



AIA[®] Document B105[™] – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the Thirteenth day of October in the year Two Thousand Twenty One

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Deadwood
108 Sherman St
Deadwood, SD 57732

and the Architect:

(Name, legal status, address and other information)

Chamberlin Architects
725 St Joseph St
Ste B1
Rapid City, SD 57701

for the following Project:

(Name, location and detailed description)

Days of '76 VIP Grandstand Remodel
Deadwood, South Dakota

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

Mechanical, Electrical & Plumbing to be performed by Skyline Engineering

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105–2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Design Development through Construction Documents: a lump sum of \$48,250.00, exclusive of reimbursable expenses, broken down as follows:

| | |
|----------------------------|----------|
| 1. Design Development: | \$24,000 |
| 2. Construction Documents: | \$24,250 |
| Total: | \$48,250 |

Reimbursable expenses to be billed in addition at Cost, and include:

1. Printing of Construction Documents for bidding purposes.
2. Travel to project site, billed hourly plus mileage at current government-established rate.
3. Courier services and postage, billed at cost.

The Owner shall pay the Architect an initial payment of zero (\$ 0) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus zero percent (0 %).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest from the date payment is due at the rate of percent (%), or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond eight (8) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS


(Insert descriptions of other services and modifications to the terms of this Agreement.)

The attached Exhibits 'A' is a part of this Agreement

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



ARCHITECT (Signature)



(Printed name, title, and license number, if required)

Init.



September 24, 2021

Bob Nelson Jr
Public Works Director
City of Deadwood
108 Sherman St
Deadwood, SD 57732

RE: Days of '76 VIP Grandstand Remodel

Dear Bob,

Chamberlin Architects is pleased to submit this proposal to provide architectural and engineering services for the Days of '76 VIP Grandstand Remodel.

SCOPE OF WORK

Based on our site visit, we understand that the goal of the project is to add restrooms under the existing East Grandstand in the open space, converting the existing concessions space into a office and electrical room, adding new concession/kitchen space into the storage area, replace siding on the exterior of the grandstand and new lighting.

The program includes:

- Design of new men's & women's restrooms
- Design of new office.
- Design of an electrical room.
- Design of new concessions with commercial kitchen and walk-in cooler/freezer.
- New exterior siding.

Mechanical, Electrical and Plumbing (MEP):

See attached proposal from Skyline Engineering for MEP scope and exclusions.

Scope of Architectural Services:

Design and Construction Phase Support

- Provide design of the new restrooms, concession/commercial kitchen, office and exterior siding.
- Facilitate progress and coordination meetings with staff and design team throughout project.
- Provide product specifications either on drawings or in book form as appropriate for the project.
- Coordinate and schedule DD and CD deliverables.
- Final printing and delivery of Construction Documents.
- Site visits (See consultant's proposals for their site visits):
 - (1) pre-design "scoping" trip

- (1) trip for field verification.
- (1) design review meetings.
- Bidding & construction phase services will as need service and billed at an hourly rate based on Chamberlin Architects hourly rates listed below:
 - Principal \$190
 - Senior Architect \$150
 - Junior Architect \$140
 - Architect \$120
 - Interior Designer \$110
 - Interior Design Assistant \$80
 - Senior Intern \$110
 - Intern \$90
 - Graphic Design \$80
 - Administration \$70

Specific Exclusions (See also Consultant proposals for additional exclusions):

- Historic Preservation investigation & approval submittals
- Fire sprinkler design
- 3-D Renderings
- Surveying
- Trips to the site in addition to those specifically included above.
- Destructive investigation of existing conditions.
- Civil engineering and landscape architecture.
- As-constructed drawings and specification (As-builts).
- Modifications to the existing grandstand or site beyond what is identified above.

Schedule

Design is anticipated to start in October 2021 with completion of construction documents in December 2021.

Compensation

Compensation for Services identified above shall be a lump sum of \$48,250, exclusive of Reimbursable Expenses. Should the scope of the project change and/or require additional service, an appropriate adjustment to the fee will be established at the time.

Fee broken down by discipline:

| | |
|-----------------------|---------------------|
| Chamberlin Architects | \$ 23,000.00 |
| Skyline Engineering: | <u>\$ 25,250.00</u> |
| Total Basic Services: | <u>\$ 48,250.00</u> |

Reimbursable Expenses

As used in this Agreement, Reimbursable Expenses include the following:

1. Outside reproduction services, billed at cost.
 - Estimated cost: \$500
2. Courier services and postage, billed at cost.

3. Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage requested by the State.
4. Mileage to Deadwood, billed at current government established mileage rates.
 - Estimated cost: \$500
5. All other expenses not ordinarily required to perform duties stated above, billed at cost.

Thank you for the opportunity to present this proposal. If you have any questions, please don't hesitate to ask. If you find this proposal acceptable, we can prepare an AIA Agreement, or the City of Deadwood can prepare.

Sincerely,

A handwritten signature in blue ink, reading "Bradley P. Burns". The signature is fluid and cursive, with the first name "Bradley" being more prominent than the last name "Burns".

Bradley P. Burns, AIA
Vice-President
CHAMBERLIN ARCHITECTS, P.C.



ARTICLE 1 Parties to the Contract

- 1.1** This Agreement between Skyline Engineering, LLC. (hereinafter “Skyline”) and Chamberlin Architects (hereinafter “Client”), for services described herein, on the following project: Days of 76 East Grandstand Remodel (Hereinafter “Project”).

ARTICLE 2 Project Description

- 2.1** This document summarizes Skyline’s understanding of the project and required services anticipated for limited remodeling of the east grandstand of the Deadwood Days of 76 Rodeo grounds. The project consists of converting the existing concessions into an office (not a greenroom) and an intermediate data facility (IDF), adding a new concessions space into the garage area, and adding new restroom facilities by infilling the open space under the grandstand. The remodeled space has an area of approximately 2000SF and the extent of work is confined to the areas under the existing grandstand (except as specifically identified herein) and relative to residing the back wall of the grandstand.

2.2 Anticipated Scope of Design Services:

1. MEP design services for new Men’s and Women’s restrooms.
 - a. Plumbing fixture selection and specification, and piping to fixtures.
 - b. Design of exhaust and ventilation system.
 - c. Design of heating and cooling systems.
 - d. Design of power connections and interior lighting selections and layouts.
2. MEP design services for the new office.
 - a. Design of heating and cooling systems.
 - b. Design of power connections and interior lighting selections and layouts.
 - c. Design of A/V interconnects from the new office to the new IDF.
3. MEP design services for commercial kitchen/concessions.
 - a. Plumbing and electrical connections to Owner provided cooking equipment.
 - i. This proposal anticipates a concerted effort by the Owner to define connections early on so the MEP design can be performed one time.
 - b. Selection of plumbing fixtures (Triple Compartment Sink, Hand Sink, Prep Sink)
 - c. Design of piping systems, water heater, and grease interceptor.
 - d. Design of new Type 1 hood and Ansul system for griddle and fryers to be installed in the future. Design to include ductwork and sidewall exhaust fan.
 - e. Design of heating and cooling systems for operation as a “Concessions” before becoming a full kitchen. Design will also require an HVAC solution to defer the cost of the Type I hood, Fryers, griddle, etc to get within the present budget.
 - f. Design of power service, distribution, and interior lighting selections and layouts.
 - g. Design of exterior lighting including selections and layouts limited to the new concessions area.
 - h. Design for activation via pull station and monitoring the Ansul system and localized A/V annunciation. This proposal specifically excludes interconnection to any fire detection & alarm system.
4. MEP design services for a IDF room.
 - a. Design of heating and cooling equipment as an alternate bid item or for future installation.
 - b. Design of power connections and interior lighting selections and layouts.

- c. Design services of infrastructure to support a future data rack, provided by the owner.
- 5. Miscellaneous Electrical design services per the following:
 - a. An empty 2" HDPE conduit routed underground from the crow's nest to the new IDF to support the IDF service and to support connections for streaming video from the crows next to the green room.
 - b. This proposal anticipates replacement of the existing wallpacks with new, 100% cutoff wallpacks and complimenting the outdoor lighting with wall-supported barn fixtures similar to what was specified in the VIP project over the chutes.
 - c. Ethernet cabling to the new IDF room to support future CCTV cameras as identified by the Owner.
 - d. Access controls rough-ins at each door and raceways back to the new IDF room.
- 2.3 This proposal specifically **excludes** design services associated with:
 - a. A fire alarm system and/or notification appliances beyond local connections to the hood Ansul system.
 - b. Specification layout or connections for a new power service (existing 400amp service should be sufficiently sized).
 - c. Specifications related to access controls, CCTV equipment, or a point-of-sales system.
- 2.4 This proposal is based on connections information, for new equipment and systems not being selected by Skyline, being provided to Skyline by the specifier/procurer. Equipment connection's information must be specific to this project and not generic in nature.
- 2.5 Design is anticipated to start in October 2021 with completion of construction documents in December 2021.

