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ARCHITECTURAL SERVICES CONTRACT

AGREEMENT, made _____, _____, between _____

_____ (hereinafter called the "Owner") and _____ of _____ hereinafter called the "Architect").

WHEREAS, the Owner owns and operates a rural electric or telecommunications system, having the Rural Utilities Service designation of _____, financed in whole or in part with loans made or guaranteed by the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"). If the project is financed wholly or in part by the Rural Telephone Bank, an agency of the United States of America, the references in this Agreement to the "Administrator" shall mean the "Governor" of the Rural Telephone Bank as well; and

WHEREAS, the Owner desires to _____

_____ (hereinafter called the "Project") at an estimated cost of construction not to exceed: _____

dollars (\$ _____) for new work, and/or _____ dollars

(\$ _____) for remodeling, which aggregate _____

dollars (\$ _____), hereinafter called the "Anticipated Cost," is exclusive of the cost of land, legal, architectural, accounting, or other professional services, or of interest.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE I

General Obligation of Architect

The Architect shall render, diligently and competently in accordance with the normal standards used in the profession, all architectural services which shall be necessary or advisable for the expeditious, economical, and sound design, construction, and satisfactory completion of the Project. The enumeration of specific duties and obligations to be performed by the Architect hereunder shall not be construed to limit the general undertakings of the Architect. The obligations of the Architect hereunder run to, and are for the benefit of, only the Owner and the Administrator and shall not relieve the Contractor of its own responsibility under its agreement with the Owner.

ARTICLE II

Preconstruction Period

Section 1.

(a) *The Architect shall prepare: (1) preliminary drawings, (2) a general description of materials and types of construction, and (3) an overall estimate of the cost of construction (all of the foregoing hereinafter collectively called the "Preliminary Documents"), and not later than _____ days after the date of execution of this Agreement, shall submit them in triplicate to the Owner for approval. Any changes in the Preliminary Documents required as a condition of approval shall be promptly made by the Architect.*

(b) *After receipt of notice of approval of the Preliminary Documents from the Owner, the Architect will proceed with the preparation of:*

(1) *Detailed plans showing the complete design of the Project including, but not limited to, architectural, structural, electrical, mechanical, and site development features.*

(2) *Complete and detailed specifications describing the design requirements of the Project, including all matters referred to in subparagraph (1) above, and any materials to be incorporated therein.*

(3) *The Construction Contract, RUS Form 257, "Contract to Construct Buildings," (hereinafter called the "Construction Contract"), which includes the Notice and Instructions to Bidders, Bid Bond, Bidders' Proposal, Owners' Acceptance, and Contractors' Bond, to be entered into between a bidder and the Owner for the construction of the Project. (All of the foregoing, including any revisions thereof, being hereinafter collectively called the "Plans and Specifications.")*

Within _____ days after receipt of such approval of the Preliminary Documents, the Architect shall prepare and submit to the Owner, in duplicate, for its approval, complete and detailed "Final" Plans and Specifications as required for the construction of the Project. All documents required to be prepared and submitted by the Architect hereunder shall be on the applicable standard forms prescribed by the Administrator. In the preparation of the Plans and Specifications, the Architect shall consult with the Owner to ascertain the requirements of the project. Upon approval by the Owner of the Plans and Specifications, such approval being noted thereon under the corporate seal of the Owner attesting the approval thereof by the Owner, the Architect shall diligently make such changes in the Plans and Specifications as may be required as a condition of approval thereof.

Section 2. *So far as it shall be necessary in the preparation of the Plans and Specifications and in the construction of the Project, the Owner shall furnish the Architect information and data in respect of the following:*

(a) *A complete and accurate survey of the building site, including grades and lines of streets, pavements, and adjoining properties;*

(b) *The rights, restrictions, easements, boundaries, and contours of the building site;*

(c) *Sewer, water, gas, electric, and telephone service, etc.; and*

(d) *Test borings and pits, and chemical, mechanical, and other tests.*

Section 3. *If the Owner shall direct that the Project shall be constructed under more than one contract, the Architect shall submit all necessary Construction Contract forms and shall also prepare and submit in connection with each such contract all of the information and documents that shall be required for construction of the Project.*

Section 4. *Immediately after the Architect has received approval of the Plans and Specifications from the Owner, the Architect, unless otherwise instructed by the Owner, shall take all appropriate and necessary action to*

procure full, free, and competitive bidding for the award of the Construction Contract. Any public notices which by law are required of the Owner shall be published at the expense of the Owner.

