CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 27, 2017

ITEM: Motion – Approval of Agreement Amendment – City Campus Amphitheater

FINANCIAL IMPACT: Additional expense of $116,600 plus reimbursable expenses to be paid from funds budgeted in the City Campus Amphitheater CIP account (0510 096 2017).

BACKGROUND: The Council is asked to approve an amendment to an existing agreement with Confluence for additional design services for the Amphitheater proposed to be located on the City Campus next to the pond and east of City Hall. Under a previously approved agreement dated July 10, 2017, Confluence is contracted to complete Site Survey (Part 1), Schematic Design/Design Development (Part 2) and Sound Study/Noise Mitigation Options (Part 4). The consultant is currently working on these tasks. With the donation from Microsoft earlier this year and other potential donations, staff is now recommending to add Construction Documents (Part 3) at $87,400 and Construction Administration (Part 5) at $29,200 to the existing agreement.

The amendment to the agreement with Confluence is attached along with their original proposal and a scope of services.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement amendment with Confluence

Lead Staff Member: David Sadler, Superintendent of Parks

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks and Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

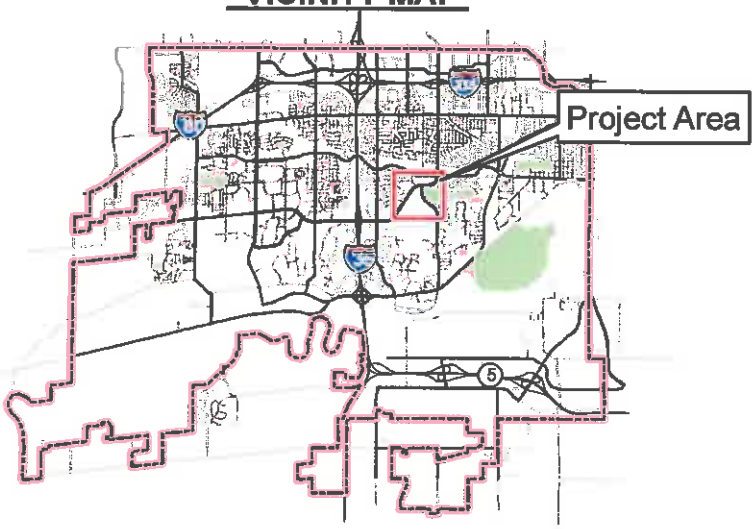
PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

VICINITY MAP



LEGEND

Project Location

THE CITY OF WEST DES MOINES	PROJECT:	AMPHITHEATER - AMENDMENT TO PSA		
	LOCATION:	CITY CAMPUS		
	DRAWN BY: MAA	DATE: 12/19/2017	PROJECT NO.: -	SHT. 1 of 1

AMENDMENT NO. 1
TO THE AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AMENDMENT is made and entered into this 27th day of December, 2017, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Confluence. (Fed. I.D. # 42-1475404), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant", HEREBY AMENDS THE ORIGINAL Agreement dated July 10, 2017 as follows:

1. SCOPE OF SERVICES

   Services as described in the Agreement for the CITY OF WEST DES MOINES AMPHITHEATER shall be as amended as follows:

   I. Add Part Three (3): Construction Documents – as further described in original proposal dated July 6th, 2017
   II. Add Part Five (5): Construction Observation – as further described in original proposal dated July 6th, 2017

2. SCHEDULE

   The schedule as described shall be amended as follows: No Change

3. COMPENSATION

   In consideration of the additional professional services provided, the City agrees to pay the Consultant the additional fee to increase the original fee NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the ARTICLE 3: FEES AND EXPENSES.

   I. Part Three (3): Construction Documents – $87,400
   II. Part Five (5): Construction Observation – $29,200

This AMENDMENT is subject to all provisions of the original agreement. This AMENDMENT together with the Agreement represents the entire and integrated AGREEMENT between the City and Consultant, as executed on the date written above

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT

BY:_____

CITY OF WEST DES MOINES

BY:_____
Ryan T. Jacobson, City Clerk

525 17TH STREET DES MOINES, IA 50309
TEL 515-288-4971 FAX 515-288-4556 WWW.THINKCONFLUENCE.COM

CONFLUENCE

July 6th, 2017

Sally Ortgies, Parks and Recreation Director
City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, Iowa 50266

Re: An Agreement for the Provision of Professional Services
City of West Des Moines Amphitheater, Confluence #17144

Dear Ms. Ortgies:

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

A. **PROJECT NAME:** City of West Des Moines Amphitheater

B. **PROJECT DESCRIPTION:** Provide the Owner Architectural, (Ask Studios) Civil Engineering, (Larson Engineering) Structural Engineering, (Raker + Rhodes) Survey and Stage Programming and Design (McClure Engineering) and Landscape Architectural and site planning (Confluence) services from schematic design through construction observation, based upon the following understanding of the project:

1. The Conceptual design created in early 2016 will serve as the basis for design.
2. Project budget is anticipated to be just over 2 million dollars.
3. The Project's developed site area is approximately 10 acres in size.
4. The Stage will be a key component in the design of the site and will be iconic in nature.
5. This will be a phase one project many utilities will be stubbed to the locations and terminated.
6. Construction is anticipated to begin in the Spring of 2018.

