

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Health and Human Services Department, hereinafter referred to as the "County", and RSS ARCHITECTURE, P.C., an Oregon corporation whose Federal Employer Identification No. is 93-1020806, hereinafter referred to as the "Consultant".

RECITALS

WHEREAS. The County requires the services of an architectural design consulting firm with the particular training, abilities, knowledge, qualifications, and experience for the *310 NE Kirby Street, McMinnville, OR 97128 2023 Renovation Project* (hereinafter referred to as the "Project"); and

WHEREAS. The Consultant possesses such training, abilities, knowledge, qualifications, and experience and is willing to perform the certain services for the County as set forth herein; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

AGREEMENT

1. TERM. This Contract shall become effective, and services required hereunder shall commence on the date the Contract is executed by both parties and shall terminate on December 31, 2023, unless otherwise terminated or extended as provided herein.
2. CONSIDERATION.
 - a. Not-to-Exceed. As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Consultant a sum not to exceed **\$42,500.00**. Payment for all services performed hereunder, including reimbursable expenses as provided below, shall not exceed this amount.
 - b. Invoicing. On or before the 15th of each month, the Consultant shall submit an invoice for work performed by the Consultant during the preceding month. The invoice shall set out all items for payment including, but not limited to: the name of the individual, direct labor hourly rate, hours worked during the period, and tasks performed. The Consultant shall also attach photocopies of claimed reimbursable expenses, if any. Where applicable, the Consultant shall stamp and approve all subcontractor invoices. The County shall pay the Consultant within 30 days following the date the invoice is received. The County shall make payments only after the County's receipt and approval of (i) the Consultant's detailed monthly invoice, and (ii) all documentation required by the invoice. All Invoices shall be sent to (electronic invoicing permitted):

Camille Tanaka
638 NE Davis St
McMinnville, OR 97128
tanakac@co.yamhill.or.us

c. Hourly Rates & Reimbursable Expenses.

- i. The hourly rates for all services executed hereunder shall not exceed the following:

TITLE	HOURLY RATE
Corporate Officers	136.00/hr
Project Architect	\$126.00/hr
Project Manager	\$116.00/hr
Computer-Aided Drafting	\$104.00/hr
Secretarial/Clerical	\$45.00/hr
Principal Engineer (Subconsultant)	\$155.00/hr
Staff Engineer (Subconsultant)	\$145.00/hr
Engineering Technician (Subconsultant)	\$135.00/hr
Engineering Clerical (Subconsultant)	\$45.00/hr
Interior Designer (Subconsultant)	\$145.00/hr

- ii. The following expenses shall be reimbursed without mark-up:

- Travel, Communications, Reproductions, Photography, Subsistence & Lodging, Other Consultants, other expenses as approved by the County.

- d. Exclusive Payment. The compensation provided herein shall be exclusive, and the County shall neither pay nor provide Consultant with any fringe benefits, including, but not limited to, retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Consultant for any purpose whatsoever unless otherwise agreed in writing. The Consultant shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to Consultant.

3. **PROFESSIONAL SERVICES.** The Consultant shall perform the following professional services to the satisfaction of the County:

- a. *General Scope of Work.* The scope of work generally consists of the provision of professional design services for approximately 6,045 square feet of office space located at 310 NE Kirby Street, McMinnville, Oregon 97128. Once completed, the new structure will provide added space and capacity to support operations for the County's Public Health Program. The scope of work is anticipated to generally include (though it is not limited to):

- i. One story structure with approximately 5-7 new rooms, including two new exam rooms;
- ii. A medical lab space;
- iii. A lobby and potentially the division of larger offices into several smaller rooms/offices;
- iv. Remodel of existing rooms to include removing walls, flooring, installing plumbing for a sink and ensuring necessary electrical/plumbing/ventilation capacity for large medical equipment (i.e., ultra-cold freezer, autoclave, multiple vaccine refrigerators); and

