

(ATTACHMENT A)- Draft Professional Services Contract

CITY OF FORTUNA  
PROFESSIONAL SERVICES AGREEMENT  
FOR ARCHITECT SERVICES

This Agreement (“**Agreement**”) for professional services is made on \_\_\_\_\_, 2023, between the City of Fortuna, a California municipality (“**City**”), and Allen Atelier, Inc., a California corporation (“**Architect**”).

1. **Scope of Services.** Architect shall provide to City the professional services described in the Scope of Services, attached hereto as **Attachment A** and incorporated herein (the “**Services**”). Only the City’s governing body or the City Manager may authorize any change or addition to the Scope of Services specified in **Attachment A**. Any such authorization shall be in writing and signed by the parties to be effective.

2. **Term.** This Agreement shall become effective on \_\_\_\_\_ and shall continue in effect until the Services are completed, unless terminated sooner in accordance with Section 12 of this Agreement.

3. **Compensation.** For the full and satisfactory completion of the Services, City shall compensate Architect on a Time and Materials as needed basis as described in **Attachment B**.

4. **Prevailing Wage Laws.** Services by persons deemed to be employees of Architect possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. Architect has the sole responsibility to comply with those requirements, should they apply.

5. **Payment.** City shall pay Architect for services satisfactorily provided during each calendar month within thirty (30) days following City receipt and approval of a detailed invoice. Amounts unpaid 30 days after receipt of the invoice shall bear interest from the date payment is due at the rate of ten percent (10%) per annum until paid. The invoice must include, at a minimum:

- 5.1 A description of the specific Services provided,
- 5.2 the name of the individual providing the Services,
- 5.3 the date(s) upon which the Services were provided,
- 5.4 the time spent providing the Services,
- 5.5 the amount due for the Services and the basis for calculating the amount due, and

5.6 an itemized summary of Allowable Reimbursable Expenses.

## **6. Independent Contractor.**

6.1 Architect understands and acknowledges that Architect is an independent contractor, not an employee, partner, agent, or principal of City. This Agreement does not create a partnership, joint venture, association, or employer-employee relationship between the Parties. At its own expense, Architect is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for Architect and for Architect's employees and Subconsultants. Architect has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of persons whom Architect uses in performing the Services under this Agreement. Architect shall provide the Services in Architect's own manner and method, except as this Agreement specifies. Architect shall treat a provision in Architect Agreement that may appear either to give City the right to direct Architect as to the details of doing the work, or to exercise a measure of control over the work, as giving Architect direction only as to the work's end result.

6.2 Architect shall indemnify, and hold harmless City for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that City may be required to make on behalf of Architect, an employee of Architect, or any employee of Architect construed to be an employee of City, for the work done under this Agreement.

## **7. Architect's Warranties.**

7.1 Architect warrants that Services provided under this Agreement shall be performed in accordance with generally accepted professional practices and standards for Architect's profession in the state.

7.2 Architect warrants that Services provided under this Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations.

7.3 Architect warrants that Architect has no present interest which would conflict in any manner with the performance of Services on the City's behalf.

7.4 Architect represents and warrants that it is now, and will remain for the duration of its Services, properly licensed, qualified, experienced, and equipped to perform the Services.

7.5 Architect possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement and the Services in a professional and competent manner.

7.6 Architect represents and warrants that the Services and the sale or use of the Services shall not infringe, directly or indirectly, on any valid patent, copyright or trademark, and Architect shall, at Architect 's sole cost and expense, indemnify and hold harmless the City from and against claims and causes of action based on alleged or actual infringements thereof.

7.7 These warranties shall survive the expiration or termination of this Agreement, and are in addition to any warranties provided by law. No payment to Architect for any Services performed hereunder (including, without limitation, final payment) shall constitute a waiver of any Claims by the City against Architect relating to the Services.

