PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 3rd day of May 2022, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **Confluence,** 530 N 3rd St., Minneapolis, MN 55401 (“Consultant”).

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

Windermere Bluff Community Park (PR-21-005)

The City and Consultant agree as follows:

1. **Consultant's Services**. The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City’s professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.

2. **Time for Performance of Services**. The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City.

3. **Term**. The term of this Agreement will be from May 3, 2022, through December 31, 2022, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.

4. **Compensation for Services**. City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant’s hourly rates must be based on the hourly rates approved by the City.

The Agreement amount shall include all services to be rendered by the Consultant as part of this Agreement (including all travel, living and overhead expenses incurred by the Consultant in connection with performing the services herein) except for special services authorized in writing by the City. The amount stipulated shall be considered a "Not to Exceed" cost to the City.

The Consultant must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The Consultant must notify the City if the Consultant anticipates that the negotiated amount might be exceeded, in order to determine whether or not the City is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5. **Payment of Fees**. The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.

6. **Audit Disclosure**. The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

   Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination**. Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above. Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond Consultant's control), the Consultant shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulation of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property, and the Consultant shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

In the event this Contract is terminated for cause, then the City may take over and complete the work, by contract or otherwise, and the Consultant and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the City may have.

Termination Not For Cause. The City may terminate this Contract at any time, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the Consultant shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Consultant under this Contract, which shall, at the option of the City, become its property. If the Contract is terminated by the City as provided in this paragraph, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor**. The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.

9. **Independent Contractor**. At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.

10. **Assignment**. Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.

11. **Services not Provided for**. No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.

12. **Severability**. The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.

13. **Entire Agreement**. The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.

14. **Compliance with Laws and Regulations**. In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.

15. **Equal Opportunity**. During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program

work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver**. Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.

17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, which they may suffer or for which they may be held liable, as a result of, and to the extent of, the negligent or wrongful acts of the Consultant, his employees, or anyone else for whom he is legally responsible in the performance of this Agreement.

    The Consultant assumes full responsibility for relations with its subcontractors, and must hold the City harmless and must defend and indemnify the City, its employees and agents, for any claims, damages, losses, and expenses in any manner caused by such subcontractors, arising out of or connected with this contract.

18. **Insurance**. During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:

    A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than $1,500,000 each occurrence for damages of bodily injury or death to one or more persons and $1,500,000 each occurrence for damage to or destruction of property.

    B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).

    C. Comprehensive Automobile Liability Insurance, in an amount not less than $1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.

    D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than $2,000,000.

    E. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.

F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive notice ten (10) days prior to the cancellation or expiration any of the specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

This policy must provide, as between the City and the Consultant, that the Consultant's coverage shall be the primary coverage in the event of a loss. If the Consultant is providing either architectural or engineering services, the Consultant must also maintain during the term of this Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the City's approved form which verifies the existence of these insurance coverages must be provided to the City before work under this Agreement is begun.

19. **Governing Law**. This Agreement will be controlled by the laws of the State of Minnesota.

20. **Whole Agreement**. This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

By:_____
William H. Reynolds, City Administrator

Date:_____

By:_____
Bill Mars, Mayor

Date:_____

Confluence

By:_____

Its: Contracts Officer

Date: 04/27/2022

EXHIBIT A

PROJECT NAME: Windermere Neighborhood Park Implementation Design
TOTAL BUDGET: $195,426.50