- v. Other cosmetic updates as needed.
 - b. *Deliverables*. Deliverables shall be considered those tangible resulting work products that are to be delivered to the County, such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings, and reports. Deliverables for the Project shall include:
 - i. Schematic design drawings;
 - ii. Construction cost estimate; and
 - iii. Construction documents, including:
 - 1. Preparation of drawings based on approved schematic design documents setting forth in detail the architectural, structural, mechanical, and electrical requirements for the Project;
 - 2. Development and preparation of bidding documents, conditions of the construction contract, architectural specifications, coordination of specifications prepared by other disciplines;
 - 3. Submission of required documents to jurisdiction(s) having authority to issue construction permits and acquisition of required construction permits; and
 - 4. Preparation of a final bid package for a lump sum bid, including any subsequent addenda as may be required, including supplementary drawings and specifications where needed.
 - c. *Owner's Representative*. The Consultant shall work closely with the County, and all Project stakeholders, to accomplish the Project's goals and objectives. Specifically, the Consultant shall be tasked with providing the County with the following services:
 - i. Project oversight, analysis, and auditing;
 - ii. Project management assistance and support; and
 - iii. Construction management.
 - d. *Authority*. Ultimate decision-making authority resides with the County, which will delegate sufficient authority to the Consultant to carry out the services described herein.
 - e. *Exhibit A*. In addition to the scope provided herein, the Consultant shall abide by and conform to all obligations asserted by the Consultant in their proposal, attached hereto as Exhibit A and incorporated herein. In the event of discrepancy between Exhibit A and this Contract, this Contract shall prevail.
4. ELECTRONIC FORMAT. The Consultant shall perform the services required herein and prepare all documents under this Contract with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Consultant shall deliver to the County, upon request, electronic versions of the documents via USB drive, DVD, or CD in an unencrypted format.
5. STANDARD OF CARE.
- a. The Consultant shall perform all services required hereunder in accordance with the same professional skill, care, diligence, and standards as other professionals performing similar services under similar conditions (the "Standard of Care".)
 - b. The Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that

they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Consultant.

- c. The Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables, and other documents prepared by the Consultant at no additional cost to the County.
 - d. The County's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by the County will not relieve Consultant of any responsibility for complying with the Standard of Care.
 - e. During the term of the Contract, the Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required by law for the Consultant to conduct its business and perform the services required hereunder. The Consultant shall review the Project site and the nature of the services to be provided and advise Owner throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.
 - f. The Consultant shall make available key personnel of the Consultant, as identified by Consultant in their proposal. Without prior notice to, and the written consent of, Owner, the Consultant shall not re-assign or transfer any key personnel to other duties or positions so that the key personnel are unable to fully perform his or her responsibilities under the Contract. The Consultant shall remove any individual or sub-consultant from the Project if so directed by the County in writing following discussion with the Consultant, provided that the Consultant shall have a reasonable time period within which to find a suitable replacement.
 - g. The Consultant shall, at no additional cost to the County, render assistance to the County in resolving problems or other issues relating to the Project design or to specified materials.
6. **OWNERSHIP OF WORK PRODUCT.** All work product produced by the Consultant under this Contract is the exclusive property of the County. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork, and any data or information in any form. The Consultant and the County intend that such Work Product shall be deemed "work made for hire" of which the County shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Consultant hereby irrevocably assigns and transfers to the County all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. The Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the County. The Consultant waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. Notwithstanding the foregoing, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of the Consultant are and will remain the exclusive property of the Consultant.
7. **INDEPENDENT CONSULTANT.** This agreement is not a contract of employment. The County does not seek to hire Consultant as an employee(s) of the County nor does the Consultant desire to be an employee(s) of the County for performance of the services

described herein. The parties intend that the Consultant, in performing the services specified herein, shall be and act as an independent Consultant and shall have professional control of the work and the manner in which it is performed. The Consultant shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Consultant as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Consultant's services. The Consultant shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Consultant.

8. AMENDMENT. This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and local ordinances. No amendment shall bind either party unless in writing and signed by both parties.
9. COMPLIANCE WITH ORS 279B.220. For all services provided under this Contract, the Consultant shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Consultant or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Consultant does not pay promptly any claim that is due for the services furnished to the Consultant by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Consultant under this Contract. The County's payment of a claim does not relieve the Consultant or its surety, if any, from their obligations for any unpaid claims.
10. HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.
 - a. Pursuant to ORS 279B.235(3), the Consultant shall pay the Consultant's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 - b. Pursuant to ORS 279B.235(1)(b), the Consultant shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.
 - c. Pursuant to ORS 279B.235(1)(c), the Consultant shall not prohibit any of the Consultant's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
 - d. Pursuant to ORS 279B.235(5)(b), the Consultant shall notify, in writing, any person employed by the Consultant under this Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by

employees, of the number of hours per day and days per week that the Consultant may require the employees to work.

