright by Owner shall be subject to Owner's making of all payments required by this Agreement. If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design Professional.

10.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 8, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright, provided payment has been made pursuant to ARTICLE 8.

10.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, if Design Professional has retained the copyright, Owner may still reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Regardless of which Party owns the copyright, Owner's use of the Documents without Design Professional's involvement or on other projects is at Owner's sole risk, except for Design Professional's indemnification obligations pursuant to Section 3.9, and Owner shall defend, indemnify, and hold harmless Design Professional and its consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

10.1.4 DESIGN PROFESSIONAL'S USE OF DOCUMENTS Where Design Professional has transferred its copyright interest in the Documents to Owner, Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

10.1.5 Design Professional shall obtain from its Consultants rights and rights of use that correspond to the rights given by Design Professional to Owner in this Agreement and Design Professional shall provide evidence that such rights have been secured.

10.2 DOCUMENTS IN ELECTRONIC FORM If Owner requires that Owner, Design Professional, Construction Manager, and Trade Contractors exchange documents and data in electronic or digital form, prior to any such exchange, Owner, Design Professional, Construction Manager, and Trade Contractors shall agree on a written protocol governing all exchanges using ConsensusDocs 200.2 or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and Services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.

10.3 EXTENT OF AGREEMENT Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated agreement between Owner and Design Professional and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement and each



and every provision are for the exclusive benefit of Owner and Design Professional and not for the benefit of any third party except to the extent expressly provided in this Agreement.

10.4 ASSIGNMENT Except for an assignment of proceeds, Design Professional shall not assign its interest in this Agreement without the written consent of Owner.

10.5 GOVERNING LAW AND VENUE This Agreement shall be governed by the law of the State of Idaho. The venue for any dispute resolution proceeding shall be the Third Judicial District of the State of Idaho in and for Canyon County (for state court actions), or U.S. District Court, District of Idaho (for federal court actions).

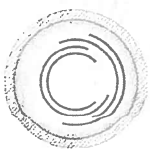
10.6 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.7 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

10.8 TITLES The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.


10.9 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

10.10 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

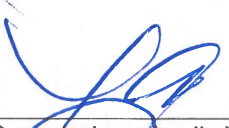




In witness of their willingness to agree and be bound by the terms of this Agreement, the Parties have executed the Agreement below:


RBA ARCHITECTS, LLC

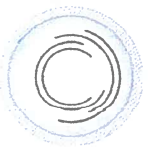
By:  Name: Richard Bugtisch Title: Architect

**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO**

	Yes	No	Did Not Vote
<u></u> Commissioner Leslie Van Beek	<u>✓</u>	<u> </u>	<u> </u>
<u></u> Commissioner Brad Holton	<u>X</u>	<u> </u>	<u> </u>
<u></u> Commissioner Zach Brooks	<u>o</u>	<u> </u>	<u> </u>

Attest: Rick Hogaboam, Clerk

By: 
Deputy Clerk 10.17.24



ORIGINAL

**CONTRACT FOR
ARCHITECTURAL SERVICES
BETWEEN CANYON COUNTY (OWNER) AND
HOUSTON-BUGATSCH (ARCHITECT)**

**CANYON COUNTY
WAREHOUSE-TEMPORARY HOLDING FACILITY**

Houston-Bugatsch Architectural Services Contract
Canyon County Warehouse-Temporary Holding Facility

1

CC: P.A. . . . Minutes
Maintenance
Chris Harris

#07-103

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AGREEMENT NO. 07-103

**CONTRACT FOR ARCHITECTURAL SERVICES
BETWEEN OWNER AND ARCHITECT**

THIS CONTRACT FOR ARCHITECTURAL SERVICES BETWEEN OWNER AND ARCHITECT (the "Contract") is made and entered into by Canyon County, a political subdivision of the State of Idaho, (the "Owner") and **Houston-Bugatsch Architects, Chartered**, (the "Architect"). This Contract is executed under seal and shall be effective on the date executed by the last party to execute it.

