

 **AIA[®] Document B141[™] – 1997 Part 1**

Standard Form of Agreement Between Owner and Architect
with Standard Form of Architect's Services

AGREEMENT made as of the **SIXTEENTH** day of **OCTOBER**
 in the year **2006**
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

OWNER: CITY OF RAPID CITY
 300 SIXTH STREET
 RAPID CITY, SOUTH DAKOTA 57701-2724

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

and the Architect:
(Name, address and other information)

baffuto architettura
 THOMAS BAFFUTO, AIA (SOLE PROPRIETOR)
 1025 DUFFER DRIVE
 RAPID CITY, SOUTH DAKOTA 57702

For the following Project:
(Include detailed description of Project)

CITY OF RAPID CITY DEPARTMENT OF PARKS AND RECREATION INTEND ON DEVELOPING TWO BUILDINGS AT TWO SEPARATE SITES, ONE ADDRESSING OFFICE AND SHOP NEEDS AT THE PARKS DIVISION HEADQUARTERS LOCATED ON CANYON LAKE DRIVE AND THE OTHER ADDRESSING SHOP NEEDS AT MEADOWBROOK GOLF COURSE ON ARROWHEAD DRIVE. PROJECT SPECIFIC: PERFORM SCHEMATIC DESIGN SERVICES FOR BOTH SITE AND BUILDINGS.

The Owner and Architect agree as follows:

TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

(Identify or describe, if appropriate, proposed use or goals.)

THE DEVELOPMENT OF TWO PARKS AND RECREATION FACILITIES.

§ 1.1.2.2 The physical parameters are:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)

TO DESIGN TWO 6,000-8,000 SF BUILDINGS: OFFICE AND SHOP NEEDS AT THE PARKS DIVISION HEADQUARTERS LOCATED ON CANYON LAKE DRIVE AND THE OTHER ADDRESSING SHOP NEEDS AT MEADOWBROOK GOLF COURSE ON ARROWHEAD DRIVE.
GEOTECHNICAL SERVICES IS PART OF THIS AGREEMENT (ONE TEST HOLE PER SITE)

§ 1.1.2.3 The Owner's Program is:

(Identify documentation or state the manner in which the program will be developed.)

PROJECT PROGRAMMING OF EACH BUILDING IS BY THE ARCHITECT AND THE USER/OWNER.

§ 1.1.2.4 The legal parameters are:

(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)

EXISTING TWO SITES ARE THE PARKS DIVISION HEADQUARTERS LOCATED ON CANYON LAKE DRIVE, RAPID CITY, SD AND AT MEADOWBROOK GOLF COURSE ON ARROWHEAD DRIVE, RAPID CITY, SD
EXISTING BUILDING(S) WILL BE PLANNED TO BE DEMOLISHED AS PART OF THE PROJECT.

§ 1.1.2.5 The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:
TOTAL DESIGN PROJECT (FEE ONLY) IS FOR THIRTY FIVE THOUSAND TWO HUNDRED AND SIXTY DOLLARS AND NO CENTS (\$35,260). PROJECT SUBSEQUENT DESIGN SERVICES WILL BE IN A LATER CONTRACT
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:

N/A

§ 1.1.2.6 The time parameters are:

(Identify, if appropriate, milestone dates, durations or fast track scheduling.)

| | |
|---|--|
| 02/15/07 COMPLETE SCHEMATIC DESIGNS | [06/30/07 PROP COMPLETE FINAL DESIGN] |
| [02/22/07 PROPOSED START OF PRELIM. CD'S] | [07/31/07[PROPOSED BID OPENING] |
| [03/15/07 PROPOSED START OF FINAL CD'S] | [09/15/07 PROPOSED START CONSTRUCTION] |

DATES ARE SUBJECT TO CITY APPROVALS BEFORE PROCEEDING TO EACH ITEM ABOVE

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

(Identify method such as competitive bid, negotiated contract, or construction management.)

DESIGN SERVICES ARE A LUMP SUM CONTRACT. CONSTRUCTION IS NOT PART OF THIS CONTRACT.

