City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MPW

FROM: Randall M. Krauel, Director of Public Works RMK

DATE: November 4, 2020

SUBJECT: Downtown Streetscape Phase 10
Construction Phase Services Agreement

The October 22, 2018, Design Services Agreement with Confluence excluded construction observation services. Information was presented at the time that construction service fees were not included in the Agreement but would be required at the time of construction.

An Agreement for the Provision of Limited Professional Services has been prepared with Confluence for Construction Phase Services. The Basic Services provided in the Agreement include review of submittals, attendance at construction meetings, electrical review and preparation of a punch list. The fees are proposed on an hourly basis not to exceed $22,300.00, based on estimated hours.

A summary of the Design Services Agreement and the Construction Services Agreement is as follows:

Design Services Agreement, 10-22-18	$97,915.00
Supplemental Service Agreement # 1, 01-28-20	$5,560.00
Construction Services Agreement	$22,300.00
Total	$125,775.00

RECOMMENDATION: Mayor and City Council consideration of passage and approval of the Resolution Approving the Agreement for Limited Professional Services with Confluence for the Corridor of Commerce Downtown Streetscape Phase 10 Project.

RMK:ds

attachments (2)

RESOLUTION NO. _____

RESOLUTION APPROVING AN AGREEMENT FOR THE PROVISION OF LIMITED PROFESSIONAL SERVICES WITH CONFLUENCE FOR THE CORRIDOR OF COMMERCE DOWNTOWN STREETSCAPE PHASE 10 PROJECT.

WHEREAS, Chapter 17 of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the City be approved by the City Council; and,

WHEREAS, an Agreement for the Provision of Limited Professional Services with Confluence has been prepared for construction phase services for the Corridor of Commerce Downtown Streetscape Phase 10 project; and,

WHEREAS, the City Council has determined that the Agreement for the Provision of Limited Professional Services is in the best interests of the City of Carroll and residents thereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Agreement for Provision of Limited Professional Services with Confluence for the Corridor of Commerce Downtown Streetscape Phase 10 Project is approved.

Passed and approved by the Carroll City Council this 9th day of November, 2020.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

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CONFLUENCE

AN AGREEMENT FOR THE PROVISION OF LIMITED PROFESSIONAL SERVICES

CLIENT:	City of Carroll	DATE:	November 2, 2020
CLIENT CONTACT:	Randy Krauel	PROJECT #:	20378

PROJECT NAME AND LOCATION:

Carroll Downtown Streetscape - Phase 10 – C.O.
Carroll, Iowa

PROJECT UNDERSTANDING:

Confluence understands that the City of Carroll is seeking a fee proposal for Construction Phase Services for the Downtown Streetscape Phase 10 Project. Confluence is providing the following proposal for our General Services to the City. Confluence has assumed that all RPR services as well as the review and recommendation for monthly pay estimates will be performed by the City. Confluence estimates monthly construction meetings for the Downtown Streetscape Phase 10 Project.

BASIC SCOPE OF SERVICES:

Provide services to include: review of required shop drawings and submittals; attendance at regular construction meetings or meetings as needed; preparation of the project punch list (site work, civil, electrical); electrical review as requested.

FEE ARRANGEMENT:

Basic Services shall be on an hourly basis not to exceed $22,300.00, based upon the following estimate of hours:

Landscape Architect Principal (6 hrs. x $180.00) =	$ 1,080.00
Landscape Architect Project Manager (100 hrs. x $110.00) =	$ 11,000.00
Confluence- Clerical Staff (6 hrs. x $60.00) =	$ 360.00
Project Civil Engineer (8 hrs. x $185.00) =	$ 1,480.00
Project Electrical Engineer (20 hrs. x $155.00) =	$ 3,100.00
Senior Electrical Engineer (24 hrs. x $220.00) =	$ 5,280.00
Total	$22,300.00

Reimbursable expenses are in addition to the fee to a maximum of 10% of the fee.

The attached hourly rate schedule and general conditions are a part of this agreement.

OFFERED BY:

Confluence

Jim Host

Signature — Date: 11/02/20

Jim Host, Associate
Printed Name / Title

ACCEPTED BY:

City of Carroll

Signature — Date

Eric P. Jensen, Mayor
Printed Name / Title

GENERAL CONDITIONS

1. PARTIES AND SCOPE OF WORK: Confluence (hereinafter referred to as "Confluence") shall perform professional services as set forth in Confluence's proposal, the Client's acceptance thereof if accepted by Confluence, and these General Conditions. "Client" refers to the person or business entity ordering the professional services to be done by Confluence. The Client shall designate representatives who are authorized to make all decisions on the Client's behalf when requested to do so by Confluence. If the Client is ordering professional services on behalf of another, the Client represents and warrants that the Client is the duly authorized agent of said party for the purpose of ordering and directing said professional services. Unless otherwise stated in writing, the Client assumes sole responsibility for determining whether the quantity and the nature of the professional services ordered by the Client is adequate and sufficient for the Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom the Client transmits any part of Confluence's work. Confluence shall have no duty or obligation to any third party greater than that set forth in Confluence's proposal, Client's acceptance thereof and these General Conditions. The ordering of professional services from Confluence shall constitute acceptance of the terms of Confluence's proposal and these General Conditions.

2. SCHEDULING OF WORK: Confluence will perform professional services with due and reasonable diligence consistent with sound professional practices. If Confluence is required to delay commencement of professional services or if, upon embarking upon its professional services, Confluence is required to stop or interrupt the progress of its professional services as a result of changes in the scope of the professional services requested by the Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of Confluence, additional charges will be applicable and payable by Client.

3. ACCESS TO SITE: Client will arrange and provide such access to the site as is necessary for Confluence to perform professional services. Confluence shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its professional services or the use of its equipment; however, Confluence has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires Confluence to restore the site to its former condition, upon written request Confluence will perform such additional professional services as is necessary to do so and Client agrees to pay Confluence the cost thereof.

4. CLIENTS DUTY TO NOTIFY LANDSCAPE ARCHITECT: Client represents and warrants that he has advised Confluence of any known or suspected hazardous materials, utility lines and pollutant at any site at which Confluence is to do professional services hereunder, and unless Confluence has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits. Client agrees to defend, indemnify and save Confluence harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to Confluence's performance of its professional services and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to Confluence by Client.

5. RESPONSIBILITY: Confluence's professional services shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. Confluence shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. Confluence's professional services or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. Confluence has no right or duty to stop the contractor's work.

6. STANDARD OF CARE: Confluence's professional services will be performed in accordance with this agreement and with generally accepted principles and practices. In performing its professional services, Confluence will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession.

~~**7. LIMITATION OF LIABILITY:** Should Confluence or any of its professional employees be found to have been negligent in the performance of its professional services, or to have made and breached any express or implied warranty, representation, or contract, Client, all parties claiming to have in any way relied upon Confluence's professional services agree that the maximum aggregate amount of the liability of Confluence, its officers, employees, agents, and sub-consultants shall be limited to $_____.~~

~~Initials: CONFLUENCE JH ____ CLIENT_____~~

8. PRICING ESTIMATES: Neither Confluence nor Client has any control over the costs of labor, materials, equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, Confluence cannot and does not warrant or represent those bids or negotiated prices will not vary from any established budgetary constraints. Client may perform its own cost analysis or retain its own cost consultant and shall be solely responsible for the accuracy and preparation of cost estimates at each appropriate stage of the project. Confluence will cooperate and work closely with any cost consultant to help ensure that the project can be constructed within any appropriate budgetary constraints.

9. ADDITIONAL SERVICES: Client may request or it may become necessary for Confluence to perform Additional Services in order to further the objectives of the project. Whenever reasonably possible, Confluence will notify Client in advance of Confluence's intention to perform the particular Additional Service, and Client's failure to instruct Confluence not to perform the Additional Service shall be considered Client's acquiescence to the performance of the Additional Service and agreement to pay for it. Notwithstanding any other description of Basic or Additional Services, any services which Client requests Confluence to perform after final payment has been made to the contractor(s) or more than sixty (60) days after the project has been certified to be substantially complete shall be considered Additional Services. Any modifications or changes requested by Client inconsistent with Client's prior approval(s) shall be considered Additional Services. Confluence shall be entitled to rely on the accuracy of any drawings or other information supplied to it by Client, its employees, representatives or other consultants, and any services necessitated because of an error or omission in any drawing or other information supplied by Client, its employees, representatives or other consultants shall be an Additional Service. Additional Services shall be billed at Confluence's normal hourly rates, and Client shall pay such charges above and beyond any charges for Basic Services set forth in the Proposal.

10. CONSTRUCTION ADMINISTRATION: Confluence shall have no responsibility for construction administration unless explicitly described in the Proposal. If construction observation services are performed, Confluence shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, for any defects, deficiencies or other acts or omissions of the contractor or any other persons performing any of the construction work or for the failure of any of them to carry out the work in accordance with the plans and specifications, and Confluence visits to the construction site shall be for the purpose of becoming generally familiar with the progress and the quality of the construction work and to determine in general if the work when completed will be in accordance with the plans and specifications, and Confluence is not authorized to stop the construction work or take any other action relating to job site safety. If Confluence reviews contractors' applications for payment, such reviews shall be made to the best of Confluence's knowledge, information and belief based on Confluence's limited observation of the construction work, and Confluence shall be entitled to rely on documentation submitted by the contractor(s) or others which is not inconsistent with Confluence's own observations. If the Client requests in writing that Confluence provide any specific construction phase services and if Confluence agrees in writing to provide such services, then Confluence shall be compensated for Additional Services.

