Shums Coda Associates
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of the 15 day of March, 2021, by and between the Jurisdiction of Ivins City, Utah ("Jurisdiction") and Shums Coda Associates ("Consultant").

WHEREAS, Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

WHEREAS, Consultant is willing to render the professional services described herein on the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services:** The Consultant shall furnish the following services in a professional manner:

   "Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time."

2. **Time of Performance:** The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by Jurisdiction. Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control.

3. **Compensation:** Compensation to be paid to Consultant shall be in accordance with the Schedule of Fees set forth in Exhibit B, which is attached hereto and incorporated herein by reference. Payment by Jurisdiction under this Agreement shall not be deemed a waiver of defects, even if such defects were known to Jurisdiction at the time of payment.

4. **Method of Payment:** Consultant shall submit monthly billings to Jurisdiction describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent, and by whom, and a description of any reimbursable expenditures. Jurisdiction shall pay Consultant no later than 30 days after approval of the monthly invoice by Jurisdiction staff. When payments made by Jurisdiction equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by Jurisdiction.

5. **Ownership of Documents:** All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Jurisdiction upon payment to Consultant for such work, and the Jurisdiction shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to Jurisdiction upon written request.

6. **Independent Contractor:** It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Jurisdiction. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Jurisdiction's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. **Interest of Consultant:** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

   Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

   a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the Jurisdiction or of any Jurisdiction official, other than normal agreement monitoring; and,

   b. possesses no authority with respect to any Jurisdiction decision beyond rendition of information, advice, recommendation or counsel. [FPPC Reg. 18700(a)(2)].

8. **Professional Ability of Consultant:** Jurisdiction has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. **Indemnity:** Consultant agrees to defend, indemnify and hold harmless the Jurisdiction, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including attorney's fees, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement to the extent caused by the negligent acts, errors, or omissions of Consultant. Jurisdiction also agrees to defend, indemnify and hold harmless the Consultant, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including attorney's fees, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement to the extent caused by the negligent acts, errors, or omissions of the Jurisdiction.

10. **Insurance:** Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies with insurers possessing a Best's rating of no less than A:

    a. **Workers' Compensation Coverage:** Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of Utah. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Utah for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the Jurisdiction at least thirty (30) days prior to such change.

    b. **General Liability Coverage:** Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

c. **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) combined single limit for each occurrence.

d. **Professional Liability Coverage:** Consultant shall maintain professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by the Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars ($1,000,000) on a claims-made annual aggregate basis.

e. **Policy Endorsements:** Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

1) The Jurisdiction, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

2) This policy shall be considered primary insurance as respects the Jurisdiction, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Jurisdiction, including any self-insured retention the Jurisdiction may have, shall be considered excess insurance only and shall not contribute with it.

3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

4) Any failure to comply with reporting provisions of the policies shall not effect coverage provided to the Jurisdiction, its elected or appointed officers, officials, employees, agents or volunteers.

5) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the Jurisdiction.

d. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the Jurisdiction. At the Jurisdiction's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

e. **Certificates of Insurance and Endorsements:** Consultant shall provide certificates of insurance with original endorsements to Jurisdiction as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Jurisdiction on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Jurisdiction at all times during the term of this Agreement.

11. **Compliance with Laws:** Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. **Licenses:** Consultant represents and warrants to Jurisdiction that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to Jurisdiction that consultant shall, at

its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a business license, if required.

13. **Controlling Law Venue:** This Agreement and all matters relating to it shall be governed by the laws of the State of Utah and any action brought relating to this Agreement shall be held exclusively in a state court in the appropriate Jurisdiction.

14. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Jurisdiction:	Ivins City 55 Main Street Ivins, UT 84738
If to Consultant:	**Shums Coda Associates** 5776 Stoneridge Mall Rd., Ste. #150 Pleasanton, CA 94588

15. **Consultant's Books and Records:**

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Jurisdiction for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Jurisdiction Manager, Jurisdiction Attorney, Jurisdiction Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Jurisdiction for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where Jurisdiction has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, Jurisdiction may, by written request by any of the above named officers, require that custody of the records be given to the Jurisdiction and that the records and documents be maintained. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of Agreement between the Jurisdiction and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. **Amendments:** This Agreement may be modified or amended only by a written document executed by both Consultant and Jurisdiction and approved as to form by the Jurisdiction Attorney.

18. **Waiver:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. **Litigation Expenses and Attorneys' Fees:** If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

20. **Execution:** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counter part.

