

**PROFESSIONAL SERVICES AGREEMENT –
ARCHITECTURAL DESIGN SERVICES**

This Professional Services Agreement – Architectural Design Services (this “Agreement”) is made and entered into effective on January 21, 2022 (the “Effective Date”) between City of John Day (“City”), an Oregon municipal corporation, whose address is 125 SE E Street, John Day, Oregon 97741, and Opsis Architecture LLP (“Contractor”), an Oregon limited liability partnership, whose address is 920 NW 17th Avenue, Portland, Oregon 97209.

RECITAL:

A. City desires to contract with Contractor to perform certain architectural, design, consulting and related services related to a new City aquatics center (“the Project”).

B. Contractor will perform the Services (as defined below) for and on behalf of City in accordance with, and subject to, the terms and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the parties’ mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Architectural and Design Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following architectural, design, consulting, and related services for and on behalf of City (collectively, the “Services”): (a) those architectural, design, consulting and related services described in the attached Schedule 1.1; (b) any other necessary or appropriate services customarily provided by Contractor in connection with its performance of those services described in the attached Schedule 1.1; and (c) such other architectural, design, consulting and related services requested by City from time to time. Contractor will (x) consult with and advise City on all matters concerning the Services reasonably requested by City, (y) communicate all matters and information concerning the Services to City’s city manager (or his or her designee) and perform the Services under the general direction of the city manager (or his or her designee) and/or council, and (z) devote such time and attention to the performance of the Services as necessary to perform the Services in accordance with this Agreement. Contractor acknowledges and agrees that City may cause or direct other persons or contractors to provide services for and on behalf of City that are the same or similar to the Services provided by Contractor under this Agreement.

1.2 Schedule of Services. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, all Services will be completed in accordance with the schedule contained in Schedule 1.2.

1.3 City/Contractor Coordination. Contractor’s ability to timely perform the Services requires that City staff timely deliver certain surveys, tests, inspections, reports, and services (through a contractor) to Contractor in accordance with this Section 1.3. To this end, City will complete the following:

1.3.1 Surveys. City will furnish surveys describing the physical characteristics, legal limitations, utility locations, and a legal description of the Project site to Contractor. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, paved travel ways, adjoining properties and structures, designated wetlands, adjacent drainage, rights-of-way, restrictions, easements, encroachments, established zones, deed restrictions, boundaries and contours of the Project site, locations and dimensions of existing buildings, other improvements and trees, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey must be referenced to a Project benchmark. City will provide the survey(s) to Contractor within approximately forty-five (45) days after the Effective Date.

1.3.2 Geotechnical Engineer. City will contract with a geotechnical engineer to provide or perform the following as and if necessary: test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions. The geotechnical engineer will provide written reports and recommendations concerning any testing performed by the geotechnical engineer.

1.3.3 Tests; Inspections; Reports. City will furnish tests, inspections, and reports required by law or as City and Contractor mutually and reasonably determine necessary to assist Contractor with completion of the Services, which tests, inspections, and reports may include structural, mechanical, and chemical tests, air and water pollution tests, and hazardous materials tests.

1.4 Condition Precedent. Notwithstanding anything contained in this Agreement to the contrary, City's performance of its obligations under this Agreement is conditioned on Contractor's performance of its obligations under this Agreement, including, without limitation, those Contractor obligations described under Section 4.4.