Section 5. *The Architect shall prepare and furnish to each qualified bidder requesting them one set of the Plans and Specifications together with all necessary forms and other documents upon payment of the amount stipulated by the Architect, which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. The Architect shall also prepare and furnish to bidders requesting them additional sets of the Plans and Specifications together with all necessary forms and other documents upon payment of an amount stipulated by the Architect, which payment will not be subject to refund.*

Section 6. *The Architect shall address to each prospective bidder a written response to inquiries from any prospective bidder with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of proposals for the construction of the Project or the furnishing of materials or services therefor. Under some circumstances the Architect may request that the inquiries from the prospective bidders be submitted in writing. The Architect or a competent representative of the Architect shall attend all openings of bids for the construction of the Project or any part thereof. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Architect shall carefully check and prepare tabulations of all bids received and shall render to the Owner a recommendation and all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently awarded in accordance with the policy and procedure prescribed by the Owner and the Administrator.*

Section 7. *The Architect shall furnish to the Owner all architectural information, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises, and authorizations, and shall cooperate with the Owner's attorney in the procuring thereof.*

Section 8. *If, after the Construction Contract has been approved, it shall be determined by the Owner that a change or changes in the Plans and Specifications are advisable, the Architect shall prepare and submit to the Owner all necessary details in connection with such change or changes, the Construction Contract shall be amended accordingly, and the Architect shall immediately proceed in respect of any construction required thereby in like manner as though such construction were originally required under the Construction Contract.*

ARTICLE III

Construction Period

Section 1. *The Architect shall conduct inspection activities, and for projects involving multiple construction contracts, shall provide project coordination and inspection activities, and shall make a diligent effort to secure for the Owner the expeditious and economical construction of the Project in accordance with the approved Plans and Specifications and the terms of the Construction Contract. The Architect, unless otherwise directed in writing by the Owner, shall have and exercise sole responsibility for the issuance of supplemental directives to the Contractor regarding the Contractor's performance in accordance with the terms of the Construction Contract. In fulfilling the above responsibility, the Architect shall:*

(a) Issue to the Contractor such directives and impose such restrictions as may be necessary to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications.

(b) Visit the Project site at intervals appropriate to the stage of construction, but in no event (except for periods of prolonged work stoppage or construction delay) less than once per week, to inspect construction of the Project, to inspect excavations prior to placing of concrete, and to inspect other work prior to it being covered from view.

(c) Make recommendations to the Owner concerning the selection of materials, colors, finishes, designs, or devices for use in the Project.

(d) Periodically inspect materials prior to their incorporation into the Project and promptly reject those not in compliance with the Specifications.

(e) Observe the manner of incorporation of materials into the Project and the workmanship with which such materials are incorporated.

(f) Review and if acceptable approve material and/or equipment substitutions for compliance with contract documents.

(g) Observe results of specified tests.

(h) Be available to the Owner and the Contractor during office hours for consultation.

(i) Review completed construction, direct the Contractor to correct observed defects, and approve payments to the Contractor for correctly completed construction.

(j) Prepare such change orders as may be required for the Project.

Section 2. The Architect shall review and, if acceptable, approve shop drawings, samples, schedules, and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with requirements of the Plans and Specifications.

Section 3. The Architect shall prepare and execute all estimates, certificates, and other documents required to be executed by the Architect pursuant to the Construction Contract. Unless otherwise provided in the Construction Contract, the Architect will furnish to the Contractor, free of charge, copies of the Plans and Specifications as may be reasonably necessary for the execution of the work.

Section 4. The Architect shall prepare and submit to the Owner monthly construction progress reports.

Section 5. The Architect shall, upon notice by the Contractor of completion of the work and a request for a final inspection of the Project:

(a) Make a careful and thorough inspection to determine that the construction of the Project has been completed in accordance with the Plans and Specifications and the terms of the Construction Contract and any amendments thereto.

(b) Prepare and deliver to the Owner complete and detailed final documents, including, without limitation, the following:

(1) An itemized statement of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials and services therefor.

(2) A Certificate of Completion on the form approved by the Administrator, to the effect that the Project has been fully constructed in accordance with the Plans and Specifications, if and as amended.

(3) One complete set of "as-constructed" Plans and Specifications of the Project in reproducible form satisfactory to the Owner.

