



**AGENDA ITEM #8D**

**AGENDA ITEM EXECUTIVE SUMMARY**

**Village Board Meeting**

**February 27, 2023**

**Item Title: Design Engineering Services – Municipal Campus Project**

**Staff Contact: Jason Bielawski, Village Administrator**

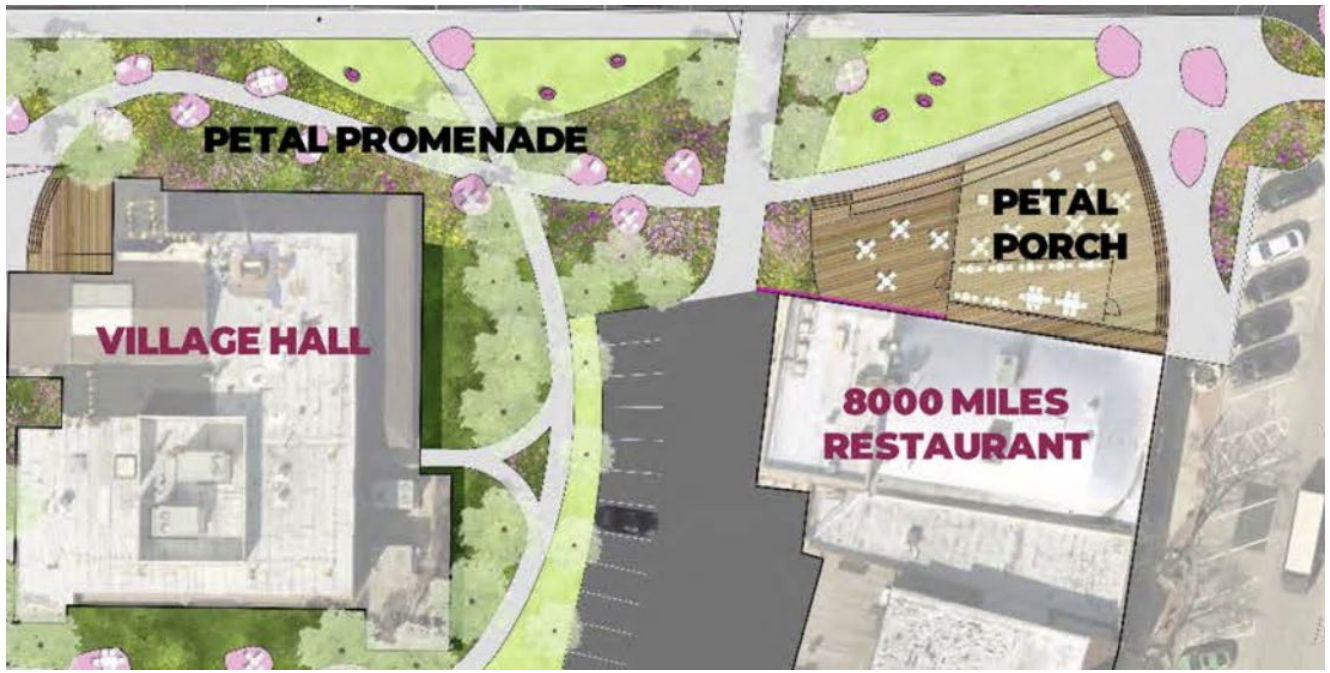
**VILLAGE BOARD ACTION**

**Adopt a resolution approving and authorizing the execution of an agreement by and between the Village of Roselle and Confluence, Inc. in an amount not to exceed \$147,500.**

**Executive Summary:**

In December 2022, the Village Board received a final presentation on the [Municipal Campus Master Plan](#), which establishes a long-term vision for a vibrant and memorable Municipal Campus. At its February 13 meeting, the Village Board recommended approval of an agreement with design architect, Confluence, for final design services for Petal Porch and Petal Promenade. The breakdown for design is \$100,000 for Petal Porch and \$47,500 for Petal Promenade excluding the porch on the southwest corner of Village Hall. The porch would be part of the Petal Plaza project. Key design elements in the Petal Porch and Promenade scope include: • A raised deck with steps, seating steps, and a ramp • A custom metal shade structure • Concrete paths • Painted “petal” concrete pads • Colorful gardens • Flexible lawn areas and • Moveable site furnishings.

Confluence would serve as the prime consultant and will subcontract with Christopher B Burke Engineering Limited (CBBEL) for civil, structural, and electrical engineering as well as surveying and stormwater review. The scope of work includes: schematic design, design development (site preparation/demolition, layout, grading and drainage, site furnishings, lighting and planting plans), construction documents, bidding and contract negotiation, and construction contract administration. The construction of the Porch and Promenade would take about 3 months to complete and would be targeted for late-summer right after the Taste of Roselle. Depending on the construction schedule, some or all the landscaping/plantings would be completed next spring in 2024.



**Implications:**

**Is this item budgeted?** Yes, the Village Board authorized utilizing unallocated American Rescue Plan Act (ARPA) funds for this project.

**Estimated cost:** Final design services is not to exceed \$147,500.

**Any other implications to be considered?** The construction project will be bid in late-spring. The estimated construction cost is at least \$1,150,000 and is not included in the FY 2023 budget. However, staff will be prepared to discuss funding for construction in late-April/early-May. The Village has a minimum of \$1,400,000 in unallocated ARPA funds that could be committed to the construction. Additionally, staff will provide the Village Board with estimated costs for addressing ongoing differed maintenance such as sidewalks, irrigation, lighting, and the civic plaza that would be avoided if construction commences.