The architectural services required by this Contract are to be rendered for a construction project identified as the Canyon County Warehouse-Temporary Holding Facility (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and the Architect agree:

**I.
REPRESENTATIONS AND WARRANTIES**

By executing this Contract, the Architect makes the following express representations and warranties to Owner:

A. The Architect is professionally qualified to act as the architect for the Project and is licensed to practice architecture by all public entities having jurisdiction over the Architect and the Project;

B. The Architect shall maintain all necessary licenses, permits, or other authorizations necessary to act as architect for the Project until the Architect's duties hereunder have been fully satisfied;

C. The Architect has become familiar with and examined the Project site, facilities, existing structures, and the local conditions under which the Project is to be designed, constructed, and operated;

D. The Architect shall prepare all documents and things required by this Contract including, but not limited to all contract plans and specifications, in such a manner that they shall be accurate, coordinated, adequate for construction, sufficient to accomplish the purposes of the Project, and shall be in conformity and comply with all applicable law, codes, and regulations;

E. The Architect assumes full responsibility to Owner for the improper acts and omissions of its consultants or others employed or retained by the Architect in connection with the Project.

II. PRELIMINARY CONSULTATION, EXAMINATION, AND REPORT

Prior to the preparation of the Preliminary Design as required by Paragraph III below, the Architect shall first consult in detail with Owner and shall carefully examine any information provided by Owner concerning Owner's purposes, concepts, desires, existing facilities, and requirements (the "Owner's Criteria"), including, but not limited to, any design, construction, scheduling, budgetary, or operational Project needs, restrictions, or requirements. Following such examination and consultations, the Architect shall prepare and submit to Owner a written report detailing the Architect's understanding of the Owner's Criteria and identifying any design, construction, scheduling, budgetary, operational, or other problems or recommendations which may result from the Owner's Criteria. The report shall contain a preliminary Master Schedule. The written report of the Architect shall also include proposed solutions, if appropriate, addressing each of such identified problems.

III. PRELIMINARY DESIGN AND PRICE ESTIMATE PHASE

After reviewing with Owner the written report required by Paragraph II above, agreeing upon any proposed solutions to identified problems resulting from the Owner's Criteria, and in accordance with Article IX hereof, the Architect shall draft and submit to Owner a Preliminary Design for the Project. The Preliminary Design shall be consistent with the Owner's Criteria, as, and if, modified and shall include the following:

- A. Preliminary plans which depict, as appropriate, each of the basic aspects of the Project including, but not necessarily limited to, the size, location, and dimensions of each structure;
- B. Preliminary plans which depict each exterior view of each structure;
- C. A floor plan for each room within the Project and the dimensions thereof;
- D. Written preliminary specifications, together with preliminary plans, if and as necessary or useful to Owner, of the architectural, electrical, mechanical, structural, and, if relevant, other systems to be incorporated in the Project;
- E. A written description of the equipment and materials to be specified for the Project and the location of same; and
- F. Any other documents or things necessary or appropriate to describe and depict the Preliminary Design and the conformity of same with the Owner's Criteria (as, and if, modified as set forth above) for the Project.

Upon completion of the Preliminary Design, the Architect shall submit to Owner in writing, its estimate of the Contractor's anticipated price for constructing the Project in accordance with the Preliminary Design.

IV. DESIGN FOR CONSTRUCTION PHASE

Upon written direction from Owner, after reviewing with Owner the Preliminary Design required by Paragraph III above, and after incorporating any changes or alternations authorized or directed by Owner with respect to the Preliminary Design or with respect to the Owner's Criteria, as, and if, modified, and in accordance with Article IX hereof, the Architect shall draft and submit to Owner the Design for Construction. The Design for Construction shall include, but shall not necessarily be limited to, plans and specifications which describe with specificity all systems, elements, details, components, materials, equipment, and other information necessary for construction. The Design for Construction shall be accurate, coordinated, and in all respects adequate for construction and shall be in conformity, and comply, with all applicable law, codes, and regulations. Products, equipment, and materials specified for use shall be readily available unless written authorization to the contrary is given by Owner. In preparing the Design for Construction, the Architect shall retain, for Owner, an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. The Architect shall be responsible for designing the Project in accordance with the analysis and recommendations of its geotechnical consultant.

The Architect shall also prepare a Quality Control Plan to attach to the NCLC Fixed Price Construction Contract, as modified for this Project, as Exhibit "B" thereto.

V. SCHEDULING AND BUDGETING DUTIES

A. The Architect shall create and complete the project schedule from start of design (including design reviews and owner approvals at program phase, design development phase, and final design phase); bid/award; construction; testing/training; occupancy. The project schedule shall include the Architect's task completion schedule.

B. The Architect shall prepare the overall project budget prepared upon selection, concurrent with program phase, identifying budgets for indirect costs, contingency, design, and construction, totaling to no more than your overall bond amount. The Architect shall prepare cost estimates at program phase, design development phase, and final design phase.