§ 1.1.2.8 Other parameters are:

(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

PHASE TWO: PRELIMINARY, FINAL, BID AND CONSTRUCTION ADMINISTRATION SERVICES ARE NOT PART OF THIS CONTRACT, ALTHOUGH BAFFUTO HAS BEEN SELECTED TO PERFORM THESE ITEMS ONCE THE PROJECT IS FUNDED.

§ 1.1.3 PROJECT TEAM

§ 1.1.3.1 The Owner's Designated Representative is:

(List name, address and other information.)

RODNEY K. JOHNSON, PE, - OPERATIONS MANAGEMENT ENGINEER
RAPID CITY PUBLIC WORK DEPARTMENT
300 SIXTH STREET
RAPID CITY, SOUTH DAKOTA, 57701-2724

§ 1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:

(List name, address and other information.)

N/A

§ 1.1.3.3 The Owner's other consultants and contractors are:

(List discipline and, if known, identify them by name and address.)

JERRY COLE, DIRECTOR
CITY OF RAPID CITY PARKS AND RECREATION DEPARTMENT

§ 1.1.3.4 The Architect's Designated Representative is:

(List name, address and other information.)

THOMAS BAFFUTO, AIA NCARB
1025 DUFFER DRIVE
RAPID CITY, SOUTH DAKOTA, 57702

§ 1.1.3.5 The consultants retained at the Architect's expense are:
(List discipline and, if known, identify them by name and address.)

BROSZ ENGINEERING FOR CIVIL ENGINEERING, STURGIS, SD
PARKSIDE DESIGN, INC. FOR STRUCTURAL, RAPID CITY, SD
SKYLINE ENGINEERING, LLC FOR MECHANICAL AND ELECTRICAL, RAPID CITY, SD

§ 1.1.4 Other important initial information is:
NONE

§ 1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

N/A

§ 1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

§ 1.2.2 OWNER

§ 1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 1.3 TERMS AND CONDITIONS

§ 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

§ 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

§ 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

~~§ 1.3.4 MEDIATION~~ 10/24/06

~~§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.~~

~~§ 1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~§ 1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 1.3.5 ARBITRATION~~ TB 10/24/06

~~§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.~~

~~§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.~~

~~§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~

~~§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 1.3.5.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

§ 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 1.3.7.5 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 Architect.

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§ 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

§ 1.3.8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified below:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 Reimbursable Expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

(List other documents, if any, delineating Architect's scope of services.)

NONE

§ 1.4.1.3 Other documents as follows:

(List other documents, if any, forming part of the Agreement.)

SEE THE APPENDICES THAT FOLLOW.

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

NONE

ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

BASIC COMPENSATION AND REIMBURSABLE ITEMS: STIPULATED SUM OF THIRTY FIVE THOUSAND TWO HUNDRED AND SIXTY DOLLARS AND NO CENTS (\$35,260)

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)

ARCHITECT AT \$110/HOUR, SUPPORT STAFF AT \$45/HOUR AND CADD TECH AT \$55/HOUR
CIVIL ENGINEERING AT \$90/HOUR AND TESTING AT \$95/HOUR.
STRUCTURAL ENGINEERING AT \$90/HOUR AND CADD TECH AT \$55/HOUR

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of ONE POINT TWO (1.20) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of ONE POINT TWO (1.20) times the expenses incurred by the Architect, and the Architect's employees and consultants. *TB 10/16/06*

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

RATES: BLUEPRINTING AND PHOTOCOPYING IS INCLUSIVE OF THE LUMP SUM FEE. [SPECIFICALLY, PRINTING COST OF FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00) IS INCORPORATED.]

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of ZERO Dollars (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Forty Five (45) days from the date of the Architect's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. FIFTEEN THIRTY 30
(Insert rate of interest agreed upon.)