(4) A Certificate of Architect and a Final Statement of Architect's Fee due hereunder.

(c) Use diligent efforts:

(1) To obtain from the Contractor releases of all liens and of rights to claim any lien from manufacturers, material suppliers, and subcontractors that have furnished materials or services for the construction of the Project.

(2) To obtain a Certificate of Contractor, on the form approved by the Administrator, to the effect that all labor has been paid.

(3) To obtain and deliver to the Owner all material and workmanship warranties or bonds required by the Plans and Specifications and service and operating manuals furnished by manufacturers or suppliers.

ARTICLE IV

Compensation

Section 1. *The Owner shall pay the Architect for all services performed hereunder, except as provided in Section 3 hereof, a sum calculated as follows. (The Owner and Architect should agree upon the compensation schedule to be inserted in Tables Nos. 1 and 2 below.)*

**TABLE NO. 1
NEW CONSTRUCTION**

COST OF NEW CONSTRUCTION

COMPENSATION FOR ARCHITECTURAL SERVICES

**TABLE NO. 2
REMODELING WORK**

COST OF REMODELING WORK

COMPENSATION FOR ARCHITECTURAL SERVICES

If a Project shall consist of new construction and remodeling work, the Architect and the Owner shall agree on an equitable distribution of the final cost of construction between new construction and remodeling work, which shall be used to determine the applicable compensation from the two tables in this Section 1. For the purpose of computing compensation due the Architect under this Agreement for services rendered, "remodeling," shall be defined for this project as follows:

The sum shall be due and payable as follows:

(a) Twenty percent (20%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Preliminary Documents.

(b) An additional fifty percent (50%) thereof (using the Anticipated Cost in lieu of the Cost of Construction) within thirty (30) days after the date of approval of the Plans and Specifications.

(c) An additional twenty percent (20%) thereof, as construction progresses, in monthly installments each bearing the same ratio to the total amount payable under this subsection (c) as the corresponding monthly payment to the Contractor bears to the total amount payable to the Contractor.

(d) The balance, if any, of the compensation due under this Section 1 and all other provisions of this Agreement, shall be payable within thirty (30) days after Completion of the Project in accordance with the provisions of Section 2 of this Article IV.

For the purpose of this Article, the term "Cost of Construction of the Project," shall mean the Construction Contract Price including amendments thereto, plus the cost of labor and materials furnished for the Project by the Owner and in respect of which the Architect shall have rendered services hereunder. Extra drafting or other services performed shall be paid for as provided in Section 3 of this Article IV.

The term "Completion of the Project" shall mean full performance of all obligations under this Agreement and all amendments and revisions thereof.

Section 2. Prior to the time when any payment shall be made to the Architect pursuant to this Agreement, the Architect, if requested by the Owner, shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Architect in connection with the Project have been fully paid by the Architect up to and including a date not more than fifteen (15) days prior to the date when such payment shall be due. Before the time when the final payment provided to be made pursuant to this Article IV shall be made to the Architect by the Owner, the Architect shall also furnish to the Owner as a condition precedent to such payment (a) a Certificate of Architect stating that all the employees of the Architect have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien upon the Project have been paid, and (b) a Final Statement of Architect's Fee showing the Cost of Construction of the Project and the amount due the Architect under this Agreement.

Section 3. If the Architect shall, at the request of the Owner, perform any of the services outlined in Section 2 of Article II or if, after approval of the Construction Contract the Architect shall perform extra drafting or other services because of changes ordered by the Owner or default of the Contractor, the Architect shall be paid, in respect thereof, a sum equal to the Architect's reasonable out-of-pocket expenses, plus _____ percent (_____ %) [not to exceed fifty percent (50%)] thereof for office overhead plus reasonable subsistence, transportation, and communication expenses, if any, paid to, or on behalf of, employees; which amount shall be due and payable ten (10) days after approval by the Owner of the services performed and the invoice of the Architect. The compensation due the Architect under this paragraph shall be decreased by the amount of any increase in the compensation due the Architect under Section 1 of this Article IV. The Architect shall submit to the Owner a statement of out-of-pocket expenses in respect of extra drafting or other services to be compensated for pursuant to this Section 3. Out-of-pocket expenses shall be limited to money paid by the Architect for direct labor, labor taxes, labor insurance, prorated sick leave, vacation, holiday, retirement, and medical insurance benefits, all applicable to such direct labor, except that, in the case of services performed with the prior approval of the Owner by the following officers, partners, or others having ownership interests in the Architect, the rates corresponding to "direct labor" set forth below shall apply:

Section 4. *If this Agreement shall be terminated pursuant to the provisions of Section 1 or Section 2 of Article V hereof, the compensation for services rendered prior to such termination shall be computed as follows:*

(a) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Preliminary Documents and such compensation shall be prorated on the basis of the percentage of completion of such Preliminary Documents as of the effective date of termination.