VI. PRICE ESTIMATES

A. Contemporaneously with the submission of the Design for Construction, the Architect shall submit to Owner in writing its final estimate of the Contractor's anticipated price for constructing the Project. Once submitted, the final anticipated price estimate shall not be increased or decreased by the Architect unless the Design for Construction is changed upon authorization by Owner. In such event, the final anticipated price estimate shall be adjusted by the Architect to reflect any increase or decrease in anticipated price resulting from the change in Design for Construction.

B. Prior to directing the Architect to proceed with preparation of the Design for Construction, Owner may establish and communicate to the Architect a maximum amount for payment to the Contractor as the Contract Price for constructing the Project (the "Maximum Price"). In the event the final anticipated price estimate, as required by Paragraph VI, exceeds the Maximum Price, or in the event the lowest bid or negotiated proposal from a qualified contractor exceeds the Maximum Price, Owner may require the Architect, at no cost to Owner, to Consult with Owner and to revise the Design for Construction so as to obtain a bid or proposal at or below the Maximum Price. Absent clear and convincing evidence of gross negligence of the Architect in making the final anticipated price estimate or in designing the Project without regard to the Maximum Price, providing such revisions shall fulfill the Architect's liability to Owner in connection with the Maximum Price.

VII. DUTIES DURING BIDDING AND NEGOTIATION

The Architect, following Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist Owner in reviewing bids or proposals for construction. The Architect shall coordinate the drawing distribution to Contractors. Owner will be responsible for the direct costs of printing. The Architect will have a reimbursable allowance for printing. Owner will not pay for labor costs. The building permit costs will be the responsibility of Owner.

VIII. DUTIES, OBLIGATIONS, AND RESPONSIBILITIES DURING CONSTRUCTION

During construction of the Project, and until Final Payment to the Contractor, and at all times relevant thereto, the Architect shall have and perform the following duties, obligations, and responsibilities:

A. In addition to its duties, obligations, and responsibilities set forth in the following subparagraphs of this Paragraph VIII, the Architect shall have and perform those duties, obligations and responsibilities set forth in the NCLC Fixed Price Construction Contract Between Owner and Contractor ("the Construction Contract"), 1994 edition, as modified for this project. The Architect hereby acknowledges that it has received, reviewed, and studied a true and correct copy of the proposed Construction Contract and same is herein incorporated by reference;

B. The Architect shall, as contemplated herein, pursuant to the Construction Contract, but not otherwise, act on behalf, and be the agent, of Owner through construction of the Project. Instructions, directions, and other appropriate communications from Owner to the Contractor shall be given to the Contractor by the Architect;

C. Upon receipt, the Architect shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which Owner or the Architect may require from the Contractor. The purpose of such review and examination shall be to protect Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such

supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless Owner directs the Architect to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, of the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Architect shall sign the Schedule of Values, thereby indicating its informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Architect shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by Owner.

D. The Architect shall carefully observe the work of the Contractor whenever and wherever necessary, and shall, at a minimum, observe work at the Project site no less frequently than once a week unless a different time is requested by Owner. The purpose of such observations shall be to determine the quality and quantity of the work in comparison with the requirements of the Construction Contract. In making such observations, the Architect shall protect Owner from continuing deficient or defective work, from continuing unexcused delays in the schedule and from overpayment to the Contractor. Following each observation, the Architect shall submit a written report of such observation, together with any appropriate comments or recommendations, to Owner;

E. The Architect shall facilitate the weekly or semi-weekly meetings with the contractors and produce notes in a timely fashion. The Architect shall conduct the monthly meetings for the pay application reviews. The Architect shall be responsible for timely Requests for Information (RFI) responses, and other project issues and the frequency of site visits by the design team which shall include the major disciplines and the Architect. The Architect shall assure that the design team and Owner's staff are present during the contractor testing and training of major building systems at the time of substantial completion.