11. **WORKERS' COMPENSATION.** If the Consultant is a subject employer for workers' compensation or unemployment insurance purposes, Consultant shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Consultant and the Consultant's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Consultant or the Consultant's employees.
12. **COMPLIANCE WITH LAWS.** The Consultant shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Consultant of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Consultant shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.
13. **INDEMNIFICATION.** To the fullest extent permitted by law, and in accordance with Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, the Consultant shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Consultant in connection with the performance of any services required hereunder. The Consultant shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.
14. **INSURANCE.** The Consultant shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:
 - a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, covering all activities and operations of the Consultant;
 - b. Commercial Automobile Liability Insurance, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, for all owned, non-owned, and hired vehicles used in the performance of the services required hereunder; and
 - c. Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, to protect against all loss suffered by the County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the work or services provided under this Contract.
 - d. Additional Insurance Requirements:

- i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
- ii. Insurance coverage shall apply on a primary and non-contributory basis.
- iii. Prior to commencing services, the Consultant shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Consultant's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Consultant or its insurer to the County. If requested, the Consultant shall provide complete copies of insurance policies to the County.

15. TERMINATION.

- a. County's Termination for Convenience. The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is in the best interest of the County. The County will provide the Consultant with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. By the termination date, the Consultant shall provide the County with immediate and peaceful possession of the Project site. Such termination shall be without liability or penalty, and in no circumstance shall Consultant be entitled to lost profits for work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- b. County's Termination for Cause. The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Consultant at the Consultant's address provided herein, specifying the cause:
 - i. The Consultant breaches any of the provisions of this Contract;
 - ii. The Consultant no longer holds all licenses or certificates that are required to perform the services required under this Contract;
 - iii. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Consultant's services; or
 - iv. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited, or the County is prohibited from paying for such services from the planned funding source.
- c. Consultant's Termination for Cause. The Consultant may terminate this Contract for cause if the County fails to pay the Consultant pursuant to this Contract. The Consultant may also terminate this Contract for cause if the County commits any

material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Consultant's notice, or such longer period as the Consultant may specify in such notice.

16. **FORCE MAJEURE.** Neither the County nor the Consultant shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of the County or the Consultant. The Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Consultant until such time as the County has accepted the services required hereunder.
17. **ASSIGNMENT; DELEGATION; SUCCESSOR.** The Consultant shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Consultant of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Consultant's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.
18. **GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Consultant hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
19. **RECORDS.** The Consultant shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Consultant shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's performance hereunder. The Consultant acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Consultant for a minimum of six (6) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
20. **NOTICES.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

27. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

RSS ARCHITECTURE, P.C.

Manda S. Saunders
Signature

RANDAL S. SAUNDERS
Name (printed)

PRESIDENT
Title

MARCH 29, 2023
Date

YAMHILL COUNTY

Lindsay Berschauer
Chair, LINDSAY BERSCHAUER

Mary Starrett
Commissioner, MARY STARRETT

Commissioner, KIT JOHNSTON

Kit Johnston
Date

APPROVED AS TO FORM

Jodi Gollehon
By: _____
Jodi Gollehon, Assistant County Counsel

Accepted by Yamhill County
Board of Commissioners on
4.7.23 by Board Order
B.O. 23-128

County: Yamhill County Health and Human Services
ATTN: Lindsey Manfrin
535 NE 5th Street
McMinnville, Oregon 97128
manfrinl@co.yamhill.or.us

Consultant: RSS Architecture, P.C.
ATTN: Randal Saunders
2225 Country Club Road
Woodburn, OR 97071
randy-rssarch@qwestoffice.net

21. FOREIGN CONSULTANT. If the Consultant is not domiciled in or registered to do business in the State of Oregon, the Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Consultant has met this requirement.
22. TAX CERTIFICATION. The Consultant hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Consultant's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
23. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
24. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
25. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
26. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

MEMO

TO: Bill Michielsen
 Yamhill County Public Health
 412 Northeast Ford Street
 McMinnville, Oregon 97128
 (503) 434-7525
michielsenw@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: **ARCHITECTURAL/PLANNING SERVICES**
310 Northeast Kirby Street Interior Remodel; McMinnville, Oregon

1. PROJECT ASSUMPTIONS USED TO PREPARE FEE PROPOSAL FOR PROFESSIONAL DESIGN CONSULTING SERVICES

- a) Whole project will be designed; bid package for the project may contain additive alternate bids for specific system components - to control overall cost and allow the County to decide how much work can be afforded (MAY VARY BY SCHEDULE/SCOPE).
- b) Consultant bidding/negotiations and construction contract administration services are proposed; consulting services, as listed below, are proposed for the project.
- c) Project delivery method is assumed to be design-public bid-build; consulting services as listed below take in to account any construction delivery method.