ARTICLE 3 Project Basic Services

3.1 Skyline shall undertake the following services for the Project.

3.2 MECHANICAL BASIC SERVICES

3.2.1 Specifications

- 1. Derived CSI 2004 Divisions 21, 22, and 23 and/or on plans as most appropriate.

3.2.2 HVAC

- 1. Basic analysis and recommendation for HVAC system selection.
- 2. Equipment schedules indicating physical characteristics, capacities, electrical capacities and manufacturer used as the basis for the design.
- 3. HVAC ductwork and piping distribution.
- 4. HVAC equipment selection and locations on plans.
- 5. Major equipment manufacturer's data sheets and identification of locations.
- 6. Piping diagrams for major central systems, if required for design clarification.
- 7. Fire and smoke dampers in partitions and fire walls, based on the fire and smoke separations indicated on the architectural drawings.
- 8. Locations of thermostats and room control devices.
- 9. Identification of ceiling HVAC elements such as grilles and diffusers for incorporation into ceiling plan layouts.

3.2.3 Plumbing

1. Connection to water supply, 5'-0" beyond the building. Coordination with civil engineering.
2. Water distribution inside the building to plumbing fixtures and equipment.
3. Domestic hot water distribution to plumbing fixtures.
4. Domestic hot water recirculation system
5. Water heater selection.
6. Grease interceptor selection and design.
7. Plumbing fixtures selection.
8. Sanitary collection system within the building.
9. Connection to sanitary sewer, 5'-0" outside the building.
10. Isometric diagrams, if required by Code, or if required for design clarification.

3.2.4 Fire Protection

1. Fire protection/sprinkler system is NOT anticipated and design is excluded.

3.2.5 Special Systems

1. Natural Gas distribution inside the building and isometric.
2. Air conditioning condensate collection piping system.

3.2.6 Design coordination Support

1. Production and issue of one (1) set of drawings for the Project consisting of Design Development, Owner Review, and Construction Documents.
2. Production and issue of one (1) set of specifications for Construction Documents.
3. Coordination meetings consisting of two (2) local meetings during the design phase of the project.

3.2.7 Construction Support

1. Review contractor's shop drawings consisting of a maximum of two (2) reviews per submittal.
2. All other construction administration will be optional services and billed at an hourly rate based on Article 4 including:
 - a. Construction observations during the construction phase of the project, including the final observation and punch list of the completed construction.

3.3 ELECTRICAL BASIC SERVICES

3.3.1 Specifications

1. Standard CSI 2004 Divisions 26, 27, and 28 and/or on plans as most appropriate.

3.3.2 Electrical Service Provisions

1. Short circuit analysis based on standard coordination tables.
2. Service transient voltage surge suppression.

3.3.3 Electrical Distribution System

1. Electrical distribution to include two new panels repowering loads based on new equipment selections and existing concession loads.
2. Electrical distribution system riser diagram, panelboard schedules, and load analysis.
3. Receptacle layout.
4. Motor and other equipment connections.
5. Coordination of power requirements for kitchen equipment.

3.3.4 Lighting System

1. Light fixtures selection and specification.
2. Interior lighting layout.

3. Exterior building lighting layouts and/or reconfigurations, limited to the area of remodel and the back wall lighting including wallpack replacements.
4. Egress and exit lighting based on egress routes defined by architect.
5. Lighting controls inclusive of occupancy sensors, contactors, photocells and timeclocks.

3.3.5 Special Systems

1. Fire Alarm monitoring and annunciation limited to kitchen hood monitoring and local annunciation.
2. Ethernet outlets, jacks, and wiring from outlet to new IDF comms/tech closet for the following as identified by the Architect or Owner.
 - a. Tele/data.
 - b. Point-of-sale.
 - c. CCTV.
3. 120V power and conduit only for:
 - a. IT/Communications Equipment/Rack
 - b. Security Access system and Equipment

3.3.6 Design coordination Support

1. Production and issue of one (1) set of drawings for each of design phases of the Project consisting of Design Development, Owner Review, and Construction Documents.
2. Production and issue of one (1) set of specifications for Construction Documents.
3. Coordination meetings consisting of two (2) local meetings during the design phase of the project.