**Strategic Priority:**

Focused Redevelopment

**Attachments:**

Resolution  
Agreement

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**THE VILLAGE OF ROSELLE**  
DUPAGE AND COOK COUNTIES, ILLINOIS

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**RESOLUTION**  
NUMBER \_\_\_\_\_

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**A RESOLUTION  
APPROVING AND AUTHORIZING  
THE EXECUTION OF AN AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF ROSELLE AND  
CONFLUENCE, INC.**

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DAVID PILESKI, Mayor  
AMANDA HAUSMAN, Village Clerk

BRUCE BERKSHIRE  
WAYNE D. DOMKE  
CHERYL LENISA  
TOM DELLA PENNA  
TOM PIORKOWSKI  
LEE TREJO

Village Board

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Published in pamphlet form by authority of the  
Mayor and the Board of Trustees of the Village of Roselle  
on this the 27th day of February, 2023

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION  
APPROVING AND AUTHORIZING  
THE EXECUTION OF AN AGREEMENT  
BY AND BETWEEN  
THE VILLAGE OF ROSELLE AND  
CONFLUENCE, INC.**

**WHEREAS**, the Village of Roselle is a municipal corporation organized pursuant to the laws of the State of Illinois possessing certain powers and perform certain functions pertaining to its local government and affairs as provided for by and through the Illinois Constitution of 1970, Illinois Municipal Code and Illinois Statute;

**WHEREAS**, the Village of Roselle (hereinafter referred to as "Village") upon approval of the corporate authorities may enter into an agreement with another party pursuant to Illinois Statute;

**WHEREAS**, Confluence, Inc. (hereinafter referred to as "Consultant") is a consulting firm that provides various services to its clientele including but not limited to landscape and architectural design and planning services to assist its client in the decision making process during various project phases;

**WHEREAS**, the Village is interested in engaging Consultant for the purpose of providing landscape architectural services relating to phase one of the Village's Municipal Campus Master Plan which includes the Petal Porch and Promenade (hereinafter referred to as the "Project");

**WHEREAS**, the respective parties are desirous of entering into a professional services agreement setting forth the terms and conditions of the services relative to the Project; and

**WHEREAS**, the Corporate Authorities of the Village of Roselle have determined that it is in the best interests of the health, welfare and safety of the residents of the Village to approve the agreement with Confluence, Inc. as referenced herein.

**NOW, THEREFORE, BE IT RESOLVED**, in open meeting assembled, by the Mayor and Board of Trustees of the Village of Roselle, DuPage and Cook Counties, Illinois, as follows:

**Section One – Recitals**

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preamble to the resolution are full, true and correct and do hereby, by reference, incorporate and make them part of this resolution as legislative findings.

**Section Two – Approval of Agreement**

The Village hereby approves the agreement (hereinafter referred to as the "Agreement") substantially in the form attached hereto and made a part hereof as Exhibit A.

### **Section Three – Authorization and Direction**

The Mayor is hereby authorized to execute, Agreement, substantially in the form of such agreement attached hereto as Exhibit A, with such changes therein as shall be approved by the Village Attorney and the officials of the Village executing the same, their execution thereof to constitute exclusive evidence of their approval to any and all changes or revisions therein from and after the execution and delivery of such agreements.

### **Section Four - Other Actions Authorized**

The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of this resolution and otherwise to consummate the transactions contemplated herein and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

### **Section Five - Acts of Village Officials**

That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of this resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

### **Section Six - Authorization of Expenditures**

The Corporate Authorities hereby authorize, allocate and direct the expenditure of all costs related to the execution of the agreements, additionally, the Village is authorized and directed to allocate and spend all necessary funds to fulfill the requirements of the agreements and of this resolution.

### **Section Seven - Waiver of Bidding Process**

To the extent that any requirement of bidding would be applicable to the transactions contemplated hereunder, the same is hereby waived.

### **Section Eight – Effective Date**

This resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

### **Section Nine - Publication**

This resolution shall be published in book or pamphlet form as provided by the Illinois Municipal Code.

### **Section Ten – Saving Clause**

If any section, paragraph, clause or provision of this resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this resolution which are hereby declared to be separable.

**Section Eleven – Conflict Clause**

All resolutions, parts of resolutions or board actions in conflict herewith are hereby repealed to the extent of such conflict.

**Section Eleven – Recording**

This resolution shall be entered into the minutes and upon the journals of the Board of Trustees of the Village of Roselle.

**DECIDED** pursuant to a Roll Call Vote:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

**PASSED AND APPROVED** by the Village of Roselle Board of Trustees on the 27th day of February, 2023:

\_\_\_\_\_  
David Pileski  
Mayor

ATTEST:

\_\_\_\_\_  
Amanda Hausman  
Village Clerk

STATE OF ILLINOIS )  
 ) SS  
 COUNTIES OF DUPAGE AND COOK )

**CLERK’S CERTIFICATION**

I, Amanda Hausman hereby certify that I am the duly appointed and qualified Village Clerk in and for the Village of Roselle, DuPage and Cook Counties, Illinois; that I am the keeper of the files, records, and seal of said Village, and that the following is a true and correct copy of Resolution No. \_\_\_\_\_

**A RESOLUTION  
 APPROVING AND AUTHORIZING  
 THE EXECUTION OF AN AGREEMENT BY AND BETWEEN  
 THE VILLAGE OF ROSELLE AND CONFLUENCE, INC.**

adopted and approved by the Mayor and the Board of Trustees at an official meeting held on February 27, 2023 and that the vote on the motion for adoption was as follows:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Village Code of the Village of Roselle, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

I further state that this Certification is issued under my hand and the seal of the Village of Roselle as required in the Illinois Compiled Statues 65 ILCS 5/1-2-4.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Corporate Seal of said Village of Roselle, DuPage and Cook Counties, Illinois on the date set forth herein.