1.5 Subcontractors. Subject to the terms and conditions contained in this Agreement, Contractor will subcontract with the following subcontractors (individually and collectively, "Subcontractor(s)") to perform portions of the Services: (a) Catena Consulting Engineers, Inc., an Oregon corporation; (b) Sisul Enterprises, Inc., an Oregon corporation; (c) Colebreit Engineering, LLC, an Oregon limited liability company; (d) Walker Macy, LLC, an Oregon limited liability company; (e) Counsilman/Hunsaker & Associates, Inc., a Missouri corporation; and (f) ACC Cost Consultants, LLC, an Oregon limited liability company. Except as expressly provided in the immediately preceding sentence, Contractor is not permitted to subcontract and/or assign all or any part of the Services without City's prior written consent. City's consent to Contractor's subcontracts with Subcontractors (and all other proposed subcontracts and/or assignment of Services by Contractor) is conditioned on (in addition to any other condition that the City may reasonably impose) the following: (i) Contractor demonstrating to City that each Subcontractor and any other subcontractor/assignees (if any) are capable of successfully performing the identified Services in accordance with this Agreement; and (ii) each Subcontractor and/or the subcontractor/assignee agreeing in writing to comply with and be bound by all the terms and conditions contained in this Agreement. Contractor will deliver to City, promptly after execution, an original executed copy of all documentation pertaining to the subcontract(s) and/or assignment(s) in form reasonably acceptable to City. Contractor's subcontract with each Subcontractor and any other subcontract or assignment concerning the Services is subject to the following: (w) the terms and conditions of this Agreement will in no way be deemed to have been waived or modified; (x) consent will not be deemed consent to any further subcontract or assignment by City; (y) the subcontract or assignment, whether with or without City's consent, will not modify, relieve, and/or eliminate any Contractor liability or obligation

under this Agreement (Contractor remains liable for the timely and proper performance of the Services in accordance with this Agreement); and (z) City will pay Contractor for performance of the subcontracted/assigned Services subject to and in accordance with the terms and conditions contained in this Agreement.

2. Compensation.

2.1 Compensation. Subject to the terms and conditions contained in this Agreement, in consideration of Contractor's timely performance of the Services in accordance with this Agreement, City will pay Contractor for the Services at the fees and hourly rates identified in the fee schedule attached hereto as Schedule 2.1. Contractor will submit monthly invoices to City concerning the Services performed by Contractor during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Contractor (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the applicable fee(s) for performing the Services; and (d) any other information reasonably requested by City. City will pay the amount due under each Invoice within thirty (30) days after City has reviewed and approved the Invoice. No compensation will be paid by City for any portion of the Services not performed. City's payment will be accepted by Contractor as full compensation for performing the subject Services. Notwithstanding anything contained in this Agreement to the contrary, total compensation payable by City under this Agreement for completion of the Services will not exceed \$564,600.00, plus any reimbursement of expenses in accordance with and subject to Section 2.2 of this Agreement. City's payment of all compensation to Contractor under this Agreement is subject to all applicable loan and/or grant documents and agreements entered into between City and the applicable public agency.

2.2 No Benefits; No Reimbursement of Expenses. City will not provide any benefits to Contractor. Contractor will be responsible for obtaining Contractor's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Contractor will provide, at Contractor's cost and expense, all materials, equipment, and supplies necessary or appropriate to perform the Services. City will not reimburse Contractor for any expenses Contractor incurs to perform the Services except for Contractor's reasonable and necessary transportation expenses which Contractor incurs to attend in-person meetings (which City has requested that Contractor attend) subject to and in accordance with the following: (a) travel time (i.e., Contractor's actual drive-time) will be billed to City at ½ (or 50%) of the subject classified employee's standard hourly rate identified in Schedule 2.1; and (b) Contractor's mileage will be reimbursed at the then-applicable Internal Revenue Service standard mileage rates. Contractor will provide City receipts and mileage reports for all expenses incurred in the applicable month concurrent with submitting its monthly Invoice.

3. Relationship.

3.1 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. Contractor has the authority to hire other persons to assist Contractor in performing the Services (and has the authority to fire such persons).

3.2 Taxes; Licenses. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

3.3 No Agency Relationship. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City.

4. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

4.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized, validly existing, and in good standing under applicable Oregon laws. Contractor has full power and authority to sign and deliver this Agreement and to perform all Contractor's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

4.2 Licenses; Quality of Services. City has selected Contractor based on Contractor's professional experience, qualifications, reputation and specialized expertise. Prior to Contractor's execution of this Agreement, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services, including, without limitation, a City business license. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, free from errors, and consistent with the terms and conditions contained in this Agreement. The Services will be performed in accordance with the Laws (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. All materials and documents prepared by Consultant will be accurate, complete, unambiguous, prepared properly, and in compliance with the Laws. Contractor acknowledges and agrees that City is not responsible for discovering deficiencies in the technical accuracy of the Services. Contractor will promptly correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in City-furnished information and documentation (and Contractor was acting reasonably in relying upon such deficient information and documentation). Contractor will perform the Services subject to and in accordance with all applicable loan and/or grant documents and agreements entered into between City and the applicable public agency.