3.3.7 Construction Support

1. Review contractor's shop drawings consisting of a maximum of two (2) reviews per submittal.
2. All other construction administration will be optional services and billed at an hourly rate based on Article 4 including:
 - a. Construction observations during the construction phase of the project, including the final observation and punch list of the completed construction.

3.3.8 Any work or services not identified in this Article 3 shall be considered Optional Additional Services. In the event Client desires Optional Additional Services, Skyline shall be compensated as provided in Article 4.

ARTICLE 4 Optional Additional Services

4.1 Skyline shall only perform the items identified in Article 3 regarding Project Basic Services. The following constitutes Optional Additional Services which Skyline offers to Client:

1. Items specifically excluded in the project description.
2. Design of site utilities or site structures beyond 5'-0" from the building.
3. Preparation of detailed (quantities based) construction cost estimates.
4. Life cycle cost analysis of major equipment and systems.
5. Preparation of AutoCAD record drawings, based on contractor markups.
6. Commissioning of building mechanical and electrical systems.
7. Construction observation trips as outlined in the Project Basic Services. As proposed, Skyline will make all observation trips requested and these will be deemed approved and authorized.
8. Design of Owner or Architect initiated changes to the project during construction, or significant changes to the project scope during the design phase.

9. Restart costs if project is delayed over 30 days.
10. Redesign or design services in response to Contractor generated errors or construction not in accordance with the contract documents.
11. Design services for or modifications to any existing buildings and/or systems beyond that identified herein.
12. Calculation to show compliance with local energy codes, where required.
13. Design services for structural systems.
14. Design services related to central automation controls systems and/or energy management systems.
15. Design services related to fire standpipes and/or fire pump – anticipated to be designed by the Fire Suppression Contractor.
16. Design services related to computer room HVAC systems or network systems beyond those identified herein.
17. Design services related to groundwater or foundation drainage systems.
18. Design services related to or including electrical power coordination studies.
19. Design services related to providing ARC flash exposure or define PPE requirements. Design service related NFPA 70E operational requirements are excluded.
20. Design services related to specialized lighting, including custom fixture design or low-voltage solutions.
21. Design services related to specialized electrical distribution systems, including under-floor wiring, raised floors, or flexible wiring systems.
22. Design services for telecommunications beyond provisions identified herein, generally limited to the and horizontal cabling.
23. Design services related to sound or intercom systems.
24. Design services to define ADA requirements
25. Services associated with LEED certification.
26. Services or project delivery using Building Information Modeling (BIM).
27. Services related to value engineering, CMAR or otherwise.
28. Add/Deduct alternates not identified herein.
29. Services not listed as Basic Services.

4.2 In the event that Client desires Optional Additional Services beyond those defined as Project Basic Services, then Client shall direct Skyline in writing. In the absence of a mutual written agreement, Skyline shall notify Client that it is performing Optional Additional Services. In the event that Client fails to inform Skyline in writing, within seven calendar days of receipt of notice, that the Optional Additional Services are not required, then client shall compensate Skyline according to the terms and conditions of this Article 4 for Optional Additional Services.

4.3 The following hourly rates, effective through December 31, 2021, shall be used as the basis for compensation for any Optional Additional Services, or any agreed upon hourly work performed by Skyline:

| | |
|------------------------|-------|
| Principal | \$170 |
| Senior Engineer (PE) | \$170 |
| Project Manager | \$150 |
| Project Engineer (PE) | \$135 |
| Project Engineer (EIT) | \$125 |
| Project Designer | \$120 |
| CAD/BIM Technician | \$ 85 |
| Clerical/Intern | \$ 65 |

4.4 In addition to the hourly rates outlined in Article 4.3, Skyline shall also be entitled to Reimbursable Expenses as outlined in Article 5.3.

- 4.5 If Skyline performs any Optional Additional Services, then Skyline shall be entitled to an appropriate adjustment in Skyline's schedule.