**8. Notice.** Any notice, billing, or payment required by this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a .pdf (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

City: City of Fortuna  
Attn: City Manager  
P.O. Box 545  
Fortuna, CA 95540  
Phone: (707) 725-1410  
Email: mperry@ci.fortuna.ca.us

Architect: Allen Atelier, Inc.  
PO Box 582  
Blue Lake, CA 95525  
Phone: (707) 232-5332  
Email: valerie@allen-atelier.com

**9. Indemnity.**

Where the services to be provided by Architect under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Architect agrees to indemnify and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Architect in the performance of services under this Agreement, but

this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the City's (or any of its officers, official employees, or volunteers) own negligent acts or omissions, recklessness, or willful misconduct. If it is finally adjudicated that liability is caused by the comparative fault of the City, then Architect's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Architect's proportionate percentage of fault, and the City shall promptly reimburse Architect for any amount paid as indemnification or defense of the City in excess of Architect's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, Architect agrees to indemnify and hold harmless the City, its officers officials, employees and volunteers for an against any claim, demands, losses, liability of any kind or nature arising out of or in connection with the Architect's performance or failure to perform under the terms of this contract, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.

This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive the expiration or early termination of this Agreement with respect to Liability arising during the term of the Agreement.

**10. Insurance.** Before providing any services under this Agreement, Architect shall be required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Architect and its employees, agents, or subcontractors relating to or arising from the performance of services under this Agreement, and must remain in full force and effect at all times during the term of the Agreement. Allrequired insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Architect fails to provide any of the required coverage, City may, at its sole discretion, purchase such coverage at Architect's expense and deduct the cost from payments due to Architect.

10.1 The following insurance policies and limits are required for this Agreement:

10.1.1 **Commercial General Liability Insurance ("CGL").** Architect will file with the City before beginning professional services, certificates of insurance satisfactory to the City evidencing general liability coverage of not less than \$1,000,000.00 per

occurrence (\$1,000,000.00 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000.00 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$\_\_\_\_\_) (if applicable). The general liability coverage is to state or be endorsed to state (i) "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by City of Fortuna, its officers, employees, or authorized volunteers shall not contribute to it" and (ii) the inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverages afforded shall apply as though separate policies have been issued to each insured.

In the event that the Architect employs other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Architect's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

**10.1.2 Workers' Compensation Insurance.** By his/her signature hereunder, Architect certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Architect will comply with such provisions before commencing the performance of the professional services and work under this Agreement. Architect and sub-consultants will keep workers' compensation insurance for their employees in effect during all Services covered by this Agreement.

**10.1.3 Professional Liability.** Architect will file with the City, before beginning professional services, a certificate of insurance satisfactory to the City evidencing professional liability coverage of not less than two million dollars (\$2,000,000.00) per claim and annual aggregate. The retroactive date (if any) is to be no later than the effective date of this Agreement. Architect shall maintain such coverage continuously for a period of at least three years after the completion of the contract Services. Architect shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. The professional liability coverage shall give the City, its officers, employees, and authorized volunteers insured status. In the event that the Architect employs

other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Architect's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above prior to the commencement of any Services by the sub-consultant.

10.2 Each certificate of insurance must state that the coverage afforded by the policy or policies shall not be reduced, cancelled or allowed to expire without at least thirty (30) days written notice to City, unless due to non-payment of premiums, in which case at least ten (10) days written notice shall be made to City.

10.3 Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City.

10.4 If any of the required coverages expire during the term of this Agreement, the Architect shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the City at least ten (10) days prior to the expiration date.

**11. Dispute Resolution.** In the event that any dispute arises between the parties in relation to this Agreement, the parties agree to meet face to face as soon as possible to engage in a good faith effort to resolve the matter informally. In the event that any dispute arises between the parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

11.1 Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days after the date that such notice is given, or sooner if reasonably practicable. The parties shall jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel.

11.2 Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.

**12. Early Termination.**

12.1 **Termination for Convenience.** City may terminate this Agreement for convenience by giving ten (10) calendar days written notice to Architect. In the event City elects to terminate the Agreement without cause, it shall

pay Architect for services satisfactorily provided up to the effective date of termination.