~~11%~~ 0%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 1.5.9 If the services covered by this Agreement have not been completed within SIX (6) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

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

OWNER
JIM SHAW, MAYOR
CITY OF RAPID CITY

(Signature) JAMES F. PRESTON, FINANCE OFFICER
CITY OF RAPID CITY

(Printed name and title)

ARCHITECT
Thomas Baffuto 10/16/06

(Signature) THOMAS BAFFUTO, AIA / NCARB
OWNER/PRINCIPAL ARCHITECT

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

APPENDIX INDEX

Appendix A

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Professional Services Contract Fee Proposal

Appendix B

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Professional Error and Omissions Insurance (verification)



baffuto architecttura

art + technology equals architecture

October 2, 2006

Mr. Jerry Cole, Director

City of Rapid City
Department of Parks and Recreation
125 Waterloo Street
Rapid City, South Dakota 57701

Re: **Architectural Design Service Fee Proposal**
City of Rapid City - Department of Parks and Recreation
New Maintenance Buildings:
Parks Division Headquarters - Canyon Lake Drive
Meadowbrook Golf Course - Arrowhead Drive

Mr. Cole:

Thank you for selecting *baffuto architecttura* through the interview process as your architectural firm to provide architectural services for Department of Parks and Recreation New Maintenance Buildings Project.

Per our discussion there are several aspects of the project that should be covered in this proposal and ultimately the Contract.

1. Two building sites are being examined for the first portion of work (Phase 1). Each site needs to be surveyed to appropriately identify the existing conditions and environment such that the Parks and Recreation Department, architectural and engineering planning can consider the various possibilities for each project.
2. Two Programs need to be developed for each building.
3. Two sets of Site Plans, Floor Plans, and Building Elevations are needed.
4. Cost Estimates are needed for both Schematic Design approaches.
5. Baffuto architecttura has been selected as the firm to perform the above A&E Phase 1 services and the Preliminary Design, Final Design, Construction (Phase 2), A&E services for the funded solution.

We look forward working with you and your staff on this important City project. Below is what we see as our specific role, tasks and fee.

PHASE 1

ANTICIPATED ITEMS OF WORK

- | | | |
|----|---|---------------------------|
| A. | <input type="checkbox"/> PROGRAMMING | Lump Sum \$2,832 |
| | a. Record and collate Space Needs Form (2X). | |
| | a. Area and sizes. | |
| | b. Detailed description of space needs. | |
| | b. Create Diagram of functional relationships of spaces (2X). | |
| | c. Preliminary Estimate based on space needs only (2X). | |
| B. | <input type="checkbox"/> SCHEMATIC DESIGN | Lump Sum \$,31,930 |
| | a. Site Geotechnical Borings and Report (2X). | [\$500] |
| | i. One test boring for each site. | |

- ii. Report of findings for cost estimate implications, i.e. engineered fill and water table.
- b. Site Surveying Data and Documents (2X). [\$11,600]
 - i. Two Sites: Canyon Lake Drive and Arrowhead Drive.
 - ii. Flood Plain Verification.
- c. Architectural Site Plans (2X). [\$19,830]
 - i. City Ordinances.
 - ii. Flood Plain Issues.
 - iii. Setbacks.
 - iv. Building Layout.
 - v. Paved Delivery and Parking Areas
 - vi. Equipment Areas
- d. Architectural Main Floor Plans (2X with specific design ideas identified).
 - i. Rooms/spaces identified.
 - ii. Equipment identified
 - iii. Dimensions/areas.
 - iv. Doors and windows located.
- e. Architectural Building Elevations (2X).
 - i. All four elevations.
- f. Construction Estimates (2X).

Fees Below are to be Negotiated Once the Scope is Set and will be Part of an AIA Standard Form of Agreement Between Owner and Architect

PHASE 2

- C. PRELIMINARY DESIGN **Lump Sum To Be Determined**
- a. Site Plan
 - b. Main Floor Plan
 - c. Building Elevations and Sections
 - d. Structural Engineering Foundations and Footings
 - e. Mechanical Engineering Design Layout
 - f. Electrical Design Layout

- D. FINAL DESIGN **Lump Sum To Be Determined**
- Complete construction drawings and specifications per approved design (Owners, City of Rapid City, Parks and Recreation Department)

- a. Site Plan
- b. Main Floor Plan / Code Plan
- c. Main Floor Ceiling Plan and Details
- d. Main Floor Room Finish Plan
- e. Building and Wall Sections
- f. Interior Elevations and Details
- g. Door Schedule, Hardware and Details
- h. Specifications proposed but not limited to:
 - Division 1 – General Requirements
 - Invitation to Bid
 - Instruction to Bidders
 - Bid Bond
 - Non-Collusive Affidavit
 - Form of Performance and Payment Bond
 - Certificate of Insurance
 - General Conditions of the Contract for Construction
 - Supplement and Special Conditions to the Contract
 - General Wage Determination
 - Standard Form of Agreement Between the Owner and Contractor
 - Bid Form

SECTION TITLE

- 01010 Summary of Work
- 01027 Applications for Payment

- 01035 Modification Procedures
- 01040 Coordination
- 01045 Cutting and Patching
- 01095 Reference Standards and Definitions
- 01200 Project Meetings
- 01300 Submittals
- 01400 Quality Control
- 01500 Construction Facilities and Temporary Controls
- 01600 Materials and Equipment
- 01631 Substitutions
- 01700 Contract Closeout
- 01732 Selective Demolition
- 01740 Warranties
- Division 2 – Site Construction
 - 01732 Selective Demolition
 - 02300 Earthwork
 - 02620 Sub Drainage
 - 02920 Lawn and Grasses
- Division 3 – Concrete
 - 03300 Cast-in-Place Concrete
 - 03542 Concrete Floor Topping
- Division 4 – Masonry
 - 04810 Unit Masonry Assemblies
 - 04860 Stone Veneer Assemblies
- Division 5 – Metals
 - 05120 Structural Steel
 - 05521 Pipe and Tube Railings
- Division 6 – Wood and Plastics
 - 06100 Rough Carpentry
 - 06176 Metal-Plate-Connected Wood Trusses
 - 06200 Finish Carpentry
 - 06402 Interior Architectural Woodwork/Paneling
- Division 7 – Thermal and Moisture Protection
 - 07115 Bituminous Dampproofing
 - 07210 Building Insulation
 - 07240 Exterior Insulation and Finish System
 - 07610 Sheet Metal Roofing
 - 07841 Through-Penetration Fire-stop Systems
 - 07920 Joint Sealants
- Division 8 – Doors and Windows
 - 08110 Steel Doors and Frames
 - 08361 Sectional Overhead Doors
 - 08411 Aluminum Framed Entrances and Storefronts
 - 08520 Aluminum Windows
 - 08711 Door Hardware
 - 08800 Glazing
- Division 9 – Finishes
 - 09260 Gypsum Board Assemblies
 - 09310 Ceramic Tile
 - 09651 Resilient Floor Tile
 - 09653 Resilient Wall Base and Accessories
 - 09512 Acoustical Tile Ceilings
 - 09680 Carpet
 - 09910 Painting
- Division 10 – Specialties
 - 10801 Toilet and Bath Accessories
 - 10520 Fire Protection Specialties
- Division 11 – Equipment
 - 11160 Hydraulic Lifts
- Division 12 – Furnishings
 - 12491 Horizontal Louver Blinds
- Division 13 – Special Construction
 - None
- Division 14 – Conveying Systems
 - None
- Division 15 – Mechanical Systems

- Division 16 – Electrical Systems
- i. Structural Engineering Final Drawings
- j. Mechanical Engineering Final Drawings
- k. Electrical Engineering Final Drawings

- E. **BIDDING AND CONSTRUCTION ADMINISTRATION Lump sum To Be Determined**
1. Bidding administration, answering contractor, suppliers and sub-contractor questions. Develop Addenda for clarifications and new information.
 2. Perform Project construction report, assuring the construction conforms to the construction documents. Create (and respond) to items such as RFI/RFP, Change Orders and RFP/CO Tracking.
 3. Perform observations per State Law regarding safety and welfare of the public.