ARTICLE 5 Compensation For Basic Services

- 5.1 A lump sum of \$25,250.00 inclusive of Reimbursable Expenses.
- 5.2 In addition to the above, Client is responsible for all applicable taxes.
- 5.3 **Reimbursable Expenses.**

As used in this Agreement, Reimbursable Expenses include the following:

- 5.3.1 All expenses for travel, meals, and lodging associated with the Project billed at cost, except Skyline and personal vehicle mileage, billed at IRS-approved reimbursement rate.
- 5.3.2 Inside reproductions (excluding reproductions for the in-house use by Skyline), billed as follows:
- | | |
|-----------------------------------|--------------------|
| -Plotting on Bond_____ | \$0.20/square foot |
| -Plotting on Vellum_____ | \$0.30/square foot |
| -Plotting on Mylar_____ | \$0.60/square foot |
| -Black and white Photocopies_____ | \$0.15/sheet |
| -Color photocopies_____ | \$0.30/sheet |
- 5.3.3 Outside reproduction services, billed at cost.
- 5.3.4 Courier services and postage, billed at cost.
- 5.3.5 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage requested by Client.
- 5.3.6 Any Subconsultant utilized by Skyline will be billed at cost.
- 5.3.7 All other expenses not ordinarily required to perform duties stated in this contract, billed at cost.

ARTICLE 6 Payments to Skyline

- 6.1 Payments on account of services rendered and for Reimbursable Expenses shall be made monthly upon presentment of Skyline's statement of services. No deductions shall be made from Skyline's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contactors, or on account of the cost of changes in the work other than those which Skyline has been adjudged to be liable.
- 6.2 Client shall disclose to Skyline, prior to execution of this Agreement, contingent or other special provisions relative to compensation that Client may have in any understanding or other agreement which may impact Skyline's compensation.
- 6.3 Skyline shall have the right to stop work if any payment shall not be timely made in full according to the terms and conditions of this Agreement. Skyline has the right to suspend work, or terminate this Agreement if their statements are not paid pursuant to the terms and conditions herein. If the statements are not paid within thirty (30) days after they become due, Skyline further reserves the option to void this agreement, sue for damages, and pursue any other legal or

equitable claim. Skyline is under no duty to continue work without timely payments according to the terms and conditions herein.

- 6.4 In the event of Client's failure to timely compensate Skyline and Skyline chooses to terminate this Agreement or suspend its services, then Skyline shall have no liability to Client for any delay or damage.
- 6.5 Skyline is under no duty to provide any services, documents, plans, specification, or any other work until Skyline is paid in full for its statement of services. Skyline specifically reserves the right to withhold any and all work and/or work product until paid according to this Agreement.
- 6.6 Amounts unpaid thirty (30) days after the invoice date shall bear interest at a rate of 1.0% per month.
- 6.7 This agreement may be terminated by either party giving written notice to the other party ten days prior to the termination date. Skyline shall be paid for work completed through the date of the termination notice for the services performed on an hourly basis at two and one-half times the direct personnel expense incurred, and reimbursable expenses incurred up to the termination date, plus any termination expenses.

ARTICLE 7 Insurance and Limitation of Liability

- 7.1 Waivers of Subrogation. Client and Skyline waive all rights against each other for damages caused by fire or other causes of loss to the extent covered by property insurance, except such rights as they have to proceeds of such insurance held by the Project Owner as fiduciary. The Client shall require of the consultants, general contractor, separate contractors, owner(s), and all subcontractors, by appropriate agreements, similar written waivers of subrogation in favor of Skyline and of other parties enumerated in this Article 7.1.
- 7.2 Limitation of Skyline's Liability. Client agrees that Skyline's total liability to Client for any and all injury, claims, losses, expenses, damages, or claims expense, attorney fees shall not exceed the available limits of Skyline's insurance. Such claims include, but are not limited to negligent acts, errors or omissions, strict liability, breach of contract or breach of implied or express warranty. Further, each party waives any subrogation right it may have on behalf of its insurer against each other. At the time the parties entered into this contract, damages in the event of a breach are incapable or very difficult of accurate estimation. The parties hereto have undertaken reasonable efforts to fix fair compensation. The amount stipulated bears a reasonable relation to probable damages and is not disproportionate to any damages reasonably to be anticipated.
- 7.3 As further consideration for Client's limitation of claims against Skyline to the amount of Skyline's insurance coverage, Skyline shall keep in force for the term of this project, a professional liability insurance policy insuring it against negligent acts, errors, or omissions in the amount of \$500,000.

ARTICLE 8 Miscellaneous Contract Provisions

- 8.1 Inasmuch as the remodeling and/or rehabilitation of an existing structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees to bear all costs, losses and expenses, including the cost of Skyline's additional services, arising or allegedly arising from the discovery of concealed or unknown conditions in the existing structure.

