

February 25, 2022

City of Mitchell
612 N Main St
Mitchell, SD 57301

RE: Mitchell, Rec Center Fitness Center – Phase 2
#08820.002

City of Mitchell:

We are pleased to submit this Agreement for professional design services to revise the Phase 1 plans to complete the renovation for a new Fitness Center and add cooling to the existing Gymnasium.

Initial Project Information

The project consists of design for HVAC system upgrades to add air conditioning to the new fitness center and existing Gymnasium. The design shall also include evaluation of the existing roof structure, and modifications to handle the weight of a new roof-mounted condensing unit. Other building modifications will include lintel openings in existing CMU walls for ductwork and electrical system modifications.

Scope of Services

1. Site Investigation and Documentation:
 - a. Review of the existing mechanical system for conversion to a heat pump and dry cooler system to serve the new Fitness Room & existing Gymnasium.
2. Design Phase Services:
 - a. Architectural
 - i. Remove completed pool in-fill plans and details from documents.
 - ii. Front wall opening to remain as designed.
 - iii. Change rubber tile flooring in Fitness Center to be a combination of exercise carpet tiles and resilient athletic flooring.
 - iv. Change lockers to open cubbies.
 - v. Revise bidding conditions and technical specifications
 - b. Structural
 - i. Remove completed pool in-fill plans and details from documents
 - ii. Front wall opening to remain as designed.
 - iii. Eliminate roof structural modifications in lieu of a ground-mounted dry cooler.
 - iv. Structural wall evaluation and lintel design for supply and return duct opening into the existing gymnasium.
 - v. Revise technical specifications as required.
 - c. Mechanical
 - i. Remove completed pool in-fill mechanical items from documents.
 - ii. Revise mechanical plans to add cooling to new Fitness Center and existing Gymnasium.
 1. Remove existing AHU and install a new water source heat pump system to serve the new Fitness Center and Existing Gymnasium.

2. Add a ground-mounted dry cooler on the north side of the building to provide cooling to the heat pump system.
 3. Add new condenser water piping systems that utilize the existing boiler system for heat injection to the condenser loop.
 4. Utilize duct sox ducting in the new Fitness Center and the existing Gymnasium.
 5. Revise technical specifications as required.
- d. Electrical
 - i. Modify electrical distribution system.
 1. Place a new panel "FL1" in the mechanical room in lieu of feeding the existing panel in the Pool Equipment Room.
 2. In lieu of feeding panel "FL1" from the "MDP" in the Aquatics Center, the new panel will be fed from existing switchboard "M".
 - ii. Eliminate lighting controls system and utilize toggle switching.
 - iii. Revise fire alarm modifications as required for HVAC upgrades.
 - iv. Revise technical specifications as required.
3. Bid Phase Services
 - a. Respond to contractor questions
 - b. Pre-bid & Bid Opening activities by owner.
 - c. Supplemental documentation
 4. Contract Administration Services
 - a. The Client will provide regular site observation reports and progress photographs to the Architect.
 - b. The Architect will provide three site visits and one substantial completion (4 total site visits).
 - c. Submittal review.
 - d. Respond to contractor questions.
 - e. Supplemental documentation.
 5. Assumptions/Exclusions
 - a. There is no asbestos within the construction area but if discovered, the Owner will be responsible for mitigation.
 - b. Materials testing and special inspections (if required) are excluded.
 - c. Utilities for the new addition will be served from the existing utilities, adjacent water source, electrical panels, emergency circuits, annunciators, etc. Design of new utilities is excluded.
 - d. If additional site observation visits are requested, Schemmer will invoice at the then-current hourly rate for the individual(s) plus mileage.
 - e. Cost estimates are excluded.

Client's Responsibility

The Client has provided full information for design objectives, special requirements.

The Client's designated representative shall act on the Client's behalf with respect to the project. This representative shall be capable of rendering decisions pertaining to the project.

Schedule

Following a notice to proceed, Schemmer will work with the Client to establish a mutually agreeable schedule for the proposed services.