\_\_\_\_\_  
 Amanda Hausman, Village Clerk

(SEAL)

Exhibit A

Agreement

DRAFT



February 22, 2023

Jason Bielawski, Village Administrator  
The Village of Roselle  
31 S Prospect Street  
Roselle, IL 60172  
jbielawski@roselle.il.us

**RE: Roselle – Petal Porch and Promenade, 23022  
Professional Services Agreement**

Mr. Jason Bielawski:

We are pleased to submit this professional Services agreement for Landscape Architectural Services as provided herein between The Village of Roselle (*Client*) and Confluence (*Landscape Architect*). Please return one copy of the executed agreement to Confluence. We are looking forward to working on your Project!

**Project**

The first phase of implementation of the proposed Municipal Campus Master Plan approved in December 2022. Scope includes “Petal Porch” - a terrace and lawn area on the corner of Prospect and Main Street as well as “Petal Promenade” an adjacent garden walkway leading to Village Hall.

**Article 1: Landscape Architectural Services**

- 1.1 Scope of Services. The Scope of Landscape Architectural Services to be provided under this agreement are detailed in “Exhibit B”.
- 1.2 Supplemental Services. Supplemental Services are detailed in “Exhibit B” – Supplemental Services are beyond the basic Scope of Services, and when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation (either on the hourly basis stated in “Exhibit C” or the basis of a negotiated sum) beyond the Compensation stated in Article 4 Landscape Architect Compensation.
- 1.3 Standard of Care. The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.
- 1.4 Coordination. The Landscape Architect shall coordinate the Services of its consultants and shall cooperate with the Client’s representatives and separate consultants in the best interest of the Project.

- 1.5 Representations. The Landscape Architect represents that it and its consultants have and shall maintain through the performance of the Landscape Architectural Services under this agreement the requisite licenses, registrations, and/or certifications required for the performance of these Services in the jurisdiction in which the Project is located.
- 1.6 Approval of Services/Changes to Approved Services. The Landscape Architect shall proceed with a phase or design package of the Landscape Architecture Services only after receiving the Client's approval of the Services and deliverables provided in the previous phase and authorization to proceed into the next phase. Revisions to drawings or other documents shall constitute Supplemental Services made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Project requirements.
- 1.7 Opinions of Probable Construction Costs. Opinions of probable construction costs provided by the Landscape Architect are based on the Landscape Architects familiarity with the landscape construction industry and are provided only to assist the Client's budget planning; such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated. Unless expressly agreed to in writing and signed by the parties, no fixed limit of construction costs is established as a condition of this Agreement by the furnishing of opinions of probable construction costs.
- 1.8 Certifications. The Client shall not request certifications which would require legal opinions or knowledge or serviced beyond the scope of the Agreement. All such certifications shall be limited to professional opinions rendered in accordance with generally accepted standards of professional practice.
- 1.9 Construction Safety. The presence of the Landscape Architect, its employee's, or consultants at the Project site shall not be deemed an assumption by the Landscape Architect of any obligations, duties, or responsibilities for safety, including but not limited to construction means, methods, sequences techniques, or procedures necessary for performing, superintending, or coordinating the work of the Project in accordance with the Construction Documents or regulatory health or safety requirements, if any. The Landscape Architect, its employees, and consultants have no authority to exercise any control over any construction contractor, its employees, or subcontractors in connection with their work or health and safety programs and procedures.

## **Article 2: Client's Responsibilities**

- 2.1 Program. The Client shall provide the detailed Project description and budget parameters designated "Exhibit A" and attached hereto.
- 2.2 Information
  - 2.2.1 The Client shall provide site surveys and legal information, including as applicable: written legal description of site, a land survey by a professional land surveyor who is licensed or registered under the law of the jurisdiction in which the property is located, rights-of-way, easements, encroachments, zoning, covenants, and deed or

other restrictions, if any. The proposed scope of work includes a new topographic survey for the site to replace the outdated existing survey.

