

**FOURTH AMENDATORY AGREEMENT**

**THIS FOURTH AMENDATORY AGREEMENT**, is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the "City"), and **WENK ASSOCIATES, INC.**, a Colorado corporation (the "Design Consultant"), whose address is 1335 Elati Street, Denver, Colorado 80204.

**WITNESSETH**

**WHEREAS**, the City and the Design Consultant entered into an Agreement dated June 17, 2008, an Amendatory Agreement May 26, 2009, a Second Amendatory Agreement dated October 5, 2010 and a Third Amendatory Agreement dated February 1, 2011 (collectively, the "Agreement"); and

**WHEREAS**, the City and the Design Consultant desire to add funding and extend the term of the Agreement; and

**WHEREAS**, The City and the Design Consultant desire to amend the agreement to modify the scope of work and update other contract language as follows;

**NOW THEREFORE**, in consideration of the premises, and the mutual covenants and obligations herein contained, the parties agree as follows:

1. **SECTION 3** of the Agreement entitled "**3.01 Fee for Basic Services**" and "**3.05 Maximum Contract Amount**" are hereby amended to read as follows:

**"SECTION 3 - COMPENSATION, PAYMENT AND FUNDING "**

**3.01 Fee for Basic Services.** "The City agrees to pay the Design Consultant, as full compensation for its basic services rendered hereunder, a fee not to exceed **SEVEN HUNDRED FIFTEEN THOUSAND FIVE HUNDRED TWO DOLLARS AND 00/100 (\$715,502.00)** in accordance with the billing rates and project budget set forth in Exhibit A and subsequent Exhibits A-1, A-2 and A-3 and A-4. The amounts budgeted for phases may be increased or decreased, and the amounts allocated for services and expenses adjusted, upon written approval of the Manager or his designee, and are subject to the Maximum Contract Amount Stated in this Section 3.

**3.05 Maximum Contract Amount.** "Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SEVEN HUNDRED FIFTEEN THOUSAND FIVE HUNDRED TWO DOLLARS**

**AND 00/100 (\$715,502.00)** (the “Maximum Contract Amount”) The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed beyond that specifically described in Exhibit A and subsequent Exhibits A-1, A-2, A-3 and A-4. Any services performed beyond those set forth therein are performed at Consultant’s risk without authorization under the Agreement.”

2. The revised Scope of Services is attached hereto and incorporated herein as **Exhibit A-4**. Such revised Scope of Services attached hereto shall amend the previous Scope of Services attached as **Exhibit A, A-1, A-2 and A-3** to the Agreement. Any reference to **Exhibit A, A-1, A-2 or A-3** found in the agreement, shall be inclusive of **Exhibit A-4** and shall incorporate all aspects thereof.

3. A new section numbering 5.29 is included in the Agreement reading as follows:

**5.29 NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or

contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.”

4. A new section numbering 5.30 is included in the Agreement reading as follows:

**5.30. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

The Design Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

**EXHIBIT LIST:**

**EXHIBIT A-4: Scope of Work**

**[SIGNATURE PAGE TO FOLLOW]**

**Contract Control Number:** CE80115

**Vendor Name:** WENK ASSOCIATES INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: CE80115

Vendor Name: WENK ASSOCIATES INC

By: Bill Wenk

Name: William E. Wenk  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required]

By: Rita M. Halme

Name: RITA M. HALME  
(please print)

Title: BUSINESS MANAGER  
(please print)





ASSOCIATES

1335 ELATI STREET  
DENVER, CO 80204  
FAX 628.0004  
303.628.0003

**EXHIBIT  
A-4**

July 8, 2011

Mr. Jay C. Henke

Wellington E. Webb Municipal Office Building

Department of Parks and Recreation, Planning, Design and Construction

201 West Colfax Avenue, Sixth Floor

Denver, Colorado 80202

**RE: ADDITIONAL SERVICE REQUESTS, PARKFIELD LAKE PARK (SECOND REVISION)**

Dear Jay;

Per our discussion, we are submitting this additional services request for design related services during construction for Muller Engineering for additional engineering services at the storm drains south of the recreation center and for Wenk Associates for Construction Observation for the extended construction period.

**Storm Drain Improvements**

Additional engineering is required on the south side of the recreation center to solve connection and outfall issues associated with three underground roof drains and an additional inlet for the art piece. Muller Engineering will prepare a new design drawing for the storm drains on the south side of the recreation center (three roof drains, spray ground drain, and art piece drain). Their services will include:

- Showing an enlarged view of the improvement area with pipe callouts, outfall details for the pipe through the lake edge wall, and an outfall detail for the pipe(s) in the cobble swale.
- Quantity tabulations on the drawing for the improvements.
- Pipe sizing calculations, including approximating the 100-year runoff from the roof for the roof drains, 100 year runoff calculations for the other two inlets, and perform sizing of those inlet basins. Design calculations in a one page or less letter with calculations attached to the letter.
- Including the HDPE City table to the plans if ADS N-12 pipe is approved.
- Addressing one (1) round of review comments and resubmitting the revised plan.
- Time for designing and calculating the connection to the spray ground inlet will not be charged against the contract.

Wenk Associates will provide base files, details, and coordinate services with our sub-consultants, the Contractor, and the City.

Proposed fees for these services are as follows (billed hourly, not to exceed):

Muller Engineering additional fees	\$ 2,000.00
Wenk Associates additional fees	\$ 450.00
<b>Total request (Wenk Associates, Muller Engineering)</b>	<b>\$2,450.00</b>

**Construction Observation for Extended Construction Period.**

We are projecting that four to ten hours a week for the six remaining additional weeks will continue to include:

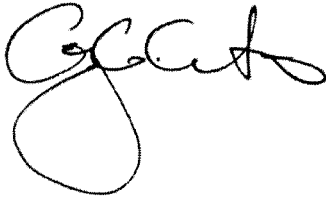
- Attendance at weekly progress meetings
- Site visits, including form and mock-up review, staking, punch list walkthroughs, and project close-out
- Reviewing submittals, responding to RFI's, and issuing ASI's as required
- Coordination with the Contractor, our sub-contractors, and Denver Parks & Recreation
- Time for as-builts/review as specified in the original contract is not included in this request and will be included under our original construction observation budget.

Proposed fees for these services are as follows:

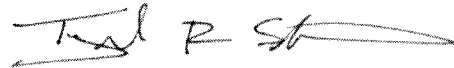
<u>Wenk Associates additional fees, billed hourly, not to exceed:</u>	<u>\$4,800.00</u>
<b>Total Request (Wenk Associates)</b>	<b>\$4,800.00</b>

Please feel free to contact us if you have any questions or require additional information.

Sincerely,



Craig Coronato, FASLA  
Senior Associate  
Wenk Associates



Tyrel Sturgeon  
Project Manager  
Wenk Associates

cc: Bill Wenk, Rita Halme