

# **QBS AS-BUILTS EMERGENCY PREPAREDNESS BUILDING PLAN BUSINESS CONSULTANT AGREEMENT**

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**THIS BUSINESS CONSULTANT AGREEMENT** (“Contract”) is made and entered into by QBS As-Builts, Inc., an Indiana corporation, with corporate headquarters located at 674 Shakespeare Drive, Avon, IN 46123, (“Consultant”) and \*\*\*\*\*, a \*\*\*\*\* corporation, with corporate headquarters located at \*\*\*\*, (“Company”) on the \*\*\*\*\* day of \*\*\*\*\*, 20\*\* (the “Effective Date”).

## **RECITALS**

**WHEREAS**, the Consultant is in the business of the providing advice and direction on emergency preparedness building plans (generally “Services”); and

**WHEREAS**, the Company desires to enter into an agreement with Consultant to utilize the expertise of Consultant relative to the Services offered by Consultant;

**WHEREAS**, Consultant desires to enter into an agreement with the Company to provide it the Services Consultant provides;

**NOW THEREFORE**, the Parties having exchanged valuable consideration, the adequacy and sufficiency of which the Parties acknowledge by executing this Contract containing their terms and conditions, and their mutual covenants and promises, the Parties agree to the following terms and conditions.

## **TERMS AND CONDITIONS**

### **1. CONSULTATION SERVICES**

The Company hereby employs the consultant to perform the following services in accordance with the terms and conditions set forth in this Contract. The Consultant will conduct an Emergency Preparedness Building Plan for property located at \_\_\_\_\_

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The Consultant will consult with the officers and employees of the company concerning matters relating to the safety and emergency preparedness of the company including interior layout, ingress and egress, building code compliance and the creation of an emergency plan of action (the “Services”).

**2. TERMS OF AGREEMENT**

This Agreement will begin on the \_\_\_\_\_ day of \_\_\_\_\_, 20\*\* and will end on the \_\_\_\_\_ day of \_\_\_\_\_, 20\*\*. Either Party may cancel this agreement on 10 days written notice to the other Party in writing, by certified mail, return receipt requested, or personal delivery.

**3. TIME DEVOTED BY CONSULTANT**

It is anticipated the Consultant will spend approximately \_\_\_\_\_ hours in fulfilling its obligations under this Contract. The determination of how much time to expend and when to expend its time on this Contract shall rest in the sole discretion of the Consultant. The particular amount of time may vary from day to day or week to week. However, the Consultant shall devote a minimum of \_\_\_\_\_ hours per month to its duties in accordance with this Contract.

**4. PLACE WHERE SERVICES WILL BE RENDERED**

The Consultant will perform most of the actions and components comprising the Services in accordance with this Contract at a location determined in the Consultant’s sole discretion. In addition, the Consultant will perform some of the actions and components comprising the Services on the telephone, by email, on computers, and at such other places as necessary to perform the Services in accordance with this Contract.

**5. PAYMENT TO CONSULTANT**

Consultant will be paid at the rate of \$ \_\_\_\_\_ per hour for work performed to complete the Services, as billed to Company by the Consultant from time to time. Consultant will submit an itemized statement setting forth the time spent on providing the Services rendered, and Company will pay Consultant the amounts due as indicated by statements submitted by the Consultant within ten (10) business days of receipt.

**6. INDEPENDENT CONTRACTOR**

Both the Company and Consultant agree that the Consultant will act as an independent contractor in the performance of its duties under this contract. Accordingly, the Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of the Consultant’s activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fee as required. Further, the Consultant shall determine in its sole discretion when, where, and how to perform the actions and components comprising the Services. Should the Company require the Consultant to expend any monies for travel related to the providing

the Services, to drive to meetings, or other similar expenses, the Company shall reimburse Consultant for such expenses.

