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14 FEB 20 P 2:54 January 31, 2014

AMENDMENT NO. 2

TO: Yamhill County
535 Northeast Fifth Street
McMinnville, Oregon 97128
(503) 434-7471 FAX: (503) 434-4358
Dunnb@co.yamhill.or.us

FROM: Randy Saunders
RSS ARCHITECTURE, P.C.
2225 Country Club Road
Woodburn, Oregon 97071
(503) 982-1211 Fax: (503) 982-2236
randy-rssarch@qwestoffice.net

RE: **YAMHILL COUNTY ENERGY EFFICIENCY, SAFETY, AND MAINTENANCE PROJECTS
Proposal for Professional Design Consulting Services - Proposed Fee Sum
Amendment
Architect's Project No. 1217**

1. This is Amendment No. 2 to that certain agreement between Yamhill County, a political subdivision of the State of Oregon, and **RSS ARCHITECTURE, P.C.**, entered into on December 13, 2012.

RSS ARCHITECTURE, P.C. requests an increase in our original Agreement for Services fee sum with Yamhill County. The purpose of this increase is to provide compensation for time spent adding sewer line improvements in 6th Street, HVAC system adjustments due to complications in the former Ticor Building, and minor additional consulting for other projects within the contractual scope of work. Requested fee sum increase is:

TWO THOUSAND FIVE HUNDRED SEVENTY-FOUR DOLLARS AND NINETEEN CENTS
(\$2,574.19)

2. If this increase in fee sum is acceptable all other terms and conditions of the Owner-Architect Agreement currently in place would remain the same.
3. **RSS ARCHITECTURE, P.C.** makes no representation through company design consulting services to guarantee/warranty or infallibly estimate the construction cost of any proposed project work.
4. **RSS ARCHITECTURE, P.C.** makes no representation through company design consulting services to guarantee or warranty perfection in documents prepared for any proposed project work.
5. The Owner acknowledges receipt and reading of the article included with this document titled **RULES OF CONDUCT AND STANDARD OF CARE**. The Owner further acknowledges **RSS ARCHITECTURE, P.C.** is legally obligated to perform SERVICES at least to the standard of care customary to the local area, but in no way is representing to guarantee or warranty a satisfactory result for the project through company design consulting services.
6. **RSS ARCHITECTURE, P.C.** endeavors to complete documents as accurately and thoroughly as possible. We make no representation through this Amendment No. 1 or through company design consulting services that additional project cost due to document flaws will not occur. The Client acknowledges document flaws within the standard of care customary to the project location are the Client's budgetary responsibility to account for.

B.O.14-11

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7. This Amendment No. 2 is approved and accepted

By: Mary P. Stein

Title: Chair, Board of Commissioners Date: 2/5/14

By: _____

Title: _____ Date: _____

Approved As To Form
by Christian Boenisch
Christian Boenisch
County Counsel
Yamhill County

Accepted by Yamhill County
Board of Commissioners on
1/9/14 by Board Order
14-11



Randal S. Saunders Architect/President

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RULES OF CONDUCT AND THE STANDARD OF CARE

Every Architect know what the *standard of care* is, right?

In the most rudimentary terms, the law is clear in that an Architect must perform services with usual and customary professional care and in accordance with general accepted practices in effect at the time the services are rendered, based on the laws and practices of a given locale. But, this is an oversimplification of a very complex subject.

Architecture is not a finite science, and what is considered "industry standard" may vary from one part of the country to another. This is the reason the standard of care is tempered by the region in which a project is located. The standard of care is also modified by the knowledge and expertise that is required for a particular building or construction type, given all the circumstances of a specific project.

In questions of professional breach of duty, the most essential question relating to professional conduct and to the standard of care is this: "Did this Architect conduct themselves in the same manner that another prudent Architect working under similar circumstances would have done?"

STANDARD OF CARE VS. STANDARD OF PERFECTION

Doctors are not required to guarantee a return to perfect health; Attorneys are not required to guarantee acquittal or victory in court; Architects, in turn, are not required to guarantee a perfect result - i.e. that the roof won't leak or that a building will function perfectly.

Some clients seek an improper or enlarged definition of the standard of care more akin to a standard of perfection, they may be disappointed with anything less. Underfunded owners require special attention during contract negotiations - they may want more building than they can afford and they may not have the financial resources to do the project without serious problems along the way. Owners who view the Architect as the provider of a product rather than as a provider of professional services will likely be disappointed and dissatisfied when the "product" isn't perfect.