(b) One-half of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost (or of the Cost of Construction of the Project if termination is effective after approval of the Construction Contract) shall represent compensation for the Plans and Specifications and such compensation shall be prorated on the basis of the percentage of completion of such Plans and Specifications as of the effective date of termination.

(c) One-fifth of the compensation set forth in Section 1 of this Article IV based upon the Anticipated Cost shall represent compensation for the coordination and inspection of construction of the Project and such compensation shall be prorated on the basis of the percentage of such services determined by the value of the Project constructed prior to the effective date of termination.

(d) One-tenth of the compensation set forth in Section 1 of this Article IV based upon the Cost of Construction of the Project shall represent compensation for the services provided for in Section 5 of Article III and such compensation shall be prorated on the basis of the percentage of such services performed prior to the effective date of termination.

(e) Compensation for the services referred to in Section 2 of Article II which may be performed by the Architect at the request of the Owner and for extra drafting and other services because of changes ordered by the Owner, shall be computed in accordance with the provisions of Section 3 of this Article IV.

Section 5. *Interest shall be paid by the Owner to the Architect on all unpaid balances due the architect, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Architect. Such interest shall be at the rate of _____ percent (_____ %). [Percentage is not to exceed any applicable State usury laws.] Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Architect and the Owner.*

ARTICLE V

Miscellaneous

Section 1. *The Owner may at any time terminate this Agreement by giving notice to the Architect in writing to that effect, delivered and mailed to the Architect's last known address not less than ten (10) days prior to the effective date of termination specified in the notice. From and after the effective date of termination specified in such notice, this Agreement shall be terminated, provided, however, that the Architect shall be entitled to receive compensation for services theretofore rendered pursuant to this Agreement, computed in accordance with the provisions of Article IV, Section 4, hereof.*

Section 2. *The Architect shall have the right, by giving to the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Architect shall have been prevented by conditions beyond the control and without the fault of the Architect (a) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement, or (b) from proceeding with the completion of full performance of any remaining services required of the Architect pursuant to this Agreement for a period of six (6) months from the date of last performance by the Architect of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Architect shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in Section 1 of this Article.*

Section 3. *Upon Completion of the Project or termination of this Agreement, the Architect shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all letters, documents, and other material including all records pertaining thereto.*

Section 4. *Insurance. The Architect shall take out and maintain throughout the period of this Agreement insurance of the following types and minimum amounts:*

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Architect's employees who perform any of the obligations of the Architect under the Agreement. If any employer or employee is not subject to the workers' compensation laws of the governing State, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the Agreement shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article IV, Section 1, but not less than \$500, 000.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the total compensation to be paid under this Agreement.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Architect shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Architect shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 5. *The obligations and duties to be performed by the Architect under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Architect, if the Owner shall so direct, shall replace any person employed by the Architect in connection with the Project.*

For the information of the Owner and the Administrator, the Architect shall, upon request, file with the Owner and the Administrator, on forms approved by the Administrator, statements of the qualifications, including specific experience, of each person assigned to the Project and the duties assigned to each, and certifications of insurance coverage.

Section 6. *The Architect shall follow all applicable RUS rules and regulations.*

Section 7. *This agreement shall be simultaneously executed and delivered in three counterparts, each of which when so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.*

Section 8. *The obligations of the Architect under this Agreement shall not be assigned without the approval in writing of the Owner.*

Section 9. *The Architect shall comply with applicable statutes pertaining to the practice of the profession.*

It is hereby warranted that the Architect possesses license number _____ issued by the State of _____ on the _____ day of _____, _____.

IN WITNESS WHEREOF, *the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be affixed and attested by their duly authorized representatives all as of the date first above written.*

Owner

By _____
President

ATTEST:

_____ *Secretary*

Architect

Title

ATTEST:

_____ *Secretary*