- 2.2.2 The Client shall provide for the Landscape Architect's right to enter from time to time, property owned by the Client or others so the Landscape Architect may perform the Landscape Architectural Services.
  - 2.2.3 The Client shall be responsible for all legal, accounting, and insurance Services the Client may require or deem necessary in the interest of the Project.
- 2.3 Independent Testing. The Client shall provide independent testing Services when deemed necessary to determine site conditions such as soil and subsoil conditions, water, pollution, and hazardous waste presence and characteristics.
- 2.4 Reliance. The Landscape Architect shall be entitled to rely on the accuracy and completeness of the information, test results, and work provided by the Client and the Client's consultants. The Landscape Architect shall not be responsible for calculations, specifications, or designs based on erroneous, inaccurate, or incomplete information provided by the Client, provided that the Landscape Architect has acted in accordance with the standard of care described in section 1.1 above.
- 2.5 Client's Representative. The Client shall designate a representative with authority to act on the Client's behalf with regard to the Project. If for any reason the Client's designated representative is replaced during the progress of the Project, the Landscape Architect shall be notified of the change in a timely manner.
- 2.6 Approvals. Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services. Comments from the Client's Representative shall be a consolidation of all comments of interested user groups or entities to provide clear direction of the Landscape Architect and to avoid delays.
- 2.7 Notice of Nonconformance. If the Client observes or becomes aware of any errors or omissions or inconsistencies in any documents provided by the Landscape Architect or any fault or defect in the Project, the Client shall promptly give written notice thereof to the Landscape Architect.
- 2.8 Project Permit and Review Fees. The Client shall pay all fees required to secure jurisdictional approvals for the Project.

### **Article 3: Ownership of Documents**

- 3.1 The Landscape Architect shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, specifications, Construction Documents, displays, graphic art, photographs, and other images and devices in any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Landscape Architect (collectively, the "Design Materials").

- 3.2 Subject to payment by the Client of all Compensation and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project. Termination of the Agreement prior to the completion of the Project shall terminate this license; all Design Materials and copies thereof in the Client's possession or control shall be returned to the Landscape Architect within 21 days of the notice of termination.
- 3.3 The Client, to the fullest extent permitted by law, shall indemnify and hold harmless the Landscape Architect for costs, including legal fees and defense costs, liability of loss, which result from unauthorized modification of the Design Materials, if any, or the use of Design Materials for any purpose other than the Project.
- 3.4 In the event this Agreement is terminated prior to the completion of the Project, the Landscape Architect shall have no liability to the Client or anyone claiming through the Client for any claims, liabilities, or damages resulting from the use, misuse, or modification of the Design Materials without the Landscape Architect's approval, and the Client agrees to indemnify and defend the Landscape Architect against all such claims.

**Article 4: Landscape Architect Compensation**

- 4.1 Compensation for the Scope of Services described in section 1.1 of "Exhibit B" under this agreement shall be the **\$147,500** plus Reimbursable Expenses as defined below, Supplemental Services described in Section 1.2 of "Exhibit B", when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in "Exhibit C" or on the basis of a negotiated fee provided in an amendment to this Agreement. The Compensation breaks out as follows:

***PETAL PORCH SCOPE***

	<b>Confluence</b>	<b>CBBEL</b>	<b>SUBTOTAL</b>
	<i>Landscape Architect</i>	<i>Civil, Struc, Elec</i>	
	<i>Prime Consultant</i>	<i>Engineering; Survey</i>	
<b>SUBTOTAL</b>	\$50,000	\$50,000	<b>\$100,000</b>

***PETAL PROMENADE SCOPE***

	<b>Confluence</b>	<b>CBBEL</b>	<b>SUBTOTAL</b>
	<i>Landscape Architecture</i>	<i>Civil, Struc, Elec</i>	
	<i>Prime Consultant</i>	<i>Engineering; Survey</i>	
<b>SUBTOTAL</b>	\$25,000	\$22,500	<b>\$47,500</b>
<b>TOTAL</b>	<b>\$75,000</b>	<b>\$72,500</b>	<b>\$147,500</b>

**Note:** A topographic and utility survey provided by CBBEL is **included** in the services and fees above for a total fee of **\$6,600**

- 4.2 Reimbursable Expenses are expenditures as made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 15%. Reimbursable Expenses include but are not limited to the following:
- 4.2.1 travel expenses in connection with the Project, living expenses in connection with out-of-town travel, long distance communications.
  - 4.2.2 costs of reproductions, faxes, postage and handling of documents messenger and overnight delivery services;
  - 4.2.3 costs of renderings photographs, models, and mock-ups requested by the Client;
  - 4.2.4 expense of professional liability insurance dedicated exclusively to the Project, or additional insurance coverage of limits requested by the Client in excess of that normally carried by the Landscape Architect and its consultants;
  - 4.2.5 costs of printing and delivering bid packages;
  - 4.2.6 services of professional consultants which cannot be quantified at the time of contracting; and
  - 4.2.7 other, similar direct Project-related expenditures.
- 4.3 Payments
- 4.3.1 Monthly payments to the Landscape Architect shall be based on (1) the percentage of Scope of Services completed in accordance with the Schedule of Services provided in "Exhibit D" herein and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.
  - 4.3.2 If the Client disputes, in good faith, all or any portion of any statement from the Landscape Architect for Landscape Architectural Services or Reimbursable Expenses, the Client shall notify the Landscape Architect in writing within seven (7) days of receipt of the disputed statement, describing the nature of the dispute and including a reasonable detailed explanation of the reason for the dispute.
  - 4.3.3 Payments are due and payable 45 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 60 days after the invoice date shall be determined overdue and shall accrue 1.5% simple interest per month. In the event any portion or all of an account remains unpaid 120 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees. Pursuant to section 7.2, herein, at the Landscape Architect's option, overdue payments may be grounds for termination or suspension of Services.
- 4.4 Extended Services. If through no fault of the Landscape Architect, the Scope of Services described in section 1.4 of "Exhibit B" have not been completed within the term indicated in the Schedule of Services provided in "Exhibit D", the compensation for Services rendered after that time shall be renegotiated or shall be the basis of the hourly rates provided in "Exhibit C".

## **Article 5: Insurance, Indemnification, Consequential Damages & Limitation of Liability**

5.1 Insurance. The Landscape Architect shall secure and maintain insurance coverages indicated as follows:

<u>Coverage:</u>	<u>Liability Limits:</u>
Professional Liability:	\$2,000,000 per claim/\$4,000,000 aggregate
Commercial General Liability:	\$1,000,000 per claim/\$2,000,000 aggregate
Comprehensive Automobile Liability:	\$1,000,000 combined single limit
Umbrella Liability:	\$3,000,000 each occurrence/\$3,000,000 aggregate
Drone Aviation Liability:	\$1,000,000 per claim
Workers Compensation:	\$2,000,000 per claim/\$2,000,000 policy limit

5.2 Indemnification

5.2.1 Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees, and representatives, from and against liability for losses, damages, and expenses, including reasonable attorney's fees, to the extent such losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages or expenses are caused by the joint or concurrent negligence of the Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

5.2.2 Since it would be unfair for the Landscape Architect to be exposed to liability for its failure to perform a service that the Client has either refused to authorize or has instructed the Landscape Architect not to perform, the Client hereby waives all claims against the Landscape Architect and agrees to defend, indemnify and hold the Landscape Architect harmless from claims or liability for injury or loss allegedly arising from the Landscape Architect's failure to perform a service that the Client has either refused to authorize or has instructed the Landscape Architect not to perform.

5.3 Consequential Damages. The Landscape Architect and the Client waive consequential damages for claims, disputes, or other matters in question which arise of or are related to this Agreement, including but not limited to consequential damages due to the termination of this Agreement by either party in accordance with the provisions of Article 7 thereof.

5.4 Limitation of Liability. To the maximum extent permitted by law, the Client agrees to limit the Landscape Architect's liability for the Client's damages to the sum of \$75,000.00 or the Landscape Architect's fee, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

In the event the Client does not wish to limit the Landscape Architect's professional liability, the Landscape Architect agrees to waive this limitation upon written notice from the Client and agreement of the Client to pay, in addition to the agreed upon Landscape Architect's fee, a fee of 10% of the Landscape Architect's previously agreed upon fee within five (5) calendar days after this Agreement is fully executed. This additional fee is in consideration of the greater risk involved in performing work for which there is no limitation of liability.

5.5 Waiver of Subrogation. To the extent damages are covered and paid by property insurance during construction, the Client and the Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. The

Client and the Landscape Architect, respectively, shall require their contractors, consultants, agents and employees' similar waivers in favor of the parties enumerated herein.

- 5.6 Hazardous Material Waiver. Unless otherwise provided in the Agreement, the Landscape Architect and the Landscape Architect's consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

## **Article 6: Dispute Resolution**

- 6.1 If a dispute arises out of or relates to this agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation in accordance with section 6.2.
- 6.2 If the dispute is not settled pursuant to section 6.1, before recourse to any other dispute resolution procedure, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be the location of the Project unless the parties agree otherwise. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within 60 days of filing the request. Unless otherwise agreed the cost of mediation shall be shared equally by both parties.
- 6.3 For any claim subject to, but not resolved by, mediation pursuant to 6.2, the method of binding dispute resolution shall be as follows:
- Arbitration pursuant to section 6.4 of this Agreement
  - Litigation in the 18<sup>th</sup> Judicial Circuit Court DuPage County
- 6.4 If the parties have selected arbitration in section 6.3, claims, disputes, and other matters in question between the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect. All arbitration hearings shall be conducted at the location of the mediation shall be the location of the Project unless the parties agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or tother matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.
- 6.5 Unless otherwise agreed in writing, the Landscape Architect agrees to continue to perform its Services during any dispute resolution proceedings. If the Landscape Architect continues to

perform, the Client shall continue to make payments in accordance with this Agreement for amounts not in dispute.

- 6.6 Appropriate provisions for consolidation shall be included in other contracts relating to the Project so that all parties necessary to resolving a claim can be made parties to the same dispute resolution proceeding.
- 6.7 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

#### **Article 7: Suspension/Termination**

- 7.1 This agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.
- 7.2 The Client's failure to make payments to the Landscape Architect in accordance with the provisions of this agreement shall be deemed a substantial failure to perform and a cause for termination; however, in this circumstance the Landscape Architect, at its options, may elect to suspend its Services on seven (7) days written notice to the Client. The Landscape Architect shall have no liability to the Client for any delays caused by a suspension under this provision.
- 7.3 If the Client suspends the Landscape Architect's Services for any reason, the Landscape Architect shall be compensated for all Landscape Architectural Services performed to that date, and the Landscape Architect shall have no liability to the Client for any delays caused by the Client's decision to suspend the Services.
- 7.4 When suspended Services are resumed, the Landscape Architect shall be compensated for expenses incurred due to the interruption and resumption of the Landscape Architectural Services, and the Compensation and the Schedule of Services for the Services remaining to be performed shall be equitably adjusted.
- 7.5 A suspension of Services by either party for more than thirty (30) days may, at the Landscape Architect's option, be deemed grounds for termination of the Agreement.
- 7.6 If termination is not due to the fault of the Landscape Architect, the Client shall pay, in addition to Compensation and Reimbursable Expenses due at the time of termination, all actual costs and expenses reasonable incurred by the Landscape Architect in connection with such termination. In addition, the Client shall comply and cooperate in accordance with the provisions of Article 3, Ownership of Documents.
- 7.7 The Client may terminate this Agreement for convenience and without cause with seven (7) days written notice to the Landscape Architect providing, in addition to the Compensation, Reimbursable Expenses, and compliance with the Ownership of the Documents provisions indicated in section 7.6, above.



## Article 8: Other Terms & Conditions

- 8.1 Promotional Materials & Images. The Landscape Architect shall have the right to include photographic or artistic representations of the design of the Project among the Landscape Architect's promotional and professional materials. The Landscape Architect shall be given reasonable access to the completed Project to make such representations. However, the Landscape Architect's materials shall not include the Client's confidential or proprietary information if the Client has previously advised the Landscape Architect in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for the Landscape Architect in the Client's promotional materials for the Project.
- 8.2 Force Majeure. Either party. As applicable, shall be relieved of its obligations hereunder in the event and to the extent that performance hereunder is delayed or prevented by any cause beyond its control and not caused by the party claiming relief hereunder, including, without limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or the recovery from such cause ("Force Majeure"). The parties agree to make all reasonable efforts to mitigate the delays and damages of Force Majeure.
- 8.3 Notices. Notices required pursuant to this Agreement shall be sufficient if delivered personally or by registered mail, return receipt requested at the addresses indicated on the first page of this Agreement.
- 8.4 Assignment. Neither party shall assign their interest in this Agreement without the expressed written consent of the other, except as to the assignment of the proceeds.
- 8.5 Third Party Relationships. Nothing in this Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of, any third party against either the Client or the Landscape Architect.
- 8.6 Severability. If any term or provision of the Agreement shall be found to be invalid or unenforceable, the remaining provisions shall, to the fullest extent permitted by law, remain in full force and effect.
- 8.7 Captions. Captions of articles, sections, paragraphs, or subparagraphs of this agreement are for convenience and reference only.
- 8.8 Governing Law. The laws of the State of Illinois shall govern this agreement.
- 8.9 Complete Agreement. This Agreement represents the entire understanding between the Client and Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in writing signed by both the Client and Landscape Architect.

8.10 Limitations Period. As between the parties to the Agreement: as to all acts or failures to act by either party to the Agreement, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued in any and all events not later than the completion of Services under the Agreement.

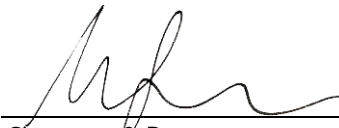
**Exhibits**

The following Exhibits are incorporated in and made part of this Agreement:

- "A" Client's Program
- "B" Scope of Services and Supplemental Services
- "C" Landscape Architect's Hourly Compensation Rates & Reimbursable Expenses Schedule
- "D" Landscape Architect's Schedule of Services

**Offered by:**

Confluence, Inc.



02-22-23

Signature & Date

Matthew Strange, Principal

Printed Name & Title

Confluence  
307 N Michigan Ave, Suite 601  
Chicago, IL 60601

**Accepted By:**

Village of Roselle

Signature & Date

Printed Name & Title

Copy: [Lori Miller, Confluence]

## Exhibit "A": Client's Program

Building off of the December 2022 approved Municipal Campus Master Plan, this project will focus on the "Petal Porch" and "Petal Promenade" portions of the plan. As a part of the Master Plan effort, multiple 3D views were generated to provide a general sense of the intended look and feel of the space as well as preliminary rough-order-of-magnitude budgets prepared by Brightview. The plan was shared during a public meeting and approved during a Village Board meeting.

Key design elements in the Petal Porch and Promenade scope include:

- A raised deck with steps, seating steps, and a ramp
- A custom metal shade structure
- Simple concrete paths
- Painted "petal" concrete pads
- Colorful gardens
- Flexible lawn areas
- Moveable site furnishings

Total rough-order-of magnitude pricing was as follows:

### PETAL PORCH

Base Cost - \$557,698

Base Cost with 12% Contingency - \$624,621

Ph 2 Engineering Fees (10-12%) - \$62,462 - \$74,954

### PETAL PROMENADE

Base Cost - \$481,636

Base Cost with 12% Contingency - \$539,432

Ph 2 Engineering Fees (10-12%) - \$53,943 - \$64,731

Schedule:

Client has indicated a desire to bid work in Spring 2023, mobilize in Early August 2023, begin construction in late August 2023, complete hardscape construction in late Fall 2023, and complete landscape construction in May 2024

Note: if the project budget increases significantly due to a Client-directed modification in project scope, the LA's design fees may need to be evaluated and possibly modified to address the changes

End of Exhibit "A"

## Exhibit “B”: Scope of Services and Supplemental Services

### 1.1 Scope of Services

1.1.1 Schematic Design Phase. Schematic Design shall begin with a Site Analysis and Topographic Survey to identify physical attributes and limitations of the site relative to the Program. The Landscape Architect and Surveyor shall:

- (a.) Complete a topographic survey including utility locations and existing drains.
- (b.) Identify existing site conditions and features such as topography, drainage patterns, vegetation, including significant specimen plants, water elements, structures, views, and known off-site considerations relevant to the Client’s Program.
- (c.) Analyze existing site conditions to identify physical attributes and limitations of Project site.
- (d.) Review applicable Governmental requirements including zoning, ordinances, and permit requirements, known special restrictions, and zoning conditions.

