

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF RAPID CITY,
THE ALLIANCE OF TRIBAL TOURISM ADVOCATES AND WYSS ASSOC., INC., FOR
DESIGN SERVICES RELATED TO POWWOW GARDENS AND ART MARKET**

This PROFESSIONAL SERVICE AGREEMENT is made and entered into this ____ day of _____ 2009, by and between the Alliance of Tribal Tourism Advocates (ATTA), 522 7th Street, Suite 210, Rapid City, SD 57701, the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701 (CITY), and Wyss Associates, Inc., 728 Sixth Street, Rapid City, SD 57701 (CONSULTANT) in reference to The Powwow Gardens and Indian Art Market, (PROJECT), for CONSULTANT'S professional design services in connection with the PROJECT described herein.

ARTICLE I: THE PROJECT

The project, as used herein, refers to providing landscape, architectural and engineering design services as described in the Scope of Design Services, which has been attached hereto as Exhibit A, for a proposed powwow garden and art market. The PROJECT is located in Rapid City, South Dakota at a site owned by the City as shown in Exhibit B which the parties anticipate will be leased to, and operated by, ATTA.

ARTICLE II: SCOPE OF WORK

- A. The professional services ATTA and the CITY have employed CONSULTANT to perform under this AGREEMENT are described in the attached Scope of Design Services. This scope of services is based on information available at the present time.
- B. Discovery of changed or unknown conditions may be cause to renegotiate the scope of work. Should the CONSULTANT feel changed conditions warrant renegotiating, CONSULTANT shall identify such changes to ATTA and the CITY, and the parties shall promptly, and in good faith, enter into renegotiation of this AGREEMENT.

ARTICLE III: PERIOD OF SERVICE

- A. CONSULTANT shall commence with work upon receipt of an executed AGREEMENT.
- B. CONSULTANT shall complete the designated work as described in 'Scope of Design Services' on a timely basis according to the mutually agreed schedule contained on the attached Project Schedule – (Exhibit C). The CONSULTANT shall furnish required information on a timely basis according to mutually agreed upon schedules. CONSULTANT will not be responsible for delays beyond its control.

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ARTICLE IV: COMPENSATION

- A. The CITY agrees to pay the CONSULTANT for completing the professional services contained in Exhibit A based on the stipulated fees contained in the attached Compensation Schedule – ‘Payment for Designated Services’ (Exhibit D).
- B. Expenses actually incurred for the PROJECT by CONSULTANT for designated services are included within the stipulated fees as indicated on the attached Compensation Schedule – ‘Payment for Designated Services’ (Exhibit D). Additional expenses beyond the scope of this PROJECT that are requested and authorized by the CITY and ATTA, are to be charged at rates as indicated on the attached Compensation Schedule – ‘Payment for Additional Expenses’ (Exhibit D).
- C. In the event there are significant changes in the PROJECT scope or schedule, ATTA, the CITY and CONSULTANT will negotiate for changes in fee. In determining increases or decreases of the fee, the actual increase or decrease in services involved will be considered. If changes in services are negotiated on the basis of hourly billing rates, compensation is to be charged at rates as indicated in the attached Compensation Schedule – ‘Payment for Additional Expenses’ (Exhibit D).
- D. CONSULTANT shall submit monthly statements for services rendered through the statement period. The CITY represents adequate funds will be available to make the payments. Payment from CITY is due within Forty-Five days from date of invoice.
- E. The total fees under this AGREEMENT are not to exceed \$150,000 without prior approval of the CITY and ATTA. The CONSULTANT and ATTA acknowledge that \$150,000 is the maximum amount the CITY will pay for the services under this AGREEMENT and that any additional compensation the CONSULTANT may become entitled to will be the sole responsibility of ATTA, unless prior to such additional work being completed, the CITY specifically agrees to contribute additional funds. Neither ATTA or the CITY will be responsible for paying for any additional work which results in higher fees, unless such additional work is approved prior to being undertaken by the CONSULTANT.