	TEAM MEMBER:	Brad Aldrich		Liz Hixon		Jena Stanton		Mamata Guragain		Patrick Alvord		TOTAL CONFLUENCE LABOR		(See Attachment B time/ task) NAME: SRF	SUBCONTRACTOR SUBTOTAL BUDGET	MARKUP	SUBCONTRACTOR TOTAL BUDGET	EXPENSES	EXPENSES	EXPENSES	STANDARD EXPENSES TOTAL BUDGET	PROJECT TOTAL BUDGET
	BILLING CATEGORY:	Associate Principal		Professional 1		Professional 1		Technician 1		Principal Partner												
	HOURLY RATE:	145		120		110		80		180						0%		ERA	Confluence	SRF		
PHASE 01	Project Startup and Analysis	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	$	$			$	$	$	$	$
TASK 01-A	Kickoff Meeting - Site Visit	3.	$435.00	3.	$360.00							6.	$795.00						$150.00		$150.00	$945.00
TASK 01-B	Develop Existing Conditions Map (other survey)																					
TASK 01-C	Client Kickoff Meeting	2.	$290.00	2.	$240.00							4.	$530.00									$530.00
TASK 01-D	Play Consultant Coordination	6.	$870.00	12.	$1,440.00			12.	$960.00			30.	$3,270.00									$3,270.00
TASK 01-E																						
TASK 01-F																						
TASK 01-G																						
TASK 01-H																						
TASK 01-I																						
TASK 01-J	Project Management	2.	$290.00	1.	$120.00							3.	$410.00									$410.00
	PHASE 01 TOTAL:	13.	$1,885.00	18.	$2,160.00			12.	$960.00			43.	$5,005.00						$150.00		$150.00	$5,155.00
PHASE 02	Preliminary Design (30%)	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	$	$			$	$	$	$	$
TASK 02-A	30% Design Review Meeting	2.	$290.00	2.	$240.00							4.	$530.00						$100.00		$100.00	$630.00
TASK 02-B	Site Layout	4.	$580.00	8.	$960.00			16.	$1,280.00			28.	$2,820.00									$2,820.00
TASK 02-C	Trail Plan and Profile Sheets	1.	$145.00									1.	$145.00									$145.00
TASK 02-D	Structure Layout	2.	$290.00									2.	$290.00									$290.00
TASK 02-D	Grading Plan	4.	$580.00									4.	$580.00									$580.00
TASK 02-E	Landscape Plan	4.	$580.00	8.	$960.00			12.	$960.00			24.	$2,500.00									$2,500.00
TASK 02-F	30% Comment Redlines	2.	$290.00	6.	$720.00			6.	$480.00			14.	$1,490.00									$1,490.00
TASK 02-G																						
TASK 02-H																						
TASK 02-I																						
TASK 02-J	Admin	2.	$290.00	1.	$120.00							3.	$410.00									$410.00
	PHASE 02 TOTAL:	21.	$3,045.00	25.	$3,000.00			34.	$2,720.00			80.	$8,765.00						$100.00		$100.00	$8,865.00
PHASE 03	Final Design	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	$	$			$	$	$	$	$
TASK 03-A	60% Design Development - Plans	12.	$1,740.00	24.	$2,880.00	16.	$1,760.00	40.	$3,200.00			92.	$9,580.00									$9,580.00
TASK 03-B	60% Design Review Meeting	2.	$290.00	4.	$480.00							6.	$770.00						$100.00		$100.00	$870.00
TASK 03-C	60% Comment Redlines	4.	$580.00	8.	$960.00	4.	$440.00	16.	$1,280.00			32.	$3,260.00									$3,260.00
TASK 03-D	90% Design Development	8.	$1,160.00	24.	$2,880.00	16.	$1,760.00	70.	$5,600.00			118.	$11,400.00									$11,400.00
TASK 03-E	Title Sheet Development																					
TASK 03-F	90% Comment Redlines	4.	$580.00	2.	$240.00	4.	$440.00	8.	$640.00			18.	$1,900.00						$100.00		$100.00	$2,000.00
TASK 03-G	100% Plan Submittal	4.	$580.00	16.	$1,920.00	16.	$1,760.00	36.	$2,880.00			72.	$7,140.00						$100.00		$100.00	$7,240.00
TASK 03-H	Details, Standard plates, and plans	4.	$580.00	8.	$960.00	16.	$1,760.00	24.	$1,920.00			52.	$5,220.00									$5,220.00
TASK 03-I	Specifications	6.	$870.00	8.	$960.00							14.	$1,830.00									$1,830.00
TASK 03-J	Cost Estimates			2.	$240.00							2.	$240.00									$240.00
TASK 03-K	Admin	3.	$435.00									3.	$435.00									$435.00
	PHASE 03 TOTAL:	47.	$6,815.00	96.	$11,520.00	72.	$7,920.00	194.	$15,520.00			409.	$41,775.00						$300.00		$300.00	$42,075.00
PHASE 04	Permitting and Bidding	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	$	$			$	$	$	$	$
TASK 04-A	Permitting - grading and stormwater mgmt																					
TASK 04-B	Pre-Bid Meeting																					
TASK 04-C	Bidding Questions	2.	$290.00									2.	$290.00									$290.00
TASK 04-D	Addenda Preparation	1.	$145.00									1.	$145.00									$145.00
TASK 04-E																						
TASK 04-F																						
TASK 04-G																						
TASK 04-H																						
TASK 04-I																						
TASK 04-J																						
	PHASE 04 TOTAL:	3.	$435.00									3.	$435.00									$435.00
PHASE 05	Construction	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	$	$			$	$	$	$	$
TASK 05-A	Pre-Con Meeting																		$75.00		$75.00	$75.00
TASK 05-B	Construction Meetings	2.	$290.00									2.	$290.00									$290.00
TASK 05-C	Submittals and Shop Drawings	1.	$145.00	2.	$240.00							3.	$385.00									$385.00
TASK 05-D	Construction Staking (2 man for 11 days total)																					
TASK 05-E	As-Built Drawings																					
TASK 05-F	Construction Site Visits	4.	$580.00									4.	$580.00						$350.00		$350.00	$930.00
TASK 05-G																						
TASK 05-H																						
TASK 05-I	Construction Resident Project Rep. (SRF)																					
TASK 05-J	Administration	2.	$290.00	2.	$240.00							4.	$530.00	$133,254.00	$133,254.00		$133,254.00			$3,432.50	$3,432.50	$137,216.50
	PHASE 05 TOTAL:	9.	$1,305.00	4.	$480.00							13.	$1,785.00	$133,254.00	$133,254.00		$133,254.00		$425.00	$3,432.50	$3,857.50	$138,896.50
		Brad Aldrich Associate Principal 145		Liz Hixon Professional 1 120		Jena Stanton Professional 1 110		Mamata Guragain Technician 1 80		Patrick Alvord Principal Partner 180		TOTAL CONFLUENCE LABOR		(See Attachment B time/ task) NAME: SRF			SUBCONTRACTOR TOTAL COST	EXPENSES	EXPENSES	EXPENSES COPIES-REPRO	EXPENSES TOTAL COST	PROJECT TOTAL BUDGET
		HRS	$	HRS	$	HRS	$	HRS	$	HRS	$	HRS	$									
	PROJECT TOTALS	128.	$13,485.00	155.	$17,160.00	92.	$7,920.00	240.	$19,200.00			548.	$57,765.00	$133,254.00	$133,254.00		$133,254.00		$975.00	$3,432.50	$4,407.50	$195,426.50