ARTICLE 1: SCOPE OF SERVICE:

1. Part One: Site Survey: (Provided by McClure Engineering)

1.1 Will include all physical features that fall within the project area including, but not limited to; ground, break lines, sidewalks, roadways, curb and gutter, water edge, buildings, flower beds, and trees over 6" diameter.

1.2 McClure will submit a request to Iowa One Call. If utilities exist on site they will be located and depicted on the survey.

1.3 This project will utilize remote sensing technology on board the McClure Engineering Small Unmanned Aerial System (SUAS). They will obtain high-resolution still frame photography as a resolution not more than 1" pixel resolution. They will use the imagery to calculate ground surface locations as well as produce a high-resolution ortho-photo image for use in the design of the project.

1.4 McClure will prepare a drawing at a suitable scale depicting the results of the field survey. Drawing will include all public and private utility information with associated ASCE quality levels as located as part of step 1.1 (above).

2. Part Two: Schematic Design / Design Development

2.1 Adjust existing conceptual design to match the site survey.

2.2 The Design team will work with the City of West Des Moines to develop a public engagement process

2.2.1 One day of stakeholder meetings with groups involved with the project to review the concept drawings and provide feedback.

DES MOINES / KANSAS CITY / SIOUX FALLS / CEDAR RAPIDS / MINNEAPOLIS

2.2.2 Stakeholder meetings will be followed by an open house style meeting at City Hall to review concepts and receive public feedback.
2.2.3 Once a final design has been determined, Confluence will repeat the meetings with stakeholders and the general public to get final feedback and review the design intent with all interested parties.

2.3 Develop a minimum of two concepts for the Stage structure.

2.3.1 Work with the City and McClure Engineering to develop stage programming needs
2.3.2 Work with Modus Engineering to understand lighting needs
2.3.3 Understand the site setting and maximize the benefits that the site allows us.
2.3.4 Work with Raker +Rhodes to think through structural needs of each design.
2.3.5 Design team will consider how Art can be included in any design concepts.
2.3.6 Work with Confluence and Larson Engineering to make sure site and utility demands are met.
2.3.7 Produce sections and renderings of the stage for review by the City.

2.4 Refine conceptual design to reflect stage design and adjustments.

2.5 Meetings with Owner and other City staff to review options and select a preferred option to move forward the design with.

2.6 Prepare design development drawings showing location of site elements, materials, products and cost assistance.

2.7 Based on Owner-approved direction from schematic design, prepare design development drawings that address:

2.7.1.1 Stage Design / Architecture
2.7.1.2 Structural Design
2.7.1.3 Layout and Grading Plans
2.7.1.4 Pollution Prevention Plan (Larson Engineering)
2.7.1.5 Proposed materials
2.7.1.6 Site details
2.7.1.7 Outline Specifications
2.7.1.8 Lighting Plan (Modus Engineering and Confluence)
2.7.1.9 Utility plan, prepared by Consultant's Civil Engineer (Larson Engineering)
2.7.1.10 Planting plan

2.8 Meetings with Owner and other City staff to review progress drawings.

2.9 Design team will complete a probable cost opinion.

2.10 Design Team will provide updated graphics for the owner to use in continued fund-raising efforts.

2.11 These documents shall be reviewed by the Owner, with any comments and minor revisions occurring in this phase. Any Owner/ Architect directed changes that significantly modify Owner-approved direction from schematic design would be deemed extra services and billed on an hourly basis. Consultant will identify any perceived extra services prior to proceeding with work.

2.12 Upon Owner approval of design development site documents, the Consultant will proceed into Construction Documents.

2.13 Meetings and coordination with Owner, as needed.

3. Part Three: Construction Documents

3.1 The Consultant shall prepare the following Construction Documents:

3.1.1 Architectural Drawings (Stage)
3.1.2 Structural Drawings
3.1.3 Site Preparation Plan
3.1.4 Site Layout Plan
3.1.5 Site Grading Plan
3.1.6 Site Utility Plan (storm sewer, sanitary sewer and water main only)
3.1.7 Site Lighting Plan (Modus and Confluence)
3.1.8 Site Pollution Prevention Plan (Larson Engineering)
3.1.9 Site Planting Plan
3.1.10 Site Irrigation Plan (Confluence)
3.1.11 Site Details
3.1.12 Site Specifications

3.2 Meetings with City staff and development of City Submittals as necessary to meet requirements for approval.

3.3 These documents shall be reviewed by the Owner, with any comments and minor revisions occurring in this phase. Any Owner/ Architect-directed changes that significantly modify Owner-approved direction from design development will be deemed extra services and billed on an hourly basis. Consultant will identify any perceived extra services prior to proceeding with work, whenever possible.

3.4 Design team will complete an updated probable cost opinion.

3.5 Meetings and coordination with Owner, as needed.

4. Part Four: Acoustics Study and Recommendations

4.1 Phase 1 – Measurements and modeling

4.1.1 Receive and review site plan and building drawings.

4.1.2 Visit the site on one occasion to meet with the Owner and Confluence to discuss the likely uses, noise concerns, and the noise criteria.

4.1.3 While on site, perform 24-hour detailed sound measurements, at up to four (4) locations along the property lines, to gain a representative sampling of the noise levels near the facility. This data provides an assessment that describes the A-weighted ambient noise levels as averaged over one hour intervals (Leq).

- It is the owners' responsibility to provide staff to show us the applicable property lines and help select measurement locations.
- ABD will make every effort to schedule the measurements during favorable weather conditions (no precipitation and wind speeds less than 11 mph) when snow is not present on the site. In the event that we arrive at the site and access is not available or the weather does not cooperate, we will notify you at once and return at another time at our standard hourly rate.

4.1.4 Return to our office to download the noise data and analyze the information.

4.1.5 Use the site plan and proposed amphitheater designs, along with the data collected on site to develop a computer model of the site.

4.1.6 Use the computer model to predict the sound propagation from the amphitheater and noise exposure levels to the community, and compare our findings with the existing noise levels on the site.

4.1.7 Prepare and submit a report of our findings.

4.1.8 Meet with owner and Confluence by teleconference to discuss our findings, and potential mitigation options.

4.2 Phase 2 – Mitigation recommendations

4.2.1 Identify noise mitigation options that will reduce the overall community noise exposure levels. Assuming that noise mitigation measures are available and feasible, we will identify conceptual options for reducing noise levels.

4.2.2 Submit a report describing our findings and noise mitigation recommendations. If appropriate, our report will include partial specifications for noise control products and sketches of noise control designs.

4.2.3 Meet with the Owner and Confluence by teleconference to review and discuss our report.

4.2.4 Be available by phone or email for questions or clarifications regarding our report.

- Our acoustical recommendations are provided in the form of written reports, written partial specifications, sketches, or marked-up copies of drawings. We do not provide for construction drawings related to acoustical design aspects of our work. We may be able to provide guidance with respect to the costs for some acoustical finishes and products; however, budgetary cost estimating must be performed by others.

5. Part Five: Construction Observation

5.1 Meetings with the Owner, Architect, and Contractor, as needed.

5.2 Site visits, preparation of progress reports, responses to RFI's and generation of punch lists.

5.3 Preparation of revisions and general coordination with the Project Team.

EXCLUSIONS

1. Soil Borings, Site Signage Design, Branding, Traffic study, mechanical design of site features (future restrooms), and public street plan and profile drawings.

ARTICLE 2: OWNER'S RESPONSIBILITIES:

1. The Owner shall establish the guidelines for the project and shall provide general background information needed for analysis.

2. Fees for services of special consultants (structural, sustainable, soils, hydraulic, etc.) if required beyond the Scope of Services proposed herein, shall be paid for by the Owner if authorized in advance.

ARTICLE 3: FEES AND EXPENSES:

1. We propose to perform the services described in Article 1: Scope of Services: Part One, on a Lump Sum basis. The Lump Sum is Six Thousand six hundred and forty Dollars ($6,640).

2. We propose to perform the services described in Article 1: Scope of Services: Part Two on a Lump Sum basis. The Lump Sum is Eighty-Three Thousand Seven Hundred Dollars ($83,700).

3. We propose to perform the services described in Article 1: Scope of Services: Part Three on a Lump Sum basis. The Lump Sum is Eighty-Seven Thousand Four Hundred Dollars ($87,400).

4. We propose to perform the services described in Article 1: Scope of Services: Part Four on a Lump Sum basis. The Lump Sum is Nineteen Thousand Five Hundred Dollars ($19,500).

5. We propose to perform the services described in Article 1: Scope of Services: Part Five, on a Lump Sum basis. The Lump Sum is Twenty-Nine Thousand Two Hundred Dollars ($29,200).

6. Total Contract Amount: $226,440

7. Reimbursable expenses, including travel, long-distance telephone, and printing are not included in the services fee. Expenses will be billed in accordance with the rates shown on the attached rates and expenses schedule.

8. 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 Architect/Owner of such suspension or abandonment, together with reimbursable expenses then due and all terminal expenses resulting from such suspension or abandonment.

ARTICLE 4: TIME OF PERFORMANCE:

1. We propose to process this work in a timely and expeditious manner to meet the Owner's timetable.

ARTICLE 5: 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 Architect/Owner 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.

ARTICLE 6: SUCCESSOR'S AND ASSIGNMENT:

1. The Owner and this firm each binds 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.

ARTICLE 7: CONTRACT CONFORMANCE:

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

ARTICLE 8: 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:	Accepted by:
Confluence	City of West Des Moines
(signature) (date)	(signature) (date)
Matthew O. Carlile, Principal	Sally Ortgies, City of WDM. Parks and Recreation Director
(printed name/title)	(printed name/title)

EXHIBIT 'A'

CONFLUENCE

STANDARD HOURLY RATES

Senior Principal	$160.00 - $200