4.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result

of death or injury to any person or destruction or damage to any property) with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) errors and omissions insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (d) employer liability insurance with limits of not less than \$500,000 per occurrence and in the aggregate; and (e) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City and each City Representative (as defined below) as an additional insured, and will contain a severability of interest clause; the workers' compensation insurance will contain a waiver of subrogation in favor of City. The insurance Contractor is required to obtain under this Agreement may not be cancelled without ten (10) days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) and endorsements Contractor is required to obtain under this Agreement upon Contractor's execution of this Agreement and at any other time requested by City. If Contractor fails to maintain insurance as required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon City's demand.

4.4 Compliance With Laws. Contractor will comply and perform the Services in accordance with the Laws. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will comply with each obligation applicable to Contractor and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. For purposes of this Agreement, the term "Law(s)" means all applicable federal, state, and local laws, regulations, restrictions, orders, codes, rules, and/or ordinances related to or concerning Contractor, this Agreement, and/or the Services, including, without limitation, all applicable City ordinances, resolutions, policies, regulations, orders, restrictions, and guidelines, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

4.5 Indemnification.

4.5.1 Contractor will defend, indemnify, and hold City and each present and future City employee, officer, agent, and representative (individually and collectively, "City Representative(s)"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the following: (a) damage, injury, and/or death to person or property caused directly or indirectly by Contractor's acts and/or omissions (and/or the acts and/or omissions of Contractor's members, managers, officers, employees, agents, representatives, consultants, assignees, contractors, and/or subcontractors (individually and collectively, "Contractor Representative(s)"); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 4.5.1 will survive the termination of this Agreement.

4.5.2 Contractor will indemnify and hold City and each City Representative harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, to the

extent caused and resulting from Contractor's and/or Contractor Representative's negligent performance of the Services. Contractor's indemnification obligations provided in this Section 4.5.2 will survive the termination of this Agreement.

4.6 Assignment of Studies and Reports. Contractor will assign all studies, reports, data, documents, and/or materials of any kind produced under this Agreement to City upon the earlier of City's request or the termination of this Agreement. All copies of the materials provided to City will become the property of City who may use them without Contractor's permission for any proper purpose relating to the Services, including, without limitation, additions to or completion of the Services. Contractor will defend all suits or claims for infringement of patent, trademark, and/or copyright for which Contractor is responsible (including, without limitation, any claims which may be brought against City), and Contractor will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

4.7 Records. Contractor will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of five years after the expiration or earlier termination of this Agreement. Contractor's records will be maintained in accordance with sound accounting practices. Contractor's records concerning the Services, including, without limitation, Contractor's time and billing records, will be made available to City for inspection, copying, and/or audit within ten (10) days after City's request.

4.8 Confidential Information. During the term of this Agreement, and at all times thereafter, Contractor will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, or disclose any Confidential Information to any person, or remove or make reproductions of any Confidential Information, except that Contractor may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Contractor promptly notifies the city recorder of the order and complies with any applicable protective or similar order. Contractor will promptly notify the city recorder of any unauthorized use, communication, or disclosure of any Confidential Information and will assist City in every way to retrieve any Confidential Information that was used, communicated, or disclosed by Contractor and will exert Contractor's best efforts to mitigate the harm caused by the unauthorized use, communication, or disclosure of any Confidential Information. Upon the earlier of City's request or termination of this Agreement, Contractor will immediately return to City all documents, instruments, or materials containing any Confidential Information accessed or received by Contractor, together with all copies and summaries of such Confidential Information. If requested by City, Contractor will execute a written certification satisfactory to City pursuant to which Contractor will represent and warrant that Contractor has returned all Confidential Information to City in accordance with the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms of this Agreement do not operate to transfer any ownership or other rights in or to the Confidential Information to Contractor or any other person. For purposes of this Agreement, the term "Confidential Information" means all documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Contractor; provided, however, the term "Confidential Information" does not include City's public records which are non-exempt public records under applicable federal, state, and/or local laws.