ARTICLE V: GENERAL CONDITIONS

- A. **Standard of Care:** The CONSULTANT shall perform the services set forth in this AGREEMENT exercising the same care, skill, and diligence as people engaged in CONSULTANT'S professional ordinary exercise under like circumstances. CONSULTANT warrants that it has the knowledge and ability to provide the services called for in this contract.
- B. **Professional Services:** The CONSULTANT represents that the services furnished under this AGREEMENT will be in accordance with generally accepted professional practices. The CONSULTANT shall not be responsible for (1) providing or ensuring a safe place for the performance of work by others; (2) safety procedures or provisions at PROJECT site; or (3) the accuracy of information furnished by ATTA, the CITY or their agents.
- C. **Information Provided to Consultant:** ATTA, the City or their agents shall furnish all tests, permits and reports that are required by law or that are necessary for performance of services that may not be itemized as part of the Scope of Services. Data, interpretations, and recommendations by CONSULTANT will be based solely on information available to CONSULTANT, and CONSULTANT will not be responsible for hidden conditions or other parties' interpretations or use of the information developed. If ATTA or the CITY observe or otherwise become aware of any fault or defect in the PROJECT or the information provided to CONSULTANT, they shall give prompt written notice thereof to CONSULTANT.
- D. **City's Participation in Design:** The CITY will be consulted in the design of the project. The CITY will designate a representative to be the contact person with ATTA and the CONSULTANT related to the professional services to be performed under this AGREEMENT. The CITY, in conjunction with ATTA, must approve all changes in the scope of service. The CITY will receive copies of all correspondence between ATTA and the CONSULTANT related to the improvements to be constructed and the overall layout of the PROJECT. The CITY shall also participate in all progress meetings related to the design and layout of the PROJECT. The CITY must jointly consent with ATTA on the preliminary and final design of the PROJECT.
- E. **Changes in Agreement:** No changes shall be made in this AGREEMENT, except as agreed to in writing by ATTA, the CITY and the CONSULTANT. Any provision of this AGREEMENT later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the parties will in good faith attempt to replace an invalid provision with one that is valid and enforceable, and which comes as close as possible to achieving the original intent.

- F. ***Ownership of Documents:*** The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to ATTA and the CITY by the Landscape Architect (collectively, the “Design Materials”). Subject to payment of all fees and costs owed to the Landscape Architect, the Landscape Architect grants to ATTA a nonexclusive license to reproduce the Design Materials for fund raising, public outreach general use relating to the project, and construction of the Project. Subject to payment of all fees and costs owed to the Landscape Architect, the Landscape Architect grants to the CITY a nonexclusive license to reproduce the Design Materials solely for the construction and use of the Project.

ARTICLE VI: SUPPLEMENTARY DOCUMENTS

The following documents are attached herein and made part of this SERVICE AGREEMENT:

Exhibit A: Scope of Design Services
Exhibit B: Project Site Map
Exhibit C: Project Schedule
Exhibit D: Compensation Schedules

ARTICLE VII: CHOICE OF LAW AND VENUE

This SERVICE AGREEMENT will be governed under the laws of the State of South Dakota. Any action concerning this SERVICE AGREEMENT will be venued in Pennington County in the Circuit Court for the Seventh Judicial Circuit.

IN WITNESS WHEREOF, the parties hereto have made and executed, through their lawfully empowered representatives, this SERVICE AGREEMENT as of the day and year first above written.