F. The Architect shall initially approve periodic and final payments owed to the Contractor under the Construction Contract predicated upon observations of the work, as required in Subparagraph VIII.D hereinabove, the evaluations of the Contractor's rate of progress in light of the remaining Contract Time and shall issue to Owner Approvals of Payment in such amounts. By issuing an Approval of Payment to Owner, the Architect reliably informs Owner that the Architect has made the observation of the work required by Subparagraph VIII.D above, that the work for which payment is approved has reached the quantities or percentages of completion shown, or both, that the quality of the Contractor's work meets or exceeds the requirements of the Construction Contract, and that, under the terms and conditions of the Construction Contract, Owner is obligated to make payment to the Contractor of the amount approved;

G. The Architect shall perform building commissioning duties during the installation testing and training phases and orient Owner with the building systems and operating manuals, including warranties, and will have his consultants on site to assist him in this duty.

H. The Architect shall promptly provide appropriate interpretation necessary for the proper execution of the work;

I. The Architect shall recommend rejection, in writing, any work of the Contractor which is not in compliance with the Construction Contract unless directed by Owner, in writing, not to do so;

J. The Architect shall require inspection or reinspection and testing or retesting of the work in accordance with the provisions of the Construction Contract whenever appropriate;

K. The Architect shall receive and promptly examine, study, and approve, or otherwise respond to, the Contractor's shop drawings and other submittals. Approval by the Architect of the Contractor's submittal shall constitute the Architect's representation to Owner that such submittal is in conformance with the Construction Contract;

L. The Architect shall receive, promptly examine, and advise Owner concerning requests for change orders from the Contractor. Upon request by Owner, the Architect shall draft supporting specifications, drawings, and other documentation, for Change Orders whether initiated by Owner, or by the Contractor and approved by Owner in accordance with the Construction Contract;

M. Based upon observations of the Project, the Architect shall certify in writing to Owner the fact that, and the date upon which, each Contractor has achieved Substantial Completion of the Project and the date upon which the Contractor has achieved Final Completion of the Project;

N. The Architect shall transmit to Owner all manuals, operating instructions, as-built plans, warranties, guarantees, and other documents and things required by the Construction Contract and submitted by the Contractor;

O. The Architect shall testify in any judicial proceeding concerning the design and construction of the Project, when requested in writing by Owner, and the Architect shall make available to Owner any personnel or consultants employed or retained by the Architect for the purpose of reviewing, studying, analyzing, or investigating any claims, contentions, allegations, or legal actions relating to, or arising out of, the design or construction of the Project;

P. The Architect shall review any as-built drawings furnished by the Contractor and shall certify to Owner that same are adequate and complete;

Q. The Architect shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the Architect or its consultants, or both;

R. The Architect shall have and perform additional duties obligations and responsibilities after Final Payment to the Contractor as follows:

The Architect shall indemnify and hold harmless Owner from and against all liability, claims, loss, costs, and expenses arising out of, or resulting from, the services of the Architect. In the event Owner is alleged to be liable on account of alleged acts or omissions, of the Architect, the Architect shall defend such allegations and the Architect shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses.

Time is of the essence in the performance of this Contract. With ten (10) days of the execution hereof, the Architect shall provide Owner with a proposed schedule for performance by the Architect hereunder. Such schedule, if approved by Owner, shall constitute the schedule for performance of its duties hereunder by the Architect.

The Architect shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Contract, the parties anticipate that the following named individuals will perform those functions indicated:

So long as the individuals named above remain actively employed or retained by the Architect, they shall perform the functions indicated next to their names.

For its assumption and performance of the duties, obligations, and responsibilities set forth herein, the Architect shall be paid as follows:

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A. In anticipation of and until by mutual agreement the parties enter into a signed amendment to this contract providing for a fixed price after the scope of the project is fully determined, Architect shall be paid for those services required by this Contract at the below listed hourly architect's rates allocated in the following manner and based upon timely completion of Architect's tasks, in accordance with project schedule, subject to a payment credit in favor of Owner for the work previously performed under the below hourly rates:

1. Firm Hourly Rates:

Principal Architect	\$95.00
Project Architect	\$80.00
Project Manager	\$75.00
Intern Architect	\$65.00
Cad Technician	\$45.00
Administrative	\$50.00

2. Project Schedule:

Preliminary Consultation, Examination and Report	10%
Preliminary Design and Price Estimate	15%
Design for Construction and Final Price Estimate	50%
Duties, Obligations and Responsibilities During Construction	25%

B. For Architect's securing of professional liability insurance coverage, as specified in Paragraph D of Section XIX, Insurance, Owner shall pay Architect the sum of Two Thousand Five Hundred Dollars (\$2,500.00).