## 7. CONFIDENTIAL INFORMATION

- a. “Confidential Information” shall mean (a) any technical or business information relating to the development, formulation, composition, blending, manufacture, use, supply and/or sale of the product(s) of either Consultant or the Company, (b) the actual or potential business plans and/or activities of either Consultant or the Company, or (c) the information, data, documentation, drawings, or similar information provided by the Company to Consultant to perform the Services under this Contract, or (d) the Services provided to the Company, disclosed to the other Party (“Recipient”) by the Party possessing such Confidential Information (the “Tendering Party”), either directly or indirectly, orally, in writing, by software, by drawings, samples, by visual inspection of equipment or facilities, or in any other way, disclosed to Recipient by the Tendering Party either directly or indirectly, orally or in writing or by drawings or samples or by visual inspection of equipment or facilities, or disclosed in any other way by the Tendering Party to the Recipient.
- b. Recipient shall not disclose Confidential Information received from the Tendering Party under this Contract to any third party and shall not use the same, except for the purpose of fulfilling the terms and conditions of this Contract, in each case as long as it remains Confidential Information. Further, Recipient shall not make known or cause to be made known to any third party any correlation with or identity of the Confidential Information, which may exist between Confidential Information and non-confidential technical information or know-how made available to Recipient from the Tendering Party. The obligations of non-disclosure and non-use does not include the obligation not to include Confidential Information and the results of evaluation of such Confidential Information in patent applications submitted by Consultant and not to disclose such Confidential Information it to the patent office of any country.
- c. Subsequent to the completion of this Contract, Recipient may not make copies of Confidential Information, or use, reproduce, transform or store any Confidential Information in a computer or electronic information retrieval system.
- d. The obligations of non-disclosure and non-use in Paragraph 7b shall not apply to Confidential Information which:
  - (1) Recipient can show in tangible form was in the public knowledge or literature at the time of disclosure by the Tendering Party; or
  - (2) Recipient can show by dated and written record was already in its possession at the time of disclosure by the Tendering Party hereunder without obligation of confidentiality;and such provisions shall cease to apply to information which, subsequent to its disclosure hereunder:

- (3) becomes part of the public knowledge through no act or omission of Recipient;
  - (4) is disclosed to Recipient without obligation of confidentiality by a third party having legal right to do so;
  - (5) is independently developed by or for Recipient by persons who have not had access to Confidential Information; or
  - (6) The Tendering Party makes public.
- e. Recipient may disclose to a governmental agency, judicial body, or litigant only as much of the Tendering Party's Confidential Information as is required to be disclosed pursuant to a subpoena, *subpoena duces tecum*, order, notice, or process issued by said governmental agency or judicial body, or held lawfully by such litigant ; provided that after receiving such a subpoena, *subpoena duces tecum*, order, notice, or process and prior to making any disclosure required thereunder, Recipient within five (5) business days of receipt of a copy of such subpoena, *subpoena duces tecum*, order, notice, or process shall forward it to Tendering Party in order to allow Tendering Party within five (5) business days of its receipt of such subpoena, *subpoena duces tecum*, order, notice, or process from Recipient the opportunity to oppose the subpoena, *subpoena duces tecum*, order, notice, or process, or seek a protective order or other confidential treatment, and provides reasonable assistance to the Tendering Party in such opposition, notice or process, or to obtain such protective order or other confidential treatment. Nothing in this Paragraph shall be construed to authorize Recipient to disclose Confidential Information to parties other than such governmental agency, judicial body, or litigant, pursuant to the lawful subpoena, *subpoena duces tecum*, order, notice, or process.
- f. The Company and Consultant both, and their separate officers, directors, principals, employees, agents, representatives, affiliated companies or persons, or subsidiaries are subject to the terms and conditions of this Paragraph 7, which shall continue to be effective after the termination of this Contract.
- g. All documents, drawings and writings provided to Recipient hereunder and any copies thereof shall be returned promptly to the Tendering Party upon its written request with the exception of one (1) file copy which may be retained solely for the determination of Recipient's legal obligations under this Paragraph 7; provided that such file copy shall remain subject to the provisions of this Paragraph 7. Upon such request, Recipient shall destroy any documents which have been prepared containing excerpts or other information derived from the documents, drawings and writings disclosed to Recipient by the Tendering Party.

Recipient shall restrict disclosure of Confidential Information to only those of its employees and agents who have a need to know such information to carry out the purpose of providing the Services and complying with the terms and conditions set out in this Contract, and who have undertaken written obligations of confidentiality and restricted use with Recipient. Recipient shall remain responsible to the Tendering Party for the proper observance of the obligations of this Paragraph 7 by any employee or agent

to which the Confidential Information is disclosed. Both the Company and Consultant warrant and represent to the other Party that they have in place processes, procedures and policies to maintain the confidentiality of any Confidential Information they receive from the Tendering Party pursuant to this Contract.

## **8. EMPLOYMENT OF OTHERS**

Either the Company may from time to time request that the Consultant arrange for the employment of other persons or entities to assist the Consultant in providing the Services, or the Consultant may from time to time request that the Company pay for the employment of other persons or entities to assist the Consultant in providing the Services. In such instances, all costs to the Consultant related to the retention and employment of such persons or entities to assist the Consultant in providing the Services will be paid by the Company. The hiring of any such person or entity shall not occur prior to the Company and the Consultant agreeing to do so in writing executed by both Parties.

## **9. DISCLAIMER OF WARRANTY.**

CONSULTANT MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE COMPLETENESS, UTILITY, OR ACCURACY OF ANY INFORMATION PROVIDED TO, OR THE SERVICES PROVIDED TO THE COMPANY; NOR DOES IT EXTEND TO THE COMPANY ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND/OR THE FREEDOM FROM INFRINGEMENT OF ANY PATENT AND/OR COPYRIGHT BY CONSULTANT'S USE OF INFORMATION IN PROVIDING THE SERVICES TO THE COMPANY.

## **10. NON-PAYMENT.**

If Company does not pay a bill sent by Consultant within the allocated period, a late charge equal to eighteen percent (18%) annually of the outstanding balance will become due and payable.

## **11. REMEDIES.**

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default and shall be sent by certified mail, return receipt requested, to the defaulting party. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing first notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

## 12. LIMITATION OF LIABILITY.

a. Subject to the Company's obligation to pay the Price to the Consultant, either party's liability in contract, tort or otherwise (including negligence) arising directly or indirectly, out of or in relation to this Contract or the performance or observance of its obligations under this Contract and every applicable part of it shall be limited in the aggregate to the Price.

b. To the extent it is allowed by law and subject to the Company's obligation to pay the Price, in no event shall either party be liable to the other Party for any loss of profits, goodwill, loss of business, loss of data or any other indirect or consequential loss or damage whatsoever.

## 13. INDEMNIFICATION.

a. **Consultant's Indemnification.** Consultant shall, indemnify and defend the Company and its agents, successors, heirs, assigns and representatives (the "**Company Indemnitees**") against, and shall hold the Company Indemnitees harmless from, any loss, liability, claim, charge, action, suit, proceeding, assessed interest, fee, cost, penalty, damage, tax or expense (collectively, "Losses") resulting from, arising out of, or incurred by the Company Indemnitees in connection with, or otherwise with respect to any breach of any representation, warranty, covenant or condition of the Consultant contained in this Agreement.

b. **Company's Indemnification.** The Company shall, indemnify and defend the Consultant and its agents, successors, heirs, assigns and representatives (the "**Consultant Indemnitees**") against, and shall hold the Consultant Indemnitees harmless from, any loss, liability, claim, charge, action, suit, proceeding, assessed interest, fee, cost, penalty, damage, tax or expense (collectively, "Losses") resulting from, arising out of, or incurred by the Seller Indemnitees in connection with, or otherwise with respect to (i) any breach of any representation, warranty, covenant or condition of the Company contained in this Agreement, and (ii) any environmental claim, lawsuit, hazard, damage, or contamination related to the Services.

c. **Rights, Remedies and Costs of Enforcement.** In connection with the enforcement of any right of indemnification under this Contract, the Consultant Indemnitees and Company Indemnitees, as applicable, shall have the right to exercise any remedy at law or in equity. The prevailing party in any such action shall be entitled to recover all costs and expenses of enforcement including but not limited to reasonable attorney's fees.

#### **14. ENTIRE AGREEMENT; MERGER.**

This Contract contains the entire agreement of the parties, and there are no other promises or condition in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreement or understanding between the Parties, which prior written or oral agreements or understandings are specifically merged and subsumed into this Contract.

#### **15. SEVERABILITY.**

If any term, condition, provision, paragraph, or subparagraph of this Contract will be held to be invalid or unenforceable for any reason, the remaining terms, conditions, provisions, paragraphs, or subparagraphs will continue to be valid and enforceable. If a court finds that any term, condition, provision, paragraph, or subparagraph of this Contract is invalid or unenforceable, but that by limiting such term, condition, provision, paragraph, or subparagraph it would become valid or enforceable, then such term, condition, provision, paragraph, or subparagraph will be deemed to be written, construed, and enforced as so limited.

#### **16. AMENDMENT.**

This Contract may be modified or amended in writing, if the writing is signed by both Parties to this Contract.

#### **17. GOVERNING LAW AND CONSENT TO JURISDICTION.**

**a. *Indiana Law Controls.*** This Contract and any change orders or exhibits to it shall be governed by and interpreted and enforced in accordance with the Laws of the State of Indiana, without giving effect to any choice of Law or conflict of Laws rules or provisions (whether of the State of Indiana or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Indiana.

**b. *Jurisdiction and Venue.*** Each party irrevocably submits to the exclusive jurisdiction of any commonwealth or federal court with jurisdiction in Hendricks County, Indiana, for the purposes of any suit, action or other proceeding arising out of this Contract or any transaction contemplated hereby, and agrees to commence any such action, suit or proceeding only in such courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth herein shall be effective service of process for any such action, suit or proceeding. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Contract or the transactions contemplated hereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. **EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR**

**COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS CONTRACT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS CONTRACT.**

**18. NOTICE.**

Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one Party may have furnished to the other in writing.

