



CITY OF RAPID CITY

DEPARTMENT OF PARKS AND RECREATION
125 WATERLOO STREET
RAPID CITY, SOUTH DAKOTA 57701

Jerry W. Cole
Director
(605) 394-5225

To: Legal & Finance Committee Members

From: Jerry W. Cole, Parks and Recreation Director

Subject: Amendment to Professional Services Agreement
with Wyss Associates

Date: December 18, 2008

Randy Lyons
Landscape Designer
(605) 394-5225

Jeri Taton
Administrative
Assistant
(605) 394-5225

Lon Van Deusen,
Parks & Cemetery
Manager
(605) 394-4175

Doug Lowe,
Recreation Manager
(605) 394-6161

James (JJ) Walraven
Golf Superintendent
(605) 394-4199

Duncan Olney
Aquatics Manager
(605) 394-5223

Recommendation: Authorize the Mayor and Finance Officer to sign an Amendment to the Professional Services Agreement with Wyss Associates, Inc. in the amount of \$5,800 to provide design and DCA services to place a restroom facility in Vickie Powers Memorial Park.

The original Professional Services Agreement with Wyss Associates, Inc. did not contemplate construction of a restroom facility in Phase 1 of this project due to budget constraints. However, the Parks and Recreation Advisory Board feels it is important to have a restroom facility available and in August, 2008, re-allocated funds within the Parks & Recreation CIP budget.

If you have any questions, please contact me.



**Amendment to Professional
Services Agreement**

This Agreement amends the existing contract dated June 16, 2008 between The City of Rapid City, the Client and Wyss Associates, Inc., Landscape Architects, for Services as provided herein.

Client

Department of Parks and Recreation

NAME

125 Waterloo St.

Rapid City, SD 57701

ADDRESS / CITY / STATE / ZIP

Department

RELATIONSHIP TO PROJECT OWNER

Owner

The Client acknowledges that it is authorized to enter into this Agreement pursuant to an agreement with the Owner of the Project.

City of Rapid City

A GOVERNMENT ENTITY

300 Sixth St

Rapid City, SD 57701

ADDRESS / CITY / STATE / ZIP

Landscape Architect

Wyss Associates, Inc.

A CORPORATION

728 Sixth Street

Rapid City, SD 57701-3670

ADDRESS / CITY / STATE / ZIP

Matt Fridell

CONTACT

Changes to Approved Services

Landscape Architect shall provide layout, specifications, bidding details and coordination for the inclusion of a prefabricated restroom building in the bid documents. Landscape Architect shall provide Construction Administration services for the restroom building as outlined in the

original contract. Electrical Engineer shall provide no additional services for the restroom building. Civil Engineer will provide no additional services for the restroom building.

Compensation

Compensation for the Scope of Services to be performed under this Amended Agreement shall be the stipulated sum of \$5,800.00 including Reimbursable Expenses as outlined in section 4.2. for the Landscape Architect.

Article 1

Landscape Architectural Services

1.1 Standard of Care

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards appropriate for a project of the nature and scope of this Project.

1.2 Supplemental Services

Supplemental Services are beyond the scope of the basic Scope of Services for this amendment, and when requested in writing by the Client, shall entail additional compensation.

1.3 Changes to Approved Services

Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous budget parameters and/or Project descriptions.

1.4 Schedule of Performance

The Prime Consultant's signature on this Agreement shall be the basis for the Landscape Architect to begin providing services for the Project. The Landscape Architect shall perform the services as expeditiously as is consistent with professional quality.

Article 2

Client's Responsibilities

2.1 Information

The Client shall provide site and programming information on which the design is to be based, as well as Client's budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Prime Consultant.

2.2 Budget

The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the designer's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning; such opinions shall not be construed to provide a guarantee

or warranty of the actual construction costs at the time construction bids are solicited or construction contracts negotiated.

2.3 Approvals

The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.

2.4 Project Permit and Review Fees

The Client shall pay all fees required to secure jurisdictional approvals for the Project.

Article 3 Ownership of Documents

3.1 The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and costs owed to the Landscape Architect, the Landscape Architect grants to the Client a nonexclusive license to reproduce the Design Materials solely for the construction and use of the Project.

Article 4 Landscape Architect Compensation

4.1 Compensation for the Landscape Architectural Services performed under this Agreement shall be the stipulated sum indicated including Reimbursable Expenses as defined in section 4.2. Supplemental Services, when requested in writing by the Client, shall entail additional compensation to be determined on an hourly basis as defined in section 4.3 or on the basis of a negotiated fee.

4.2 Reimbursable expenses are expenditures for the Project made by the Landscape Architect, its employees, and consultants in the interest of the Project. Reimbursable expenses are outlined in the original contract.

4.3 The following hourly rates, effective through **December 31, 2009**, shall be used as the basis for compensation for any Supplemental Services or Optional Additional Services, or any agreed upon hourly work performed by Landscape Architect

Principal	\$ 135
Senior Landscape Architect	\$ 100
Landscape Architect	\$ 75
CAD Technician II	\$ 65
CAD Technician I	\$ 60
Support Staff	\$ 35

4.4 Monthly payments to the Landscape Architect shall be based on (1) the percentage of the Scope of Services completed and shall include payments for (2) Reimbursable Expenses incurred and (3) Supplemental Services performed.

4.5 Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 1% interest per month. At the Landscape Architect's option, overdue payments may be grounds for suspension of services or termination of this Agreement.

**Article 5
Insurance, Indemnification, Consequential Damages**

5.1 Insurance

The Landscape Architect shall secure and maintain insurance coverages indicated as follows:

<u>Coverage</u>	<u>Liability Limits</u>
Professional Liability	\$1,000,000.00 per claim/aggregate
Commercial General Liability	\$1,000,000.00 per occurrence
Comprehensive Automobile Liability	\$1,000,000.00 per accident
Workers Compensation	Statutory limits

5.2 Indemnification

Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

**Article 6
Dispute Resolution**

6.1 If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 14 days of the initial discussions, the cost of which shall be shared equally by the parties.

6.2 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

Article 7

Suspension/Termination

This Agreement may be terminated by either party on 7 days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

**Article 8
Other Terms and Conditions**

8.1 Assignment

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

8.2 Governing Law

This Agreement shall be governed by the law in effect in South Dakota, the Landscape Architect's principal place of business.

8.8 Complete Agreement

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement only may be amended in writing signed by both the Client and the Landscape Architect.

Landscape Architect

By:

Date:

Client

By:

Date: