

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 16th day of June 2020, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **CONFLUENCE**., 530 N Third. S. Suite 120, 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:

Quarry Lake Park – Master Plan

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 June 16, 2020, through June 30, 2021, 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

CONFLUENCE

By: _____
Bill Mars, Mayor

Date: _____

By: _____
William H. Reynolds, City Administrator

Date: _____

By: _____

Its: _____

Date: _____

530 N 3rd STREET, MINNEAPOLIS MINNESOTA, 55401
TEL 952-451-0144 FAX 515-288-8359 WWW.THINKCONFLUENCE.COM

CONFLUENCE

June 9, 2020

PeggySue Imihy, AICP Candidate
Senior Planner
485 Gorman Street
Shakopee, MN 55379

RE: Quarry Lake Park Master Plan / Schematic Design

Ms. Imihy,

The Confluence Team is pleased to submit our proposal to provide Schematic Design for the park and trails at Quarry Lake. We will work with the City to develop a cost-effective design that works with stakeholder groups and city staff to provide infrastructure improvements supporting park activities and programming. We are proposing to partner with AE2S for 30% Civil Design and Wetland Delineation Services. AE2S is on the City's approved Engineer list. Additionally, we are currently working on the mountain bike trail design which will significantly overlap and influence the other facilities at Quarry Lake.

The following outlines our proposed Scope of Services for:

Re: An Agreement for the Provision of Professional Services for Quarry Lake Park Master Plan / Schematic Design and Integration with the Natural Surface Mountain Bike Trail:

Confluence, hereinafter referred to as the Consultant, subject to the approval and acceptance of this agreement by the City of Shakopee, hereinafter referred to as the Client, agrees to provide Professional Services to the Client as set forth below:

A. PROJECT NAME: Shakopee Parks – Quarry Lake Park Master Plan / Schematic Design

B. PROJECT DESCRIPTION: Provide the Client Landscape Architectural and trail design services for Preliminary Design of Quarry Lake features and Construction Documentation and Administration for the mountain bike trail. Quarry Lake Park preliminary design will be based on recommendations and input from the Parks and Trail System Master Plan and will address the following key elements:

- Improvements with the Prior Lake Ski Club – leaseholders with the City of Shakopee.
- Incorporation of potential improvements to address Quarry Lake water elevation. This study and design are being completed by others. Confluence will coordinate as necessary with Prior Lake – Spring Lake Watershed District, MN DNR, outside consultants, etc..
- Permit implications, grant opportunities, and potential partnerships will be explored and analyzed.
- Incorporation of future Regional Trail Pedestrian Bridge over Highway 169 and connections to other trails, parking opportunities, etc.
- Full integration with design of Quarry Lake Mountain Bike Trail that has recently commenced design. Design of this trail will proceed Quarry Lake schematic design and will require a deep understanding of both projects.

This is a comprehensive project and the fee submitted below will reflect the various tasks identified with the development of schematic plans and public engagement materials. Confluence is including AE2S to provide wetland delineation and civil design services.

TASK 1: Project Start-up and Analysis:

1.1. Data Gathering and Base Mapping

- 1.1.1 Gather all relevant base data which is currently available or obtainable in readily usable electronic CAD, GIS or PDF format.
 - 1.1.1.1 Existing topography and survey data.
 - 1.1.1.2 Existing utility information will be mapped for planning and analysis.
 - 1.1.1.3 Existing property owners and parcel information will be identified.
 - 1.1.1.4 Boundary and topo survey for construction documentation provided in other project. Utilize existing LIDAR and provided data for existing conditions and property lines, no topographic survey is included in this proposal.
 - 1.1.1.5 Proposed design for Quarry Lake water elevation and potential outlet provided by city.

1.2 Stakeholder Input and Goal Definition

- 1.2.1 Maximum of (4) stakeholder meetings anticipated including Water Ski Team, Mountain Bike stakeholders, Xcel and surrounding businesses, etc. City staff will coordinate and include Confluence as necessary.
- 1.2.2 Coordinate with public engagement findings led by City staff. Support public engagement with graphics virtual engagement materials, meeting attendance as needed (up to 2 meetings).

TASK 2: Schematic Park Design and Trail Coordination

2.1. Park Schematic Design Development

- Coordinate with Civil Consultant on Quarry Lake Level elevation.
- Provide (2) Schematic design concepts for Quarry Lake Park that integrates the proposed mountain bike trail facility on Xcel Energy Property.
- Schematic plans will identify locations and sizes of major amenities, circulation paths and proposed landscape areas.
- Signage and Wayfinding schematic design— park wide and mountain bike signage.
- Canoe and kayak launch schematic design
- Waterski viewing and access area schematic design elements
- Playground and play elements schematic design
- Picnic facilities per master plan
- Electrical station screening design vision
- Landscape vegetation visioning and schematic design

- Mountain bike trail integration – coordination with mountain bike trail options
- Opinion of costs and phasing implications for schematic design options will be provided for evaluation.

2.2. 30% Preliminary Concept Design for Roadway

2.2.1. Develop preferred concept based on following:

- Alignment with Parks and Trails Master Plan Vision.
- City staff, stakeholder groups, and public input assistance
- Preliminary Landscape Plans – showing major planting palettes and approaches for site
- Cost opinion
- Relationship with natural surface Mountain Bike Trail facility
- Grant, partnership or sponsorship opportunities

2.2.2. Provide 30% plans for implementation including the following anticipated deliverables. 30% CAD based plans to be used as the base for Construction Documents. Anticipated plan sheets include the following:

- AutoCAD based Preliminary Layout Plan with road and trail alignments, amenity feature locations, general sizing.
- Rendered Layout Plan and perspective renderings.
- Preliminary Grading and Drainage Plan
- Preliminary Landscape Plans – roadway and access drive restoration
- Preliminary SWPPP and Stormwater Management Plan to treat new impervious areas. Preliminary Stormwater Management Plan identifying stormwater management requirements, required water quality treatment volumes and develop concept stormwater management features to treat the new impervious surface areas throughout the project area.
- Preliminary Road and Trail Alignments
- Phasing Plan – implementation schedule for all site components, potential permits, etc..
- Opinion of Cost for preferred design.
- Mountain Bike Trail Alignment Coordination – Integration with Mountain Bike Trail design to ensure plans are compatible and provide the greatest cost/ benefit for the City of Shakopee.
- No watermains or sanitary sewer to be designed.

TASK 3: Wetland Delineation

3.1 Delineation Services

Provide the following wetland services within the City owned boundary of the park, focusing on western and southern shorelines as requested by City staff:

- Routine delineation of wetland boundaries within project area.
- Surveying of delineated boundaries with a sub-meter GPS (or other).

- Submittal of electronic wetland boundary files for use by City staff.
- Phase 2 delineation and report (electronic and 1-printed copy).
- Submittal of delineation review to local Wetland Conservation Act LGU as directed by City.
- Attendance at one site meeting with the LGU if needed.
- Application fees to be paid by the City. Delineation report includes one round of comments by City staff.

WORK PLAN AND PROPOSED SCHEDULE

Based upon the proposed work plan, we propose the following schedule for the Quarry Lake Park and Trail Project. The desire for construction of the natural surface mountain bike trail in 2020 will require close coordination with the 30% preliminary plan. The natural surface trails are critical features of the park and should be a major factor in the overall park programming. Similarly, the overall park programming and layout needs to happen in conjunction with the natural surface trail layouts to minimize conflicts and maximize safety. Paved roadway design and access drives will be critical elements to maximize safety. These elements will advance to Construction documents and will need to work with any park concepts that are explored with the general public.

Ultimately, the ability to complete the process as outlined is dependent on staff review time, the ability to schedule necessary meetings in a timely fashion, and weather. We will have biddable documents for the natural surface mountain bike trails ready for fall 2020 construction. General schedule milestones include:

- June 17 – base map and data collection completed.
- July 17 – (2) concept alternative development and graphics ready for public input. 1 roadway alignment concept established at 30%. Roadway progressing to CD's in other project.
- Sept. 15 – 30% preferred concept plan complete.

Your involvement and interaction with our team during the planning process will be a key to the eventual success of this project. Following each meeting, minutes will be distributed which document discussion points, decisions made and action items as well as those assigned to specific tasks. This will prevent “revisiting” decisions already made so progress is not stalled. Our team is immediately available to commit the necessary time and resources to your project in order to deliver final plans, specifications and all necessary contract documents for the identified park elements to the City of Shakopee.

FEES AND EXPENSES:

Fees and expenses are presented below as part of the design and implementation effort. Fees are based upon a Lump Sum not to exceed cost.

1. We propose to perform the services described in Task 1: Scope of Services: Project Start Up, and Analysis, on an Hourly, Not to Exceed basis. \$5,500
2. We propose to perform the services described in Task 2: Scope of Services: Schematic Park Design and Trail Layout, on an Hourly, Not to Exceed basis. \$19,950
3. We propose to perform the services described in Task 3: Scope of Services: Wetland Delineation. On an Hourly, Not to Exceed basis. \$4,000

Sub-Total: \$29,450

4. Reimbursable expenses and hourly rates are identified in the attached schedule and will be billed on a Not to Exceed basis. \$1,500
5. If the project is suspended for more than three (3) months, or abandoned in whole or in part, this firm shall be paid their compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with reimbursable expenses then due and all terminal expenses resulting from such suspension or abandonment.

EXCLUSIONS:

1. Final Drainage and utility work.
2. Final Stormwater permitting and SWPPP.
3. Final water ski facility and boat launch improvements.
4. Design of above ground structures requiring Structural Engineer.
5. Electrical design.
6. Final vehicular road and paved trail design details – plan and profiles

TIME OF PERFORMANCE:

1. We propose to process this work in a timely and expeditious manner to meet the City's timetable of construction in 2020 for the natural surface mountain bike trails.

EXTRA WORK AND CONTINUATION OF SERVICES:

1. If, during the progress or upon completion of the work outline in the Scope of Services in this agreement, the City finds it desirable or necessary to cause this Consultant to perform additional services other than those outlined in the Scope of Services, the hourly schedule and reimbursable expense schedule may apply, or a project fee may be negotiated. See attached Schedule for rates.

SUCCESSOR'S AND ASSIGNMENT:

1. The City and this firm each bind itself, partners, assigns and legal representatives to the other party to this agreement and to the partners, successors, assigns and legal representatives of such other party in respect of all covenants of this agreement.

CONTRACT CONFORMANCE:

1. If there is a conflict between this document and the agreement between the Landscape Architect and the City, the Landscape Architect's agreement with the City shall govern.

FORM OF AGREEMENT:

1. The return of one (1) copy, signed and dated in the spaces provided, will constitute your acceptance of this proposal and provide authority for proceeding to accomplish this work.

Sincerely,
Confluence

Offered by:
Confluence



(signature) 6/9/2020 (date)

Brad Aldrich, Associate Principal

(printed name/title)

Accepted by:
City of Shakopee

(signature) (date)

(printed name/title)