**12.2 Termination for Cause.** If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice ten (10) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Architect shall be entitled to payment for all services satisfactorily provided up to the effective date of termination, except that the City may withhold from that payment the amount of costs the City incurred, if any, because of Architect's alleged breach of the Agreement.

**13. Work Product.** City shall be the sole owner of **all** rights to any work product in any form which has been prepared by Architect on City's behalf pursuant to this Agreement, unless otherwise specified in writing by the parties.

**14. Audit.** During this Agreement's Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, Architect shall:

14.1 Keep and maintain, in their original form, **all** records, books, papers, or documents related to Architect's performance of this Agreement; and

14.2 Permit City or its authorized representatives, at **all** reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe **all** records, books, papers, or documents related to Architect's performance of this Agreement.

**15. General Provisions.**

**15.1 Assignment and Successors.** Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto.

**15.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement.

**15.3 Nondiscrimination.** Architect shall comply with **all** applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national

origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. **All** nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

**15.4 Choice of Law and Venue.** This Agreement shall be governed by California law, and venue shall be in the Superior Court for the county in which City is located, and no other place.

**15.5 Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

**15.6 Amendment.** No amendment or modification of this Agreement shall be binding unless it is in a writing duly authorized and signed by the parties to this Agreement.

**15.7 Provisions Deemed Inserted.** Every provision of law required to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement shall be amended to make the insertion or correction.

**15.8 Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral understandings or agreements of the parties.

**15.9 Attachments.** If any provision in any attachment to this Agreement conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions set forth in the body of this Agreement shall control over the conflicting or inconsistent provisions in the attachment.

**15.10 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**15.11 Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the



reasonable control of the party delayed, excluding financial inability (“Force Majeure Event”), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.

**15.12 Headings.** The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

**15.13 Attorneys Fees and Venue for Disputes.** If litigation becomes necessary to enforce the terms and provisions of this Agreement or as a result of any breach by Architect or the City of this Agreement, the prevailing party in any such litigation shall be entitled to recover reasonable attorney’s fees and costs. The Humboldt County Superior Court for the State of California shall have exclusive jurisdiction over any dispute arising out of this Agreement or Architect’s provision of Services hereunder, and shall serve as the venue for any such dispute. All parties expressly consent to this designation of jurisdiction and venue.

**15.14 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**15.15 Authorization.** Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

The parties agree to this Agreement as witnessed by the signatures below:

CITY:

ARCHITECT:

\_\_\_\_\_

\_\_\_\_\_

s/\_\_\_\_\_

s/\_\_\_\_\_

\_\_\_\_\_  
Name/Title [print]

\_\_\_\_\_  
Name/Title [print]

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

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

**Attachments:**

**Attachment A: Scope of Services**

**Attachment B: Architect's Fee Schedule**

**Attachment A**  
**Scope of Services**

The Architect will provide existing drawings of the Monday Club building, and design and draw a chimney replacement to match the historic chimney that was removed after incurring seismic damage.

## **Attachment B Architect's Fee Schedule**

Existing building drawings and construction documents for the construction of a new chimney to match and replace the old chimney that was damaged in an earthquake per the Architect's hourly rate (Valerie Allen rate = \$100.00 per hour). Architect estimates that the total fee will not exceed \$7,500.00, as follows:

- Existing Building Drawings: \$3,250.00
- Construction Drawings for Permit for new chimney: \$3,250.00
- Permitting with the City of Fortuna: \$1,000.00

Consultants (if any) not included in fee. Architect shall obtain prior approval from the City Manager before hiring any consultants.

The Owner shall pay the Architect an initial payment of One Thousand Five Hundred Dollars (\$1,500.00) as a deposit under this Agreement. The deposit shall be credited to the final invoice, with any overage refunded to the City.

The Owner shall reimburse the Architect for pre-approved expenses incurred in the interest of the Project, plus Ten Percent (10%).