Compensation

The fees for the services noted above in Scope of Services are as follows:

| | |
|---------------------------------|--|
| Site Investigation | \$ 1,560 |
| Re-design Services | \$ 9,360 |
| Bid Phase: | \$ 1,040 |
| <u>Contract Administration:</u> | <u>\$ 5,200 (credit \$3,000 not used in Phase 1)</u> |
| Total: | \$14,160 |

Reimbursable expenses are not included in the lump sum fees and shall be invoiced at cost plus 10 percent. Anticipated reimbursable expenses for this project include travel. The lump-sum fees include printing for in-house A/E use.

Additional Services

For services requested by the Client and not contemplated by this agreement, Schemmer will prepare and present to the Client a request for additional compensation, and provide such services once authorized by the Client.

Acceptance

This contract can be accepted by either signing where indicated or providing a written notice to proceed. A written notice to proceed by electronic mail or other means signifies an acceptance of all terms and conditions contained within this agreement. Any other form of agreement that may be proposed by the Client shall include these terms and conditions in full.

If this Agreement and the attached General Conditions meet with your approval, please sign, and return one copy for our files. The executed Agreement will serve as our notice to proceed.

Thank you for this opportunity to be of service. We look forward to working with you on this project.

Sincerely,

Robin J. Miller, NCARB, AIA
Manager Architecture

For THE SCHEMMER ASSOCIATES INC.

Jason Heinze, PE, SE, LEED AP
Executive Vice President

ACCEPTED: City of Mitchell

BY: _____

TITLE: _____

DATE: _____

GENERAL CONDITIONS

1. **REUSE OF DOCUMENTS.** All documents including, but not limited to, drawings, specifications and CADD data on electronic media furnished by The Schemmer Associates Inc. pursuant to this Agreement are Instruments of Service in respect to the project identified in the Agreement. They are not intended or represented to be suitable for use on extensions of this project or on any other project for any purpose without the specific written permission of The Schemmer Associates Inc., which may be withheld in The Schemmer Associates Inc.'s sole discretion. The Schemmer Associates Inc. may, in its sole discretion, condition permission on payment of additional compensation to The Schemmer Associates Inc. Any use without permission shall be at the user's sole risk and without liability to The Schemmer Associates Inc. Client agrees that it will indemnify and hold harmless The Schemmer Associates Inc. from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
2. **ESTIMATES.** Since The Schemmer Associates Inc. has no control over the cost of labor, materials or equipment or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, estimates of project cost are made on the basis of experience and qualifications and represent the best judgment of design professionals familiar with the industry, but The Schemmer Associates Inc. cannot and does not guarantee that proposals, bids or project costs will not vary from estimates of cost prepared by The Schemmer Associates Inc.
3. **SUSPENSION OR ABANDONMENT.** If the project is suspended for more than three months or abandoned in whole or in part, The Schemmer Associates Inc. shall be paid compensation for services performed prior to receipt of written notice of such suspension or abandonment, together with reimbursable expenses then due. If, after a period of suspension, the project is restarted, The Schemmer Associates Inc. shall be entitled to payment for any increased costs it incurs as a result of the suspension.
4. **TERMINATION.** This Agreement may be terminated by either party upon seven days' written notice should either party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others than The Schemmer Associates Inc., The Schemmer Associates Inc. shall be paid for services performed prior to termination, including reimbursable expenses.
5. **SUCCESSORS AND ASSIGNS.** Each party to this Agreement binds him/herself, his/her partners, successors, assigns and legal representatives to the other party, his/her partners, successors, assigns and legal representatives with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his/her interest in this Agreement without the written consent of the other, which consent may be withheld in the sole discretion of the non-assigning party.
6. **PAYMENTS.** Payments due The Schemmer Associates Inc. under this Agreement shall be payable within thirty (30) days of the date of billing. If full payment is not received within sixty (60) days of the date of billing, the unpaid amount shall bear interest at the highest rate permitted by law but not exceeding eighteen percent (18%) from the date of billing.
7. **DELINQUENT PAYMENTS.** If any payment due hereunder remains unpaid for a period of sixty (60) days after invoice, The Schemmer Associates Inc. may, in its sole discretion, cease providing services and not resume providing services until all amounts owing have been paid in full. Cessation of service for nonpayment shall not constitute breach by The Schemmer Associates Inc. of this agreement, or an election of remedies, and Client shall fully indemnify The Schemmer Associates Inc. for any liability or damages caused thereby. All mechanics lien rights available to The Schemmer Associates Inc. may be exercised within the time period allowed by law.
8. **TAX.** The amount of any excise, gross receipts or sales tax that may be due as a result of the work performed by The Schemmer Associates Inc. shall be invoiced to Client as a reimbursable expense.
9. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, The Schemmer Associates and The Schemmer Associates' consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Client shall indemnify and hold The Schemmer Associates Inc. harmless from and against all claims arising out of or related in any way to hazardous materials.
10. **NOTICE OF LIMITATION OF AGENTS' AUTHORITY.** Client understands and agrees that no agent, officer, or principal of The Schemmer Associates Inc. is authorized to vary the terms of this

agreement in any way except by a writing, expressly varying the terms of this Agreement.