11. CLAIMS: Client acknowledges that Confluence is a corporation and agrees to make any claim arising out of or relating to the project against Confluence only, and not against any of Confluence's directors, officers, employees or agents.

12. INSURANCE: Confluence shall keep and maintain its current insurance policies, including professional liability insurance and comprehensive general liability insurance, for the duration of the project. If Client desires additional insurance, Confluence shall use its best efforts to obtain the additional insurance, but Client shall reimburse Confluence for any additional premium or other related costs that Confluence thereby incurs. Client will use its best efforts to ensure that the construction contractor(s) name Confluence as an additional insured on their comprehensive general liability insurance policies and agree to indemnify Client and Confluence in language reasonably satisfactory to both Client and Confluence.

13. TERMINATION: Either party upon seven day's prior written notice may terminate this Agreement. In the event of termination, Confluence shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services, records and reports as are necessary to place Confluence's files in order and/or protect its professional reputation.

14. WITNESS FEES: Confluence's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay Confluence's legal expenses, administrative costs and fees pursuant to Confluence's then current fee schedule for Confluence to respond to any subpoena.

15. PAYMENT: Client shall be invoiced as professional services are completed and reported at Confluence's option, either monthly or at end of project. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay Confluence's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees. Confluence shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, and provision wherein Confluence waives any rights to a mechanics' lien, or any provision conditioning Confluence's right to receive payment for its professional services upon payment to Client by any third party. These General Conditions are notice, where required, that Confluence shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of Confluence from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time.

16. LATE PAYMENTS: Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance (18.0% true annual rate), at the sole election of Confluence, in the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

17. ENTIRE AGREEMENT: This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

18. INDEMNIFICATION: The Client shall indemnify and hold harmless Confluence and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of professional services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except Confluence), or anyone for whose acts any of them may be liable.

19. MISCELLANEOUS: To the extent within Client's control, Confluence shall have the right to take photographs, and make other reasonable promotional use of the project, and Confluence shall be given appropriate credit on all construction signs or other promotional materials concerning the project. Client may accept Confluence's Proposal either by signature, or oral assent, authorizing Confluence to commence providing professional services or making any payments to Confluence in consideration of professional services, and any of the above modes of acceptance shall be deemed to incorporate these Business Terms into the contract between the parties thereby formed.

20. OWNERSHIP OF DOCUMENTS: All documents produced by Confluence under this agreement shall remain the property of Confluence and may not be used by the Client for any other endeavor without written consent.

EXHIBIT 'A'

CONFLUENCE

STANDARD HOURLY RATES

Senior Principal	$160.00 - $210.00 per hour
Principal	$140.00 - $195.00 per hour
Associate Principal	$130.00 - $170.00 per hour
Associate	$110.00 - $160.00 per hour
Senior Project Manager	$100.00 - $150.00 per hour
Project Manager	$90.00 - $120.00 per hour
Senior Landscape Architect	$90.00 - $120.00 per hour
Landscape Architect	$80.00 - $110.00 per hour
Senior Project Planner	$90.00 - $120.00 per hour
Planner II	$80.00 - $110.00 per hour
Planner I	$70.00 - $100.00 per hour
Landscape Architect-In-Training	$70.00 - $100.00 per hour
Landscape Architect Intern / Landscape Designer	$60.00 - $85.00 per hour
Draftsperson	$50.00 - $85.00 per hour
Graphic Designer	$70.00 - $100.00 per hour
Clerical / System Staff	$42.00 - $80.00 per hour

REIMBURSABLE EXPENSES

Social Pinpoint Public Engagement Tool	$1,500.00
Filing Fees	1.15 x cost
Materials and Supplies	1.15 x cost
Meals and Lodging	1.15 x cost
Mileage	$.575 per mile
Postage	1.15 x cost
Printing by Vendor	1.15 x cost
B/W Photocopies/Prints 8½ x 11	$.05 each
B/W Photocopies/Prints 11x17	$.09 each
Color Photocopies/Prints 8½ x 11	$.65 each
Color Photocopies/Prints 11x17	$1.50 each
Large Format Plotting – Bond	$2.50/SF
Large Format Plotting - Mylar	$4.50/SF
Large Format Plotting - Photo	$5.00/SF
Flash Drives	$10.00 each
Booklet Binding (cover, coil, back)	$4.50 each
Foam Core	$8.00 each
Easel Pads	$32.75 each
Electronic Files	$50.00 Each
Online Meeting Service	$35.00 Each

Effective 5/1/2020