- 8.2** Client acknowledges and agrees that Skyline's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Skyline or any other party encounters asbestos or hazardous or toxic materials at the Project, or should it become known in any way that such materials may be present at the Project or any adjacent areas that may affect the performance of Skyline's services, Skyline may, at their option, and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.
- 8.3** All design documents prepared by Skyline pursuant to this document are instruments of service in respect to the project. This includes files, correspondence, calculations, and drawings. All documents will remain the property of Skyline until this Agreement is complete and payment has been rendered in full or until the Agreement is terminated as provided herein. Transferred documents are not intended or represented to be suitable for re-use by the Client or others in extensions of the Project or on any other project. Client agrees to Indemnify and hold Skyline harmless, including reasonable attorney fees from any re-use.
- 8.4** Client shall have sixty (60) calendar days to ascertain the completeness of the electronic file delivered by Skyline Engineering in AutoCAD or other electronic format, after which period it will be deemed as complete and having been accepted as delivered. It is also agreed that a hard copy of the documents will be delivered, and in the event of conflicts or discrepancies between the two files, the hardcopy will prevail. Skyline Engineering's title block must and will be removed from electronic files transferred to the Client. Because data stored electronically can deteriorate, Skyline shall not be responsible to maintain the electronic media and makes no representation that the electronic data/drawings will be available following 60 days after acceptance of the documents.
- 8.5** If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions, and the provision which is held invalid is hereby severed from the remaining terms and conditions so the remaining provisions are in full force and effect.
- 8.6** Electronic files prepared by Skyline Engineering pursuant to this document are instruments of service in respect to the project. They are not intended or represented to be suitable for re-use by the Client or others in extensions of the project or on any other project. Any reuse without written verification or adaptation by Skyline Engineering for the specific purposes intended will be at the Client's sole risk and without liability or legal exposure to Skyline Engineering, and the Client shall indemnify and hold harmless Skyline Engineering from all claims, damages, losses and expenses, including attorney fees and defense costs, arising out of or resulting therefrom. Any such verification or adaptation will entitle Skyline to further compensation at rates in effect at the time.
- 8.7** It is acknowledged that both parties agree the stated design fees are based upon the estimated project value stated in the project description above. Should the scope of the project change and the actual construction cost exceed the stated values, Skyline shall be entitled to proportionate fee increases.
- 8.8** The standard of care for all professional engineering and related services performed or furnished by Skyline Engineering under this agreement will be the care and skill ordinarily used by members of Skyline's profession practicing under similar circumstances at the same time and in the same locality. Skyline makes no warranties, express or implied, under this agreement or otherwise, in connection with Skyline's services.

- 8.9** Skyline's sole contractual relationship shall be with the Client and nothing herein shall be construed to create any obligation or contractual relationship between Skyline and any third party. Nothing contained in this Agreement shall create a contractual relationship with or cause of action, or claim in favor of a third party against Skyline. Skyline relies solely and exclusively on the Client to provide complete, accurate, and timely information of the Owner's design criteria. Skyline assumes no responsibility for the accuracy of "Opinions of probable cost." Skyline shall not have authority or responsibility of any contractor's means, methods, techniques, sequences, or procedures of construction for safety precautions and programs incident to the contractor's work. Skyline's scope shall not include serving as an "authority having jurisdiction" as defined by model codes nor shall we perform associated code-compliance interpretation.
- 8.10** If the construction contract requires the contractor to pay for and erect a construction site sign that includes the Client's name and/or corporate identifier, the Client shall include similar placement of Skyline Engineering's name and/or corporate identifier on the sign in the construction site sign requirements in the construction contract. The size and placement of Skyline Engineering's name and/or corporate identifier shall be similar to that of the Client, adjusted as acceptable to Skyline Engineering. If Client chooses to pay for and erect a construction site sign that includes the Client's name and/or corporate identifier, Skyline Engineering shall have the option of including its name and/or corporate identifier on the sign in a similar fashion. If this option is exercised, Skyline Engineering will proportionately share the costs of the sign and its erection with client.

ARTICLE 9 Acceptance

SKYLINE ENGINEERING, LLC

CHAMBERLIN ARCHITECTS

By: _____

By: _____

Its: VP and Managing Member

Its: _____

DATE 9-22-21

DATE _____