21. **Assignment & Subcontracting:** The parties recognize that a substantial inducement to Jurisdiction for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the Jurisdiction. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the Jurisdiction. If Jurisdiction consents to such subcontract, Consultant shall be fully responsible to Jurisdiction for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between Jurisdiction and consultant nor shall it create any obligation on the part of the Jurisdiction to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

22. **Termination:** This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

JURISDICTION:	**CONSULTANT:**
By: _____	By: _____
Title: _____	Title: _____

Attachments: Exhibit A - Scope of Services
Exhibit B - Schedule of Fees
Exhibit C - SCA Schedule of Charges

EXHIBIT A
SCOPE OF SERVICES

Building Plan Review Services

Plan Review: Consultant will perform plan reviews to cover one or more of the following disciplines: architectural, structural, mechanical, electrical, plumbing, accessibility, fire, engineering and energy requirements - all as modified or amended by the City, and per the City's currently adopted building codes.

Comment Lists and Plans Delivery: City is responsible for notifying SCA when plans are ready for review, whether hard copies are needed to be picked up or electronic files are ready for download. Plan reviews result in typed lists of comments which refer to specific details and drawings, and reference applicable code sections.

Turn-Around Schedules: SCA will generally complete plan reviews per the following schedule.

	Number of Working Days	
	Initial Check (1st):	**Recheck(s):**
Residential		
New Single Family Dwellings	7-10	5
New Multi-Family Townhomes/ Apartments (Standard)	10	5
New Multi-Family Apartments (Large Scale)	15	10
Addition/Remodel	10	5
Commercial		
New Construction	10-15	5-10
Addition/Remodel	10	5

Other turnaround schedules will be accommodated at request of Jurisdiction.

Technical Support: When mutually agreed between the City and Consultant as vital to project success, SCA staff will attend pre-construction or pre-design meetings, field visits upon request, and provide support for field inspection personnel on an as-needed basis.

Inspection Services

Consultant will provide building inspector(s) as requested by the City. Inspector(s) will report directly to the City Building Official or other person designated by the City for all project-related work.

In general, the inspection services to be provided may include, but are not limited to, field observation of all construction activity, preparation of daily reports, review of submittals and other duties as assigned.

Other Services

Consultant will provide other services as specifically requested by the City. Additional services provided shall have scope and compensation mutually agreed upon by Consultant and City prior to commencement of said services.

EXHIBIT B
SCHEDULE OF FEES

Plan Review Fees for Building Departments

Fees for comprehensive, large-scaled, commercial or multi-family residential plan reviews, performed at SCA offices, will be equal to Sixty percent (60%) of the plan review fees as calculated per the City. The City will provide SCA with jurisdiction plan review fees (project–by-project) for use in calculating SCA's fees based on current valuation table published by ICC and the 1997 UBC Table 1-A.

Fees for small-scaled commercial plan reviews will be completed for an hourly rate of $75/hour for the first three reviews, or attached rates per Exhibit C (as mutually agreed upon with the City)

The above fee covers all services associated with the typical plan review, including:

- Delivery of design documents to the jurisdiction.
- First, second, and third abbreviated reviews, if necessary, to approve projects
- Pre-application, pre-construction, or additional meeting attendance that is necessary for unusual or complex projects.

Additional plan reviews (extensive third reviews or more) that may be required will be charged on an hourly rate (per attached Exhibit C – Schedule of Charges, when mutually agreed upon with the City).

Plan review fees for Commercial projects can be performed at an hourly fee (Exhibit C) or a percentage% of the Building permit fee based on the 1997 UBC fee schedule negotiated with the Building Official.

Inspection Fees for Building Departments

On-site field inspection related support services are performed on an hourly fee basis as listed in the attached Schedule of Charges (Exhibit C).

Public Works Support & Inspections

Public Works design, plan review, maps checking or field inspection can be supplied on an hourly basis. See the attached Exhibit C.

EXHIBIT C
SCHEDULE OF CHARGES

Personnel Charges – Plan Review and Inspection Services

Personnel Description:	Hourly Billing Rate:
Principal	$150
Acting Building Official	$110
Plan Review Engineer/Architect	$105
Senior Plans Examiner	$90
Plans Examiner	$75
Engineer (Civil Reviews)	$110
Fire Protection Plan Examiner	$90
Fire Protection Engineer	$140
Fire Systems (Commercial Sprinklers/Alarms/Hoods/Racks/Smoke Control)	TBD
Permit Technician	$50
Clerical Support	$45
Senior Inspector	$80-$90
Inspector II	$75
Inspector I	$65

** Overtime for inspection hours will be billed at one hundred fifty percent (150%) of the hourly rate above. Upon Building Official Approval

** Hours for inspections in excess of 8 hours will be billed as overtime at the rate shown above. When inspection overtime is requested, on days when inspector has not already performed inspections on site (i.e., weekends, holidays, etc.), inspection overtime services will be performed in 4-hour minimum segments