Based on Analysis Phase findings, the Landscape Architect shall explore design options and develop a schematic design through the following:

- (a.) Prepare studies and related diagrams for the organization and placement of proposed Program elements taking into consideration the existing site features and the requirements of other Program elements.
- (b.) Building from the approved December 2022 Conceptual Design plan, prepare drawings illustrating alternative design studies for the form and configuration of the Program elements on the site.
- (c.) Evaluate alternative design concepts and, in conjunction with the Client, identify a preferred concept direction.
- (d.) Based on the preferred concept, prepare a schematic design plan (at appropriate scale) illustrating the form and configuration of the proposed improvements on the site.
- (e.) Preliminarily select key materials or material systems and prepare preliminary designs for key construction details.
- (f.) Prepare an opinion of probable construction costs for the schematic design plan, including a recommended contingency.
- (g.) Submit the plan(s), details, cost opinion, and other deliverables as appropriate comprising the Schematic Design submittal to the Client for review and approval.

1.1.2 Design Development Phase. Based on the Schematic Design approved by the Client, the Landscape Architect shall refine and sufficiently detail the proposed form of the improvements to comprehensively convey the design intent through the following:

- (a.) Revise and refine the Schematic Design plan to define the location of the proposed improvements in relation to both the existing site features and the other proposed improvements.
- (b.) Prepare design detail sketches illustrating the proposed forms, materials, colors, and textures of the proposed improvements.

- (c.) Prepare supplemental drawings as required to illustrate the design intent (*check all that apply*):
- (i)  Site preparation/demolition plan (*by Civil*)
  - (ii)  Layout plan(s)
  - (iii)  Grading, soil, and drainage plan (*drainage by Civil*)
  - (iv)  Site Furnishings Plan
  - (v)  Lighting plan (*fixtures & locations only, electrical design by Electrical Engineer*)
  - (vi)  Planting plan
  - (vii)  Irrigation plan (*performance spec only; drawings on a design/build basis*)
  - (viii)  Signage plan
- (d.) Prepare outline specifications for applicable work areas
- (e.) Update opinion of probable costs of the proposed improvements, indicating when appropriate the assumptions on which the opinion is based.
- (f.) Submit the plans, details, cost opinion, and other deliverables as appropriate comprising the Design Development submittal to the Client for review and approval.

1.1.3 Construction Document Phase. Based on the Design Development phase submission approved by the Client, the Landscape Architect shall prepare Construction Documents suitable for bidding or contract negotiations and for construction of the Project. The Landscape Architect shall:

- (a.) Prepare construction plans including (*check all that apply*):
- (i)  Site preparation/demolition plan (*by Civil*)
  - (ii)  Layout plan(s)
  - (iii)  Grading, soil, and drainage plan (*drainage by Civil*)
  - (iv)  Furnishings & amenities plan
  - (v)  Lighting plan (*fixtures & locations only, electrical design by Electrical Engineer*)
  - (vi)  Planting plan
  - (vii)  Irrigation plan (*performance spec only; drawings on a design/build basis*)
  - (viii)  Signage plan
- (b.) Prepare construction details to describe the materials, spatial relationships, connections, and finished suitable for constructing the proposed improvements.
- (c.) Prepare construction specifications for the proposed improvements.
- (d.) Coordinate the drawings and specifications prepared by the Landscape Architect's consultants, when appropriate, the Client's other consultants.
- (e.) Update opinion of probable costs of the proposed improvements.
- (f.) Prepare documents suitable for review for compliance with applicable governmental requirements and assist the Client in the submission to governmental agencies.
- (g.) Address timely and applicable review comments received from agencies and revise Construction Documents for compliance when required.
- (h.) Submit a final opinion of probable costs.
- (i.) Submit one electronic pdf set of the Construction Documents. Printed copies will be Reimbursable Expense as provided in Article 4.
- (h.) Attendance at the following meetings/hearings (*check all that apply*):
- (i)  Public coordination & design review meeting

- (ii)  Jurisdictional review/approval hearing

1.1.4 Bidding & Contract Negotiation Phase. When the contracts are bid, the Landscape Architect shall assist the Client during the bidding process to identify the Contractor to construct the Project and establish a firm price to accomplish the work. Once the bidding results are known, the Landscape Architect shall assist the Client to establish the contract terms for construction of the Project. The Landscape Architect shall:

- (a.) Coordinate the schedule for bid advertising, addenda, bid opening and the following bid process tasks (*check all that apply*):
  - (i)  Pre-bid qualification process
  - (ii)  Pre-bid conference
- (b.) Prepare and organize bid solicitation and proposal forms consistent with Client's requirements.
- (c.) Arrange for printing (if applicable) and distribution of the bid documents.
- (d.) Conduct pre-bid conference (if applicable) and document the proceedings.
- (e.) Clarify the Construction Documents as required through the preparation and issuance of addenda including materials substitutions and equals.
- (f.) Attend the bid opening.
- (g.) Review bids including alternates and prepare a recommendation on the award of the contract to the Client.
- (h.) Arrange for transmittal of Construction Documents to the selected contractor.
- (i.) Meet with selected contractor to review the Construction Documents and the proposed improvements.
- (j.) Provide clarification to the Construction Documents as reasonably required.

