

October 11, 2010

## AGREEMENT

**BETWEEN:** Board of Selectmen  
Town of Chilmark  
Chilmark MA 02535

**AND:** South Mountain Company, Inc.  
P.O. Box 1260  
West Tisbury MA 02575

### **The Project**

This agreement is for the completion of the design of a restroom addition to the Chilmark School, Chilmark, MA.

### **The Parties**

The Architect is South Mountain Company, Inc. (SMC). The Owner is the Town of Chilmark (the Town).

### **Scope of Services**

SMC will be responsible for the following:

#### Task #1:

Bringing the existing plans (dated December 7, 2009) and specifications (dated December 4, 2009) to construction readiness. At completion they will be in a condition that will allow a qualified builder to bid the project and build the project. They will not be prepared for a public bidding process; the Town will need to augment, if necessary, for that purpose.

#### Task #2

Three one hour quality assurance inspections during construction, at the following times:

- When the foundation is complete and rough plumbing installed;
- When framing is complete and installation installed;
- When project is deemed by builder to be complete.

### **Compensation**

The total fee for the services described will be **\$2,100**. If additional services are requested by the Town they will be billed at the rate of \$120/hour.

Reimbursable expenses are not included in professional fee for services. The following costs will be reimbursed by the Town at 1.1 times the actual amount of the expense:

- Photocopy, reproduction, plotting and/or mounting and binding costs;
- Postage and shipping;
- Long distance telephone and facsimile charges;
- Photographic services and processing;
- Consultants (civil engineering, mechanical engineering, landscape design, etc.). if needed and authorized by the Town.

### **Schedule**

Task #1 will be complete on or before November 19, 2010, assuming no changes to the program.

### **Billing and Payment**

Each task will be billed when complete. Payments shall be postmarked within twenty (20) business days of receipt of e-mailed invoice by the Town.

**Ownership of Documents**

All drawings and other documents, as instruments of service, are copyrighted and shall remain the property of SMC. The Town will be provided with copies for information and reference for the purpose of which the documents have been prepared. The Town shall not elaborate, change, or incorporate the documents into other documents or sell or otherwise distribute without specific written agreement of SMC. Any use with the written approval of SMC must include the phrase "copyright, South Mountain Company, Inc." or otherwise credit SMC. Any use without such written approval will be a material breach of contract and without liability to SMC. The Town agrees to indemnify and hold harmless SMC from all claims, damages, losses and expenses (including attorney's fees) arising out of or resulting from unauthorized use.

**Termination**

This agreement may be terminated by the parties at any time by mutual consent. The Town may unilaterally terminate by giving thirty (30) days notice in writing to SMC. If project is delayed for a period of thirty (30) days because the Town 1) is behind on payments or 2) unreasonably interferes with completion of the project or 3) delays project by inability to make decisions required from SMC, SMC may terminate on seven (7) days written notice with opportunity for the Town to cure. Termination by either party will not affect the rights and obligations of the parties accrued prior to the effective date hereof, except as mutually agreed to in writing. All fees earned and all documented expenses prior to the effective date of termination will be paid.

**Assignment**

SMC may not assign this agreement to any other person or entity.

**Proposal Duration**

This proposal is valid for a period of thirty (30) days and will be considered revoked if written acceptance is not received within thirty (30) days from Agreement date.

**Disagreements**

SMC and the Town agree that in the unlikely event that disagreements arise which the parties are unable to settle, the parties will consult a mutually acceptable mediator, and both parties agree to accept the results of the mediation. The two parties will share the cost of mediation equally.

If mediation is unsuccessful, the parties agree that they will follow the American Arbitration Association's Home Construction Arbitration Rules.

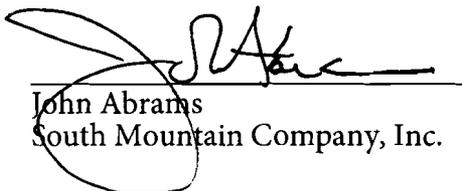
**Miscellaneous**

This agreement shall be governed by Massachusetts law, sets forth the entire agreement of the parties with respect to the matters it addresses, shall be binding on the heirs, successors and assigns of the parties and may be modified only by a written agreement assigned by the party to be charged.

We accept the terms and conditions described above.

\_\_\_\_\_  
By \_\_\_\_\_  
Town Of Chilmark

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John Abrams  
South Mountain Company, Inc.

\_\_\_\_\_  
10/12/10  
Date