C. For the assumption and performance of any duties, obligations, and responsibilities, other than those services required by this Contract, provided same are first authorized in writing by Owner, the Architect shall be paid as follows:

D. In addition to the payments provided for hereinabove, the Architect shall be entitled to receive payment for the actual cost of reimbursable expenses incurred by the Architect in connection with the Project. Such expenses, however, are limited to transportation with automobile being reimbursed at \$0.325 per mile; long distance calls; printing, reproduction, and postage or other reasonable modes of transmission of plans, specifications, and other writings or things, for bidding purposes; and any and all other disbursements made by the Architect after first receiving written authorization therefor from Owner;

E. If the Architect's duties, obligations, and responsibilities are materially changed through no fault of the Architect after execution of this Contract, compensation due to the Architect shall be equitably adjusted, either upward or downward;

F. As a condition precedent for any payment due under this Paragraph XI, the Architect shall submit monthly, unless otherwise agreed in writing by Owner, an invoice to Owner, requesting payment for services properly rendered and expenses due hereunder. The Architect's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if such services were rendered pursuant to Subparagraph XII.B or XII.D herein above, and the person(s) rendering such service. The Architect's invoice shall be accompanied by such documentation or data in support as Owner may require. If payment is requested for services rendered by the Architect pursuant to Subparagraph XII.A herein above, the invoice shall additionally reflect the allocations as provided in said Subparagraph and shall state the percentage of completion as to each such allocation. Each invoice shall bear the signature of the Architect, which signature shall constitute the Architect's representation to Owner that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this Contract, that all obligations of the Architect covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Architect that payment or any portion thereof should be withheld. Submission of the Architect's invoice for final payment shall further constitute the Architect's representation to Owner that, upon receipt by Owner of the amount invoiced, all obligations of the Architect to others, including its consultants, incurred in connection with the Project, will be paid in full;

G. In the event that Owner becomes credibly informed that any representations of the Architect as set forth in Subparagraph XII.E are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to the Architect, to the value of the inaccuracy, until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction;

H. Owner shall make payment to the Architect of all sums properly invoiced under the provisions of this Paragraph XII within thirty (30) days of Owner's receipt of such invoice.

XIII. PROJECT RECORDS

All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Architect or the Architect's consultants, shall be made available to Owner for inspection and copying upon written request of Owner. Additionally, said records shall be made available, upon request by Owner, to any state, federal, or other regulatory authorities and any such authority may review, inspect, and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Architect and its personnel in performing the obligations of this Contract and the records of expenses incurred by the Architect in its performance under said Contract. The Architect shall maintain and protect these records for no less than six (6) years after substantial completion of the Project or for any longer period of time as may be required by applicable law or good architectural practice.

**XIV.
DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF OWNER**

Owner shall have and perform the following duties, obligations, and responsibilities to the Architect:

- A. Owner shall provide the Architect with the Owner's Criteria;
- B. Owner shall review any Documents provided by or through Architect requiring Owner's decision and shall make any required decisions;
- C. Owner shall, at its own expense, furnish a legal description and any necessary survey of the real property upon which the Project is situated;
- D. As may be mandated by law or called for by the Construction Contract, Owner shall, at its own expense, provide for all required testing, inspections (except for those inspections expressly required of the Architect herein), filing, studies, or reports;
- E. In the event Owner learns of any failure to comply with the Construction Contract by the Contractor, or of any errors, omissions, or inconsistencies in the work product of the Architect, and in the further event that the Architect does not have notice of same, Owner shall inform the Architect;
- F. Owner shall afford the Architect access to the Project site and to the Work as may be reasonably necessary for the Architect to properly perform its services under this Contract;
- G. Owner shall perform its duties set forth in this Paragraph XIV in a timely manner;
- H. Except for documents requiring Owner's decision as set forth in Subparagraph XIV.B above, Owner's review of any documents prepared by the Architect or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's Criteria, as, and if, modified. No review of such documents shall relieve the Architect of its responsibility for the accuracy, adequacy, fitness, suitability, or coordination of its work product.

**XV.
APPLICABLE LAW**

The law applicable to this Contract is hereby agreed to be the law of the state where the Project is situated. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be finally determined by litigation. Any action shall be filed in District Court in Canyon County, Idaho.

**XVI.
OWNERSHIP OF THE PRELIMINARY DESIGN
AND THE DESIGN FOR CONSTRUCTION**

The Preliminary Design and the Design for Construction shall become and be the sole property of Owner. The Architect may maintain copies thereof for its records and for its future professional endeavors.