5. Term; Termination.

5.1 Term of Agreement; Termination. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until completion of the Services (which in no event will be later than May 31, 2023) unless sooner terminated or extended as provided in this Agreement. Notwithstanding anything contained in this Agreement to the contrary, (a) this Agreement may be terminated at any time by the mutual written agreement of City and Contractor, and/or (b) City may terminate this Agreement for convenience and without cause by giving thirty (30) days' prior written notice of such termination to the other party. Upon receipt of the notice of termination, except as explicitly directed by City, Contractor must immediately discontinue performing all Services.

5.2 Termination for Cause. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the Services. Subject to Sections 5.2.1 and 5.2.2, the party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach. The terminating party must provide the breaching party seven days' advance written notice of its intent to terminate this Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this Section 5.2 are in addition to any other rights and remedies provided by law and/or under this Agreement.

5.2.1 City may terminate this Agreement in whole or in part upon the happening of any of the following events: (a) Contractor's failure to perform the Services within the time specified in this Agreement and/or by City approved extension; (b) Contractor's failure to make adequate progress so as to endanger satisfactory performance of the Services; (c) Contractor's failure to fulfill the obligations of this Agreement that are essential to completion of the Services; (d) Contractor engages in any form of dishonesty or conduct involving moral turpitude related to Contractor's independent contractor relationship with City or that otherwise reflects adversely on the reputation or operations of City; (e) Contractor fails to comply with any applicable law related to Contractor's independent contractor relationship with City; (f) continuous or repeated problems occur in connection with the performance of the Services; and/or (g) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. The determination as to whether any of the aforementioned events have occurred will be made by City in its sole discretion. Upon receipt of the notice of termination, Contractor must immediately discontinue all Services affected unless the notice directs otherwise. City will make payment to Contractor for satisfactory Services completed through the date Contractor received the termination notice subject to and in accordance with this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the compensation will not include Services that were not completed, including anticipated profit for non-performed Services. If, after finalization of the termination action, City determines, in City's sole discretion, that Contractor was not in default of this Agreement, the rights and obligations of the parties will be the same as if City issued the termination for convenience under Section 5.1(b).

5.2.2 Termination by Contractor. Contractor may terminate this Agreement in whole or in part upon the happening of any of the following events: (a) City defaults on its obligations under this Agreement; (b) City fails to make payment to Contractor in accordance with the terms and conditions of this Agreement; and/or (c) City suspends the Services for more than one hundred eighty (180) days due to reasons beyond the control of Contractor, as determined by City. Upon receipt of a notice of termination from Contractor, City will cooperate with Contractor for the purpose of

terminating this Agreement or portion thereof, by mutual consent. If City and Contractor cannot reach mutual agreement on the termination settlement under this Section 5.2.2, Contractor may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon City's breach of this Agreement. If Contractor terminates this Agreement due to City's breach, City will make payment to Contractor for satisfactory Services completed through the date City received the termination notice subject to and in accordance with this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the compensation will not include Services that were not completed, including anticipated profit for non-performed Services.

5.3 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments, subject to City's obligations under Section 5.2. Notwithstanding anything contained in this Agreement to the contrary, termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will deliver to City all materials and documentation, including raw or tabulated data and work in progress, related to or concerning the Services.

5.4 Remedies. Subject to the terms and conditions contained in this Agreement, if a party breaches and/or otherwise fails to perform any of its representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

6. Miscellaneous.

6.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Contractor will not assign this Agreement to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

6.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution

of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

6.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

6.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

6.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

6.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

[signature page immediately follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and effective for all purposes as of the Effective Date.