1.1.5 Construction Contract Administration Services. The Landscape Architect shall provide the following administration Services associate with the construction of the Project:

- (a.) Take part in the pre-construction conference (if applicable).
- (b.) Review and take appropriate action on (*check all that apply*):
  - (i)  Contractor Request for Information and clarification's (RFI's).
  - (ii)  Materials and equipment submitted by the Contractor for approval.
  - (iii)  Product submittals and shop drawings.
  - (iv)  Change Order requests by Contractor submitted for approval.
  - (v)  Contractor progress applications for payment.
- (c.) Undertake to observe the work in progress at intervals appropriate to the stage of the construction for conformance with Construction Documents.
- (d.) Evaluate the completed work to determine acceptance or non-compliance based on conformity with Construction Documents.
- (e.) Conduct observations to determine completion and acceptance of the work (*check all that apply*):
  - (i)  Substantial Completion Review & punch-list creation.
  - (ii)  Final Completion Review & punch-list review.
- (f.) Review and approve a final Contractor pay application and recommend acceptance of the Project by the Client.

## 1.2 Supplemental Services

- 1.2.1 Pre-design Services. The following pre-design Services shall be considered Supplemental Services:
- (a.) Assist the Client with Programming.
  - (b.) Inventory and documentation of existing conditions affecting the Project, including identification and location of utility connections (water, sanitary sewer, gas, electrical and storm sewer).
  - (c.) Assisting the Client with marketing and/or feasibility studies.
  - (d.) Master planning.
  - (e.) Detailed Project scheduling (critical path, milestone completion dates, or other methods).
  - (f.) Representing the Client at zoning hearings and/or community meetings or design review meetings.
- 1.2.2 Design Phase Supplemental Services. Unless otherwise agreed to, the following are Supplemental Services:
- (a.) Scale models.
  - (b.) Professional 3D photo-realistic renderings.
  - (c.) Jurisdictional & Permitting Services beyond those listed described in Section 1.1.
  - (d.) Life cycle costs.
  - (e.) Long-distance travel to inspect materials and equipment of potential suppliers.
  - (f.) Expert witness testimony.
  - (g.) Attendance at litigation or arbitration proceedings when the Landscape Architect is not a party.
- 1.2.3 Construction Contract Administration Supplemental Services. The Landscape Architect shall provide the following administration Services associated with the construction of the Project as Supplemental Services. When requested, the Landscape Architect shall:
- (a.) Prepare Client initiated Change orders.
  - (b.) On behalf of the Client, revise and forward to the Client written guarantees, warranties, release of liens, and related documents required from the contractor.
  - (c.) Review the Contractor's marked-up "As-built" Drawings.
  - (d.) Determine consent of surety if any, to issuance of final certificate of payment.
- 1.2.4 Post-Construction Services. The following post-construction Services shall be considered Supplemental Services. When requested by the Client, the Landscape Architect shall:
- (a.) Prepare record drawings of the actual construction based on marked-up drawings and other data furnished by the contractor.
  - (b.) Provide observations of work and/or warranty items at appropriate times.
  - (c.) Perform post-construction evaluation of functional and operational performance of the Project.

End of Exhibit "B"

## Exhibit "C": Landscape Architect's Standard Hourly Rates & Reimbursable Expenses

### STANDARD HOURLY RATES

Senior Principal .....	\$175.00 - \$255.00 per hour
Principal .....	\$160.00 - \$220.00 per hour
Associate Principal .....	\$140.00 - \$190.00 per hour
Associate .....	\$115.00 - \$175.00 per hour
Senior Project Manager .....	\$105.00 - \$155.00 per hour
Project Manager .....	\$95.00 - \$135.00 per hour
Senior Landscape Architect .....	\$95.00 - \$175.00 per hour
Landscape Architect .....	\$85.00 - \$125.00 per hour
Senior Project Planner .....	\$95.00 - \$135.00 per hour
Planner II .....	\$85.00 - \$125.00 per hour
Planner I.....	\$75.00 - \$115.00 per hour
Landscape Architect-In-Training / Landscape Designer.....	\$75.00 - \$115.00 per hour
Landscape Architect Intern / Landscape Designer .....	\$65.00 - \$90.00 per hour
Draftsperson .....	\$55.00 - \$90.00 per hour
Graphic Designer .....	\$75.00 - \$105.00 per hour
Clerical / System Staff .....	\$75.00 - \$125.00 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 .....	\$.655 per mile
Postage .....	1.15 x cost
Printing by Vendor .....	1.15 x cost
B/W Photocopies/Prints 8½ x 11 .....	\$.10 each
B/W Photocopies/Prints 11x17.....	\$.20 each
Color Photocopies/Prints 8½ x 11 .....	\$.75 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 1/1/2023

End of Exhibit "C"



**Exhibit “D”: Schedule of Services**

The Landscape Architect shall begin providing Landscape Architectural Services on the Project promptly upon written notice to proceed and shall perform its Services as expeditiously as is consistent with the standard of care described in section 1 of the Agreement. All time frames are subject to the Client’s cooperation in accordance with the provisions in sections 1 and 2.

Service:	Anticipated Completion Date:	% Compensation:
Schematic Design	March 30, 2023	15%
Design Development	April 30, 2023	30%
Construction Documents	May 30, 2023	35%
Bidding & Contract Negotiation Phase	July 15, 2023	5%
Construction Contract Administration Services	May 30, 2024	15%

End of Exhibit “D”