Neither the Preliminary Design nor the Design for Construction are intended by the Architect for use on other projects by Owner or others. Any reuse by Owner or by third parties without the written approval of the Architect shall be at the sole risk of Owner and Owner shall indemnify and save harmless the Architect, to the extent permitted by Idaho law, from any and all liability, costs, claims, damages, losses, and expenses including attorney fees arising out of, or resulting from, such reuse; provided, however, that this Agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Contractor for use on this Project.

**XVII.
SUCCESSORS AND ASSIGNS**

The Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of Owner. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns, and legal representatives to the other and to the successors, assigns, and legal representatives of such other party.

**XVIII.
NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

**XIX.
INSURANCE**

The Architect shall maintain the following Insurance at all times this Contract is in effect and for the stated periods after final completion of the Project:

A. Workers' compensation and employer's liability insurance as required by the state where the work is performed and for at least one (1) year after final completion of the Project. Further, Architect shall provide proof of Workers' Compensation Insurance in the form of a Certificate of Insurance to Owner.

B. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and damages to property of others arising from use of motor vehicles, including on-site and off-site operations and owned, non-owned, or hired vehicles with \$1,000,000 combined single limits. Architect shall maintain this insurance for at least two (2) years after final completion of the Project.

C. Commercial general liability insurance covering claims for injuries to members of the public or damage to property or others arising out of any covered negligent act of omission of Architect or of any of its employees, agents, or subcontractors with \$1,000,000 per occurrence and in the aggregate. Architect shall maintain this insurance for at least two (2) years after final completion of the Project.

D. Architect's existing professional liability insurance of \$1,000,000.00 per occurrence and in the aggregate maintained until October 21, 2007 and professional liability insurance of \$1,000,000.00 per occurrence, dedicated to this Project from October 21, 2007 until October 21, 2008 for which Owner shall reimburse Architect the sum of \$2,500.00. Architect shall purchase and keep in force during the pendency of this Project an Errors and Omissions Policy in the face amount of \$1,000,000.00 with not more than a \$25,000.00 deductible. A certificate of insurance acceptable to Owner shall be provided to Owner prior to commencement of the work. The insurance policy shall contain a clause that the policy may not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been provided to Owner.

E. Owner will be named as an additional insured with respect to Architect's liabilities hereunder in insurance coverages identified in items XIX B and XIX C and Architect waives subrogation against Owner as to said policies. At Owner's option, the Architect, in regard to insurance coverage identified in items XIX B, XIX C and XIX D, may provide to Owner, in place of the additional insured requirements, a certificate of insurance acceptable to Owner, prior to commencement of the work.

The coverages provided herein shall contain an endorsement providing thirty (30) days notice to Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to Owner and shall be in a form acceptable to Owner. Owner shall be provided a copy of the policies described herein upon written request.

XX. OTHER INSURANCE

The Architect shall purchase, and keep in force during the pendency of this Project, Workers' Compensation Insurance in compliance with Idaho law. Architect shall provide proof of Worker's Compensation Insurance in the form of a Certificate of Insurance to Owner's Representative.

XXI. TERMINATION

A. Either party hereto may terminate this Contract upon giving seven (7) days written notice to the other in the event that such other party substantially fails to perform its material obligations set forth herein;

B. This Contract may be terminated by Owner without cause upon seven (7) days written notice to the Architect. In the event of such a termination without cause, Owner shall pay the Architect for all services rendered prior to the termination, plus any expenses incurred and unpaid which would otherwise be payable

hereunder. In such event, the Architect shall promptly submit to Owner its invoice for final payment which invoice shall comply with the provisions of Paragraph XII.

**XXII.
ENTIRE AGREEMENT**

This Contract constitutes the entire and exclusive agreement between the parties with reference to the Project and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements.

OWNER

**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO**


Matt Beabe, Chairman


David J. Ferdinand II, Member


Steven J. Rule, Member

ATTEST: WILLIAM H. HURST, CLERK

By: 
Deputy

129-07

HOUSTON-BUGATSCH

By: 
Rick Bugatsch, Secretary

STATE OF IDAHO)

ss.

County of Canyon)

On this 9 day of October, 2007, before me, a notary public, personally appeared **RICK BUGATSCH**, known or identified to me to be the Secretary of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



Claudia Amaral

Notary Public for Idaho

Residing at: Caldwell, ID

My Commission Expires: 3-15-08

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