CONSULTANT

Wyss Associates, Inc.
728 Sixth Street
Rapid City, SD 57701

Alliance of Tribal Tourism Advocates
522 Seventh St., Suite 210
Rapid City, SD 57701

Patrick Wyss, President

Robert Cournoyer, ATTA

Signature

Signature

Date: _____

Date: _____

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

ATTEST:

Alan Hanks, Mayor

Jim Preston, Finance Officer
(SEAL)

Exhibit A

Scope of Design Services

PROJECT OBJECTIVE

The PROJECT, as used herein, refers to providing professional landscape architectural and support architectural and engineering design services for The Powwow Gardens and Indian Art Market Design and Construction Management services. The budget of \$1,200,000 has been established for project construction and design services. The proposed improvements to be included in this phase of work include:

1. Site Work at Powwow Gardens and Indian Art Market – See Exhibit B

- Testing & surveying
- Demolition of existing features
- Topsoil removal, stockpiling and placement
- Erosion control
- Earthwork
- Water, sewer and storm sewer service
- Electrical services
- Retaining walls (Seat walls for circular amphitheatre)
- Other Walls
- Approximately 500 sf Building 'A' per Exhibit B
- Planned Expansion for Building 'B' and 'C'
- Asphalt paving
- Base course
- Concrete paving
- Curb & gutter
- Fencing & Gate Structures
- Minor Trail development
- Irrigation system
- Landscape (including Planting, Sod and Seeding)

2. Professional Services

- Geotechnical Engineering Services
- Engineering & Surveying Services
- Electrical Engineering Services
- Building Architectural Design Services
- Landscape Architectural Design Services
- Allowance for final plans and specifications

Exhibit A (Continued)

SCOPE OF DESIGNATED SERVICES:

The following tasks are anticipated based on the project objectives and desired elements as outlined by the Alliance of Tribal Tourism Advocates.

A. PROJECT MANAGMENT:

Project Documentation: CONSULTANT will document all phases, meetings, calls, and communication throughout project and keep available for review at any time.

Consultant Coordination: CONSULTANT will manage project design team, tracking schedules and tasks throughout the project lifecycle

A. DESIGN DEVELOPMENT PHASE:

Project Orientation & Programming: CONSULTANT will meet with OWNER Representatives to discuss all project requirements, and to determine all goals and objectives for the improvements. CONSULTANT will review with owner project information such as property and topographical survey information, utility plans, geotechnical reports, and other available site information provided by the Consultant or subcontractors.

Topographical Survey Information: CONSULTANT will contract with a licensed surveyor for supplemental topographical survey work that may be required for verification of existing site conditions within the limits of the project sites.

Site Inventory and Analysis: The CONSULTANT will visit the project site to investigate existing conditions, inventory natural resources, and to identify potential opportunities and constraints to the project. Existing use compatibility, circulation, interpretive issues, landscaping and irrigation, utilities, slope & topography, soil & drainage, vegetation, and other significant site information will be evaluated in light of the Master Plan included in Exhibit 'B'.

Design Development: CONSULTANT will evaluate OWNER suggestions and proposed concepts, and will further cultivate design elements for enhancements. CONSULTANT will prepare design review submittal delineating development alternatives and recommendations.

Probable Cost of Construction: The CONSULTANT will provide a preliminary cost estimate for proposed park improvements. The cost estimate will provide a breakdown for Phase I of construction.

Design Development Review: Design development plans and recommendations will be submitted by Consultant to required regulatory agencies and presented to City representatives for additional input and comments. During the design review, concepts will be evaluated and alternatives selected for refinement. Priorities for proposed development will be outlined.

B. CONSTRUCTION DOCUMENT PHASE:

Staging Plan: CONSULTANT will provide construction staging plan as necessary to prepare the park for construction. Documents are to include site preparation requirements, vegetative removal areas, temporary fencing & traffic control, erosion control, and specifications as required for bidding and construction.

Layout Plans & Details: CONSULTANT will provide construction layout documents for parking lot, walkways, picnic areas, and other site improvements as necessary for horizontal control. Park layout documents are to include dimensioned layout plan, related construction details, and specifications as required for bidding and construction.