SERVICES VS. PRODUCTS

The distinction that Architects provide their clients with services, not products, and they produce instruments of services, not a tangible, physical facility, is essential. The law recognizes the limitations inherent in design, and compliance with the profession's standard of care is clear with regard to the idea that expectations of perfection are not reasonable or possible. In creating a one-of-a-kind building (*unlike in the design of automobiles for example*), it is not possible to beta-test or prototype a unique design to get all the 'bugs' out on paper. No amount of effort, care, and conscientiousness on the Architects's part can foresee every aspect of transforming a complex and unique design on paper into a physical reality without a *reasonable* amount of incompleteness and human error. Discerning where that reasonable line resides is not black and white, but it is recognized in that the purpose of project monetary contingencies is to allow for a certain reasonable amount of error and omissions without crossing the line of negligence or malpractice.

The courts have consistently recognized the limitations and imprecisions of design. Outside of the obligations of the standard of care, Architects have neither a legal nor professional obligation to do perfect work or to guarantee their work.



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RULES OF CONDUCT AND THE STANDARD OF CARE (continued)

DUTIES OF THE CONTRACTOR VS. THE ARCHITECT

While the Architect provides the services and not a product, it is not always well understood that the Contractor - conversely - does indeed provide a *product* that comes with very different obligations. Contractors generally guarantee they will perform strictly in conformance with the construction documents and in accordance with industry standards and practices. It is the Contractor and not the Architect that is responsible for construction means, methods, techniques, sequences, and procedures of the construction work, and for achieving conformance as a requirement of contractor performance.

By contract and in accordance with the usual and customary application of the law, there are some important distinctions between Architects and Contractors that are not always understood, such as:

1. Contractors are obligated to guarantee performance and results, whereas Architects are obligated to act reasonably and prudently in accordance with the standard of care.
2. Contractors act as vendors, whereas Architects act as agents.
3. The contractor's legal focus is on result, whereas the Architect's focus is primarily on decision process.
4. By contract, Contractors "will achieve" a certain result, Architects "endeavor to" do so (predicated on the uncertainties inherent in the court-recognized limitations of the design process.)
5. A contractor's performance is based on a no-fault standard and the sole issue is conformance; an Architect's performance is evaluated on the standard of care.

NEGLIGENCE AND THE ARCHITECT

It is important to note negligence actions can arise from either an Architect's errors (acts of commission) or an Architect's omissions (things that should have been done and were not). If an Architect is bound to the standard of care (and not to an unachievable standard of perfection or to the same obligations of the party that is responsible for producing physical product), how does the law determine if an Architect has been negligent, breached their professional duties, or committed malpractice?

For a successful negligence action against an Architect, the law generally requires PROOF of four elements:

1. **Duty** - There must be a contractual or legal obligation to do something or to refrain from doing something. If someone claims the architect has been negligent, it must be proven that the Architect owed some duty to that person. If there is not duty, there is no negligence.
2. **Breach** - The Architect fails to perform the duty or does something that should not have been done.



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RULES OF CONDUCT AND THE STANDARD OF CARE

(continued)

NEGLIGENCE AND THE ARCHITECT (continued)

For a successful negligence action against an Architect, the law generally requires PROOF of four elements (continued):

3. **Cause** - The Architect's breach of duty is the proximate cause of harm to the person making the claim.
4. **Damage** - There must be actual harm or damage as a result of the breach.

Generally, all four of the above elements must exist for a negligence claim to be successful.

Examples of situations that can result in injury or damage and hence in a negligence claim might include:

- A building structure is inadequate for wind loads:
- The Architect fails to design the accordance with normally applicable statutes or codes.
- The Architect fails to detect a readily discernable error in a contractor's application for payment, or issues a change order without the Owner's authorization.

The Architect has a duty to perform in accordance with the law, within the standard of care, within generally accepted rules of conduct, and within the bounds of their contractual agreement with a Client. While the Architect is not expected to guarantee results or to provide a standard of perfection, the prudent design professional nonetheless recognizes these measures of professional conduct can be interpreted diversely in each unique court setting, or by an expert witness that sways a jury or an arbitrator to think otherwise. The best defense is to keep up with all of the requirements of the law and current codes of conduct, and to use good professional judgement in the exercise of all professional work.