CITY:

City of John Day,
an Oregon municipal corporation


By: Nick Green, City Manager

Federal Tax Id. No.: 93-6002192

CONTRACTOR:

Opsis Architecture LLP,
an Oregon limited liability partnership


By: Mark Stoller Partner

Federal Tax Id. No.: 93-1272425

Schedule 1.1
Scope of Services

Subject to the terms and conditions contained in this Agreement, Contractor will perform architectural, design, and consulting services, including, without limitation, the following services:

I. Schematic Design Services

Tasks

- Architectural Design – Services responding to scope of work (program/pre-design) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of building systems and materials, development of approximate dimensions, areas and volumes.
- Structural Design – Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design.
- Mechanical Design – Services consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.
- Electrical Design – Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, and general space requirements.
- Outline specifications detailing design quality standards for development of cost estimate.
- Code Analysis (egress, restroom fixture count, setback requirements, parking requirements).
- Development of schedules for decision-making, design, and documentation.
- Participate in one round of consolidated owner design review comments based on the 100% schematic design documents
- Prepare a cost estimate.

Meetings:

- Owner coordination and review meetings will be held virtually as needed.

Deliverables:

- Schematic design drawings.
- Schematic design outline specifications describing quality standards and systems.
- Construction cost estimate based on the 100% schematic design documents (reference supplemental services below).

II. Construction Documents

Tasks

- Architectural Design – Services consisting of preparation of drawings based on approved schematic design documents setting forth in detail the architectural construction requirements for the Project.
- Structural Design – Services consisting of preparation of final structural engineering calculations, drawings and specifications based on approved schematic design documentation, setting forth in detail the structural construction requirements for the Project.
- Mechanical Design – Services consisting of preparation of final mechanical engineering calculations, drawings and specifications based on approved schematic design documentation, setting forth in detail the mechanical construction requirements for the Project.

- Electrical Design – Services consisting of preparation of final electrical engineering calculations, drawings and specifications based on approved schematic design documentation, setting forth in detail the electrical construction requirements for the Project.
- Specifications – Services consisting of activities of development and preparation of bidding documents, conditions of the contract, architectural specifications, coordination of specifications prepared by other disciplines, and compilation of Project manual.
- Review and update previously established schedules for the Project.
- Participate in one round of consolidated owner design review comments based on the 90% construction documents.

Meetings:

- Owner coordination and review meetings will be held virtually as needed.

Deliverables:

- 90% construction documents issuance (including documents and specifications).
- 100% bid/permit construction documents issuance (including documents and specifications).

III. Bidding and Permitting Phase

Tasks

- Services consisting of preparation of one (1) bid package for a lump sum bid.
- Services consisting of preparation of addenda as may be required during bidding and including supplementary drawings and specifications.
- Services consisting of participation in pre-bid conferences, responses to questions from bidders, and clarification or interpretations of the bidding documents.
- Services consisting of consideration, analysis, comparisons, and recommendations relative to substitutions proposed by bidders during the bidding process.
- Services consisting of submitting required documents to jurisdiction having authority to issue construction permits and acquisition of required construction permits.

IV. Construction Administration

Tasks

- Services consisting of construction contract administrative functions including consultation, conferences, communications and progress reports.
- Coordination between the architectural work, engineering work, and other involved consultants for the Project. Reviewing and checking documents (required submittals) prepared for the Project.
- Services relating to applicable laws, statues, regulations and codes of regulating entities relating to the City's interests during construction of the Project.
- Services consisting of processing of submittals, including receipt, review of and appropriate action on shop drawings, product data, samples and other submittals required by the contract documents. Distribution of submittals to City, construction contractor, and field representatives as required.
- Services consisting of visits to the Project site at intervals appropriate to the stage of construction or as otherwise agreed to become generally familiar with the progress and quality of the work and to determine if the work is proceeding in accordance with the contract documents, and preparing related reports and communications. Contractor to chair Project meetings and prepare

meeting minutes.

- Services consisting of preparation, reproduction and distribution of clarification documents and interpretations in response to requests for clarification by construction contractors or City. Maintenance of records and coordination of communications relative to requests for clarification or information (RFI). Preparation, reproduction and distribution of drawings and specifications to describe work to be added, deleted or modified, review of proposals, review and recommend changes in time for substantial completion, assisting in the preparation of modifications of the contracts and coordination of communications, approvals, notifications, and record-keeping relative to changes in the work.
- Services consisting of monitoring the progress of the construction contractors relative to established schedules and providing status reports to City.
- Services consisting of maintenance of contract payment records, evaluation of applications for payment and certification thereof, and review and evaluation of cost data submitted by the construction contractors for work performed.

Meetings

- OAC Meetings - Weekly virtual meetings with site visits as required based on progress of work.

V. Supplemental Services

Tasks

- **Civil** – Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking.
 - o Deliverable: Included in overall bid document package.
- **Landscape** – Services consisting of the design and documentation of above-ground site improvements, including the design of hardscape pedestrian paved areas, landscape plantings, an inclusive play area, irrigation and site furnishings.
 - o Deliverable: Included in overall bid document package.
- **Aquatic Design**: Services consisting of aquatic planning, design of all aquatic support systems (mechanical and plumbing), pool tank design and detailing, and pool finish materials selection.
 - o Deliverable: Included in overall bid document package.
- **Interior Design**: Services consisting of detailed interior space planning, interior design concept development, finishes and materials selection and documentation, and development and documentation of custom interior features.
 - o Deliverable: Included in overall bid document package.
- **Fire Sprinkler/Alarm**: Services consisting of the development of performance-based specifications of the fire protection sprinkler service and fire detection and alarm services and subsequent Project conformance review of contractor design.
 - o Deliverable: Included in overall bid document package.
- **Data/Communications**: Services consisting of the design and development of final data/telecommunications system design drawings and specifications.
 - o Deliverable: Included in overall bid document package.
- **Audio/Visual** – Services consisting of the design and development of final A-V systems drawings and specifications. This design scope includes infrastructure and distribution required to route audio and video signals to projection and display systems within each required space; specifically A-V equipment racks, projector locations and distribution, A-V floor boxes and outlets, loudspeaker locations, and amplification and sound reinforcement equipment.
 - o Deliverable: Included in overall bid document package.
- **Lighting**: Services consisting of interior and exterior lighting design and preparation of final lighting

schedule, cutsheets, drawings, and calculations.

o Deliverable: Included in overall bid document package.

• **Cost Estimating** – Detailed quantity take-offs and cost estimating for architectural, landscape, civil, electrical, mechanical and structural portions of the work, including one round of reconciliation and minor estimate update.

o Deliverable: One (1) construction cost estimate based on development of schematic design documents.

Schedule 1.2
Schedule of Services

Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services in accordance with the following schedule, which schedule City and Contractor may modify from time to time by the parties' mutual and reasonable written agreement:

	Project Phase	Begin on or before:	Completed on or before:
I.	Schematic Design Services	January 21, 2022	March 7, 2022
II.	Construction Documents	March 14, 2022	June 24, 2022
III.	Bidding and Permitting Phase	June 27, 2022	August 27, 2022
IV.	Construction Administration	August 27, 2022	May 31, 2023

Schedule 2.1
Fee Schedule

Subject to the terms and conditions contained in this Agreement, Contractor will perform the Services at the following fees and hourly rates:

Design Fees

BUILDING DESIGN

Architecture	\$ 210,000
Structural Engineering	\$ 35,000
Mechanical Engineering	\$ 22,000
Plumbing Design	\$ 14,000
Electrical Engineering	\$ 30,000
Life Safety / Fire Alarm	\$ 6,000
Low Voltage / Technology	\$ 6,000
Specifications	\$ 20,000
Cost Estimating (Optional)	\$ 17,000
TOTAL BUILDING DESIGN	\$ 360,000

SITE DESIGN

Civil Engineering	\$ 30,000
Landscape Architecture	\$ 70,000
Site Lighting	\$ 6,000
TOTAL SITE DESIGN	\$ 106,000

AQUATIC DESIGN

Aquatic Design	\$ 98,600
TOTAL AQUATIC DESIGN	\$ 98,600

TOTAL FEE **\$ 564,600**

Hourly Billing Rates

<u>Classification</u>	<u>Hourly Rates</u>
Partner	\$200
Project Architect	\$135
Interior Designer	\$135
Staff Architect	\$120
Intern Architect	\$100
Clerical Support	\$ 80