Grading Plan & Details: CONSULTANT will provide grading plans as necessary for vertical control. CONSULTANT will prepare construction documents required for earthwork, site grading, drainage improvements, slope stabilization, and erosion control required for renovation of the park. Park grading documents are to include existing and proposed contours and spot elevations, and specifications as required for bidding and construction.

Irrigation Plan & Details: CONSULTANT will provide irrigation design and prepare construction documents for the installation of underground irrigation system at the proposed project site. Irrigation documents are to include irrigation plans, hydraulic calculations, irrigation equipment schedule, installation details, and specifications as required for installation.

Landscape Plan & Details: CONSULTANT will provide landscape design and prepare construction documents for the installation of trees, shrubs, and other ground cover applications at the proposed project site. Landscape documents are to include planting plan, plant materials schedule, planting details, erosion control & soil prep, and landscape specification as required for bidding and construction.

Site Electrical and Lighting: CONSULTANT will contract with a licensed electrical engineer for electrical engineering services to design power distribution and site lighting within the project areas.

Site Construction Details: CONSULTANT will provide construction details and specifications required for pedestrian/bike trails, parking lot & access road, picnic shelter pad, and other park features as required for bidding and construction.

Architectural Plans and Details: CONSULTANT will contract with a licensed architect to provide construction plans, details and specifications required for Building A as indicated in Exhibit 'B'

Coordination & Review: CONSULTANT will submit construction documents to regulatory agencies and City representatives for final input and approval.

C. BIDDING PHASE

Document Printing & Distribution: CONSULTANT will revise construction documents as necessary and will reproduce and distribute final documents for bidding. CONSULTANT will submit original construction plans and specifications to the City of Rapid City.

Estimate Quantities and Construction Costs: CONSULTANT will provide the OWNER with a breakdown of construction items, estimated quantities, and will provide an estimate for the probable cost of construction.

Bidding / Negotiate Contract for Construction: CONSULTANT will be available to answer questions from bidders and to clarify bidding requirements. CONSULTANT will assist OWNER representatives to negotiate contract for construction.

SERVICES NOT INCLUDED

The following services are not included within this designated scope of services:

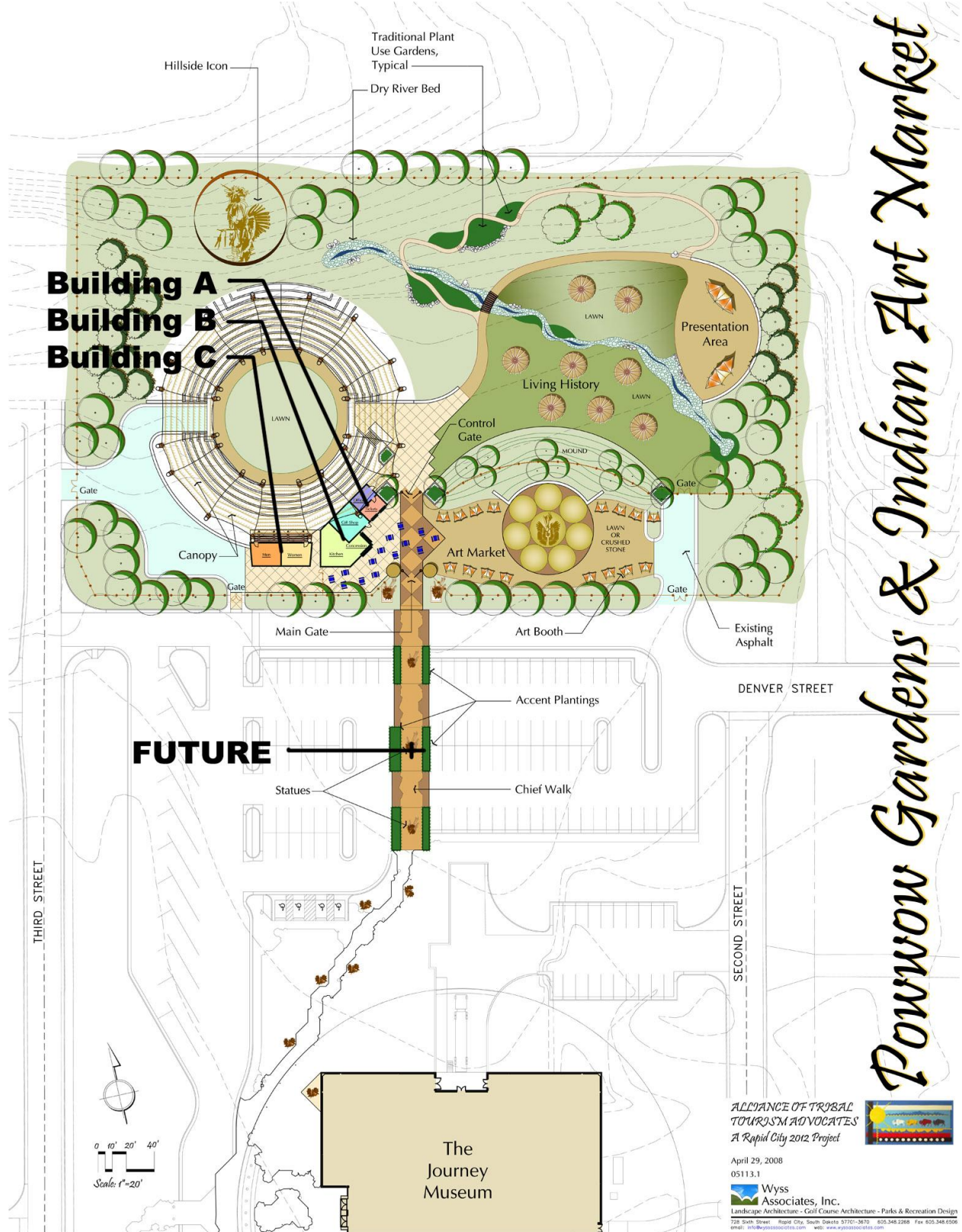
- Federal or State regulatory requirements not identified within this scope of work.
- Preparation of record (as-built) drawings
- Environmental impact and assessment reports
- Full time construction inspection
- Construction administration phase
- Canopy Design
- Buildings B & C (including Kitchen, Changing Room and Full Restrooms)
- Chief Walk
- Hillside Icon

Exhibit B Project Site & Proposed Master Plan

The site is as indicated in this image:



The Master Plan:



Powwow Gardens & Indian Art Market

Exhibit C Project Schedule

<u>Project Schedule</u>	<u>Proposed Timeline</u>
Project Orientation and Programming:	September 2009
Design Development	September – November 2009
Design Review	December 2009
Construction Documents	December 2009- January 2010
Coordination and Review	February 2010
Bid Opening and Negotiate Contract	March 2010
Start Construction	April 2010
Construction Period	April thru September 2010
Complete Construction	September 15, 2010
Completion Date (contract deadline)	September 15, 2010

Exhibit D Compensation Schedule

PAYMENT FOR DESIGNATED SERVICES

Compensation for the designated services is based on a stipulated sum as outlined in the schedule below. Progress payments for Designated Services in each phase shall be made monthly and shall be in proportion to services performed within each Phase of Services. The stipulated sum includes professional services, travel and office expenses, overhead, and profit to complete the designated scope of services. Construction Administration Services are not included below, and would be mutually agreed upon after opening of construction bids and prior to awarding a construction contract.

Schedule of Services		Fees
A.	Project Management / Coordination	\$22,000.00
B.	Geotechnical Engineering Services	\$3,300.00
C.	Engineering & Surveying Services	\$7,365.00
D.	Electrical Engineering Services	9,000.00
E.	Building Architectural Services	\$ 15,000.00
F.	Site Design / LA Design Fees	\$ 88,000.00
G.	Allowance for Direct Expenses	\$ 5,000.00
Total Design Fee =		\$149,665.00