2. PROJECT SCOPE OF WORK

- a) The interior remodeling of an existing building at 310 Northeast Kirby Street; McMinnville, Oregon.
- b) Scope of work includes mechanical, electrical, and plumbing engineering design consulting services and architectural design consulting services for a publicly bid project.
- c) Documents prepared will be for public bidding, a building permit, and construction of the improvements.

3. FEE PROPOSAL FOR COMPREHENSIVE PROFESSIONAL DESIGN CONSULTING SERVICES BASED ON THE PROJECT SCOPE OF WORK AND ASSUMPTIONS LISTED ABOVE

- a) STRUCTURAL ENGINEERING DESIGN CONSULTANT = no services proposed or to be provided
- b) PLUMBING ENGINEERING DESIGN CONSULTANT = \$ 2,333.33
- c) HEATING AND COOLING SYSTEMS ENGINEERING DESIGN CONSULTANT = \$ 2,333.33
- d) ELECTRICAL ENGINEERING DESIGN CONSULTANT = \$ 2,333.34
- e) CIVIL ENGINEERING DESIGN CONSULTANT = no services proposed or to be provided
- f) LANDSCAPE ARCHITECT DESIGN CONSULTANT = no services proposed or to be provided
- g) INTERIOR DESIGNER CONSULTANT = no services proposed or to be provided

MEMO

TO: Bill Michielsen
Yamhill County Public Health
412 Northeast Ford Street
McMinnville, Oregon 97128
(503) 434-7525
michielsenw@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: **ARCHITECTURAL/PLANNING SERVICES**
310 Northeast Kirby Street Interior Remodel; McMinnville, Oregon

3. FEE PROPOSAL FOR COMPREHENSIVE PROFESSIONAL DESIGN CONSULTING SERVICES BASED ON THE PROJECT SCOPE OF WORK AND ASSUMPTIONS LISTED ABOVE (continued):

h) INDEPENDENT PROFESSIONAL COST ESTIMATOR = no services proposed or to be provided

Sub-total for proposed design sub-consultants = \$ 7,000.00

i) ARCHITECTURAL DESIGN CONSULTING SERVICES
• Design Documents = \$ 4,240.00
• Contract Documents = \$ 9,672.00
• Bidding/Negotiations = \$ 1,088.00
• Construction Contract Administration = \$ 18,000.00

Sub-total for Architectural design consulting services = \$ 33,000.00

4. Total proposed fixed design consulting services for Architectural and sub-consultant professional design consulting services based on project assumptions listed above = **\$ 40,000.00**

5. Estimated cost of reimbursable expenses, TO BE BILLED **IN ADDITION** TO THE FIXED PROFESSIONAL DESIGN CONSULTING SERVICES FEE LISTED ABOVE = \$ 2,500.00

Please see enclosed/attached billing rates sheet for summary of likely reimbursable expense items.

6. WORK NOT INCLUDED WITHIN THE PROPOSED SCOPE OF SERVICES AND FIXED PROFESSIONAL DESIGN CONSULTING SERVICES FEE SHOWN ABOVE:

- Materials testing/laboratory services
- Energy use monitoring of any kind.
- Special inspection services required by the jurisdictional authority.
- Geotechnical (soils) Engineering, site specific seismic study, or geological assessment/report.
- Furnishing selection consulting.

MEMO

TO: Bill Michielsen
Yamhill County Public Health
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RE: **ARCHITECTURAL/PLANNING SERVICES**
310 Northeast Kirby Street Interior Remodel; McMinnville, Oregon

6. WORK **NOT INCLUDED** WITHIN THE PROPOSED SCOPE OF SERVICES AND FIXED PROFESSIONAL DESIGN CONSULTING SERVICES FEE SHOWN ABOVE (continued):

- Commissioning Services of any kind.
- Hazardous materials (asbestos, lead, pcb's, etc.) identification/mitigation consulting.
- Energy Audits of any kind.
- Clerk of the Works (full-time on-site inspector).
- "Green" Architecture or sustainable design consulting.
- Structural Engineering design consulting services.
- Land Surveying.
- Payment of any permit, review, or application fees.
- Civil Engineering design consulting services.
- Landscape Architecture design consulting services.