**19. ASSIGNMENT.**

Neither Party may assign or transfer this Contract without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.

**20. COUNTERPARTS.**

This Contract may not be executed in counterparts. This Contract shall become effective when each Party has executed and exchanged fully executed copies of this Agreement with the other Party.

**21. INTERPRETATION.**

The parties to this Contract have participated jointly in the negotiation and drafting of this Contract, and any rule of construction or interpretation otherwise requiring this Contract to be construed or interpreted against any party by virtue of the authorship of this Contract shall not apply to the construction and interpretation of this Contract.

**22. CONSTRUCTION.**

For the purposes of this Contract, except as otherwise expressly provided in this Contract or unless the context otherwise requires: (a) the meaning assigned to each term defined in this Contract shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires; (b) where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning; (c) the terms “hereof”, “herein”, “hereunder”, “hereby” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Contract as a whole and not to any particular provision of this Contract; (d) when a reference is made in this Contract to an Article, Section, paragraph, Annex, Change Order, Exhibit or Schedule, such reference is to an Article, Section, paragraph, Annex, Change Order, Exhibit or Schedule to this Contract unless otherwise specified; (e) a reference to any party to this Contract or any other agreement or document shall include such party’s predecessors, successors and



permitted assigns; and (f) all accounting terms used and not defined herein have the respective meanings given to them under GAAP.

**23. TIME.**

Time is of the essence. Time periods specified in this Contract are calendar days and shall expire at midnight of the date stated unless the parties agree in writing to a different date and/or time.

**24. ATTORNEY'S FEES.**

Any party to this Contract who is the prevailing party in any legal or equitable proceeding against any other party brought under or with relation to the Contract or transaction shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

**25. EXPENSES.**

Except as otherwise provided in this Contract, each party shall bear its own costs and expenses in connection with this Contract and the transactions contemplated hereby and thereby, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties, whether or not the transaction contemplated by this Contract closes.

**26. NO THIRD PARTY BENEFICIARIES.**

No provision of this Contract is intended to confer upon any Person other than the parties hereto any rights or remedies under this Contract.

**27. CAPTIONS.**

All captions contained in this Contract are for convenience of reference only, do not form a part of this Contract and shall not affect in any way the meaning or interpretation of this Contract.

**28. AUTHORITY TO EXECUTE AND COMPLIANCE WITH CORPORATE GOVERNANCE.**

The Parties represent that to the extent necessary each has the requisite, full and complete authority to execute this Contract with the intent to bind that Party to honor the terms and conditions of this Contract. Further, the Parties to this Contract represent and state that each is an individual and that no corporation or partnership is executing this Contract. Thus, there is no need to have any corporation or partnership comply with the provisions of its respective corporate governance rules and by-laws to authorize the person executing this Contract to do so on behalf of that corporation or partnership.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed as of the date first above written.

**QBS AS-BUILTS** (“Consultant”)

**“COMPANY”**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Print Name and Title

STATE OF INDIANA                      )  
   ) SS:  
COUNTY OF HENDRICKS                      )

Before me, a Notary Public, in and for said County and State, personally appeared Mr. Nicolas Quintana, who, being personally known to me, and having been duly sworn upon his oath, acknowledged execution of the foregoing Business Consultant Agreement (“Contract”) in his capacity as the President of QBS As-Built, Inc., an Indiana corporation (“Company”), and stated that he executed such Agreement of his own free will after the Company took all steps necessary under its corporate governance policies and procedures to authorize his execution of this Contract with the intent that it be bound to honor the terms and conditions stated in such Contract.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \*\*\*\*\*, 20\*\*.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Printed Name

My Commission Expires: \_\_\_\_\_ My County of Residence: \_\_\_\_\_

STATE OF \*\*\*\*\* )  
 ) SS:  
COUNTY OF \*\*\*\*\* )

Before me, a Notary Public, in and for said County and State, personally appeared \*\*\*\*\*, who, being personally known to me and having been duly sworn upon his oath, acknowledged execution of the foregoing Business Consultant Agreement (“Contract”) in his capacity as the \*\*\*\*\*t of \*\*\*\*\*, Inc., a \*\*\*\*\* corporation (“Company”), and stated that he executed such Agreement of his own free will after the Company took all steps necessary under its corporate governance policies and procedures to authorize his execution of this Contract with the intent that it be bound to honor the terms and conditions stated in such Contract.

Witness my hand and Notarial Seal this \_\_\_\_ day of \*\*\*\*\*, 20\*\*.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Printed Name

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_