11. **INVALIDATION OF PROFESSIONAL LIABILITY INSURANCE.** The Schemmer Associates Inc. agrees that it shall not knowingly take any action which shall cause loss of The Schemmer Associates' professional liability insurance coverage for this project or any aspect of it.

12. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the Client agrees that The Schemmer Associates Inc.'s liability to Client for damages arising out of or in any way related to its work in connection with the project or any error or deficiency in the Instruments of Service for the project, whether arising in contract, tort or otherwise, including, but not limited to, claims for indemnity or contribution shall be limited to the sum of \$50,000 or the amount paid to The Schemmer Associates Inc. as fees under this Agreement, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory asserted.

13. **COMPUTER AIDED DESIGN/DRAFTING (CADD).** CADD may be utilized to prepare drawings, specifications, calculations, and other instruments of service prepared by The Schemmer Associates Inc. Submitted data files are intended to work only as described in the agreement and are compatible only with the original hardware and software used to create the files.

13.1 Electronic files will be submitted to the Client for a 30-day acceptance period ("the Acceptance Period"). During this period, the Client may review and examine the files. Any errors discovered during the Acceptance Period will be corrected by The Schemmer Associates Inc. at no additional cost to Client. Any work associated with errors discovered or changes requested after the Acceptance Period will be considered additional services and will be performed on a time and materials basis, at The Schemmer Associates Inc.'s customary charge for the work requested. The Schemmer Associates Inc. will not maintain copies of the electronic files beyond the end of the Acceptance Period.

13.2 Because data stored on electronic media can deteriorate undetected or be modified without the knowledge of The Schemmer Associates Inc., Client agrees to accept responsibility for the completeness, correctness, and readability of the electronic media after the end of the Acceptance Period. Client agrees that it will indemnify and save harmless The Schemmer Associates Inc. from any and all claims, losses, costs, damages, awards, or judgments arising from use of the electronic media files or output

generated from them. Upon the expiration of the Acceptance Period, The Schemmer Associates Inc. agrees that it is responsible for the accuracy of the sealed hard copy drawings that are submitted by it to Client. "Accuracy" as used in this paragraph is defined as meeting the care and skill ordinarily used by members of the professional practicing under similar conditions at the same time and in the same locality.

13.3 The Owner shall be permitted to retain copies of the drawings and specifications prepared in CADD format for the Owner's information. Due to the potential that the information set forth on the electronic media can be modified by the Owner, unintentionally or otherwise, The Schemmer Associates Inc. reserves the right to remove all indicia of its ownership and/or involvement from each electronic file.

13.4 Any use or reuse of electronic files by the Owner or others without written authorization from The Schemmer Associates Inc. for the specific purpose intended will be at the Owner's risk. The Schemmer Associates Inc. may refuse authorization in its sole discretion or condition authorization on CADD adaptation by The Schemmer Associates Inc. Any such authorization or CADD adaptation by the Owner will entitle The Schemmer Associates Inc. to additional compensation at the rates established as part of the agreement for the project. Owner will, to the fullest extent permitted by law, defend, indemnify and hold The Schemmer Associates Inc. harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting from use or reuse of electronic files without written authorization from The Schemmer Associates Inc.

14. **LIMITATION OF WARRANTY.** The Schemmer Associates Inc. makes no warranties, express or implied, under this agreement or otherwise, in connection with the services provided.

15. **GEOTECHNICAL MATERIALS TESTING SERVICE.** In the case that geotechnical and/or materials testing services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Geotechnical and Materials Testing shall be considered a part of this document.

16. **CONSTRUCTION STAKING.** In the case that construction staking services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Construction Staking shall be considered a part of this document.