7. **BILLING RATES**

Below is a schedule of 2023 hourly rates for professional design consulting services provided by **RSS ARCHITECTURE, P.C.** and our proposed sub-consultants:

Corporate Officers:	\$136.00/hr.
Project Architect:	\$126.00/hr.
Project Manager:	\$116.00/hr.
Project Assistant:	\$106.00/hr.

OTHER SERVICES

Computer-Aided Drafting:	\$104.00/hr.
Secretarial/Clerical:	\$45.00/hr.

HOURLY RATES FOR PROFESSIONAL DESIGN CONSULTING SERVICES PROVIDED BY PROPOSED SUB-CONSULTANTS:

Principal Engineer:	\$155.00/hr.
Staff Engineer:	\$145.00/hr.
Engineering Technician:	\$135.00/hr.
Engineering Clerical:	\$45.00/hr.
Interior Designer:	\$145.00/hr.

MEMO

TO: Bill Michielsen
Yamhill County Public Health
412 Northeast Ford Street
McMinnville, Oregon 97128
(503) 434-7525
michielsenw@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: **ARCHITECTURAL/PLANNING SERVICES**
310 Northeast Kirby Street Interior Remodel; McMinnville, Oregon

7. **BILLING RATES** (continued)

Below is a schedule of 2022 hourly rates for professional design consulting services provided by **RSS ARCHITECTURE, P.C.** and our proposed sub-consultants (continued):

HOURLY RATES FOR PROFESSIONAL DESIGN CONSULTING SERVICES PROVIDED BY PROPOSED SUB-CONSULTANTS (continued):

Landscape Architect: \$145.00/hr.
Professional Cost Estimator: \$140.00/hr.

In addition to the hourly rates listed above reimbursable expenses would be charged as follows (subject to negotiation):

Travel: \$.70/mile or at direct cost
Communications: at direct cost
Reproductions: at direct cost
Photography: at direct cost
Subsistence & Lodging: at direct cost
Other Consultants: at direct cost
Any Other Expenses: at direct cost

8. **TERMS AND CONDITIONS**

RSS ARCHITECTURE, P.C. makes no representation through company design consulting services to guarantee/warranty or precisely estimate the construction cost of any proposed project work.

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. Further, the Client acknowledges remodel, renovation, and addition projects are inherently more difficult to design than new construction and result in greater probability of flaws in documents prepared.

By signing this proposal/agreement form the Client acknowledges receipt and reading of the article following **BILLING RATES** titled **RULES OF CONDUCT AND STANDARD OF CARE**. The Client 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

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RE: **ARCHITECTURAL/PLANNING SERVICES**
310 Northeast Kirby Street Interior Remodel; McMinnville, Oregon

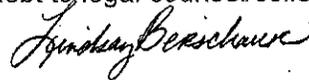
8. **TERMS AND CONDITIONS** (continued)

or warranty a satisfactory result for the project through company design consulting services.

Statement for services will be submitted monthly to the Client and are to be paid within twenty-one (21) calendar days after the postmark date of the statement. There are no exceptions to this payment schedule.

Monthly payments that are delinquent will be charged interest at a rate of one and a half percent (1.5%) compounded from the date the payment is due until it is received. There are no exceptions to this interest charge on delinquent payments. Failure to provide compensation as stipulated herein will result in assessment of interest charges and withholding of information until delinquent accounts are reconciled.

Failure to provide agreed upon compensation within ninety (90) calendar days of initial billing statement will result in automatic submittal of account debt to legal counsel/collection agency for collection.



This proposal is approved and accepted by: _____

Title: Chair Date: 4.6.23



Randal S. Saunders Architect/President

2225 COUNTRY CLUB RD. (503) 982-1211
WOODBURN OREGON 97071 (503) 370-7929

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 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.



Randal S. Saunders Architect/President

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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:

- Contractors are obligated to guarantee performance and results, whereas Architects are obligated to act reasonably and prudently in accordance with the standard of care.
- Contractors act as vendors, whereas Architects act as agents.
- The contractor's legal focus is on result, whereas the Architect's focus is primarily on decision process.
- 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.)
- 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, and within generally accepted rules of conduct. 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.