FEE PROPOSAL

baffuto architettura has been able to provide quality professional services, efficiently and effectively, at generally lower fees. We expect this efficient approach to translate into more dollars for the building project.

Total = \$34,760 [Phase 1: Programming and Schematic Designs (2X) only]

Notes on Payment & Additional Costs:

- Note 1.: Each Phase is to be approved before proceeding to the next portion of work.
- Note 2.: All printing of photocopies and blueprints to be reimbursed at 1.20 multiplier, at a lump sum price of \$500 added to above. [REV 10-05/06] TB
- Note 3.: All postage and long distance phone calls to be reimbursed at 1.20 multiplier. [REV 10-05/06] TB
- Note 4.: All other Architectural services not identified will be billed hourly (\$110/hour).
- Note 5.: Fees will be due monthly and/or at the conclusion of each phase of work.
- Note 6.: Does not include any taxes, permits, or other fees that may be associated with the project.
- Note 7.: Does not include major variation from project program, concept or design. Time will be charged at \$110/hour.
- Note 8.: Out-of-town mileage will be charged at \$.50/mile.
- Note 9.: Does not include geotechnical reports or engineering or specialized consultants. [REV 10-05/06] TB

Authorization:

I hereby authorize Thomas Baffuto, AIA of *baffuto architettura* to begin the work outlined above and to the extent noted in the above proposal. I further recognize this document to be a preliminary contract, the more extensive clauses of which will be negotiated at a later date using the Standard AIA Owner Architect Agreement. If at such time, the negotiations do not yield mutually favorable terms, I will only be responsible for Work completed within the confines of this preliminary Agreement.

| | | | |
|------------------------------------|------|-----------------------------|----------|
| Jerry Cole, Director | Date | <i>baffuto architettura</i> | 10/02/06 |
| Department of Parks and Recreation | | Thomas Baffuto, AIA / NCARB | Date |

Thank you again for this opportunity to offer this proposal to you. If you have any questions please don't hesitate to call me.

Sincerely,
baffuto architettura

Thomas Baffuto, AIA/NCARB
Principal Architect/Owner



thomas baffuto, aia

1025 Duffer Drive

Rapid City, South Dakota 57702

Phone: 1.605.341.2845 / Fax: 1.605.341.7501

tbaffuto@aol.com

Joshua 24:15 ... as for me and my house we will serve the Lord

ACORD CERTIFICATE OF LIABILITY INSURANCE

CSR PA DATE (MM/DD/YYYY)
 BAFFU-1 03/27/06

PRODUCER
 Western Dakota Insurers, Inc.
 PO Box 1300
 Rapid City SD 57709
 Phone: 605-342-3130 Fax: 605-342-2162

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED
 baffuto architettura
 Thomas Baffuto
 1025 Duffer Drive
 Rapid City SD 57702

| INSURERS AFFORDING COVERAGE | NAIC # |
|---------------------------------------|--------|
| INSURER A: Zurich Insurance Services | |
| INSURER B: XL Specialty Insurance Co. | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSURANCE TYPE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|--|---------------|----------------------------------|-----------------------------------|---|
| GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | PAS043154518 | 03/26/06 | 03/26/07 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$ | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$ |
| WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | | | | WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |
| 3 Professional Liab (Claims-made) | DPS9417004 | 03/26/06 | 03/26/07 | Ea Claim \$250,000 Aggregate \$250,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 For Professional Liability coverage, the aggregate limit is the total insurance available for all covered claims presented within the policy period. The limit may be reduced by payments of indemnity and expense.

PROF LIAB PER CLAIM/AGGREGATE DEDUCTIBLE: \$5000

CERTIFICATE HOLDER
 0000000
 VERIFICATION OF INSURANCE (FOR INSURED USE ONLY)

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF. THE ISSUING INSURER WILL ENDEAVOR TO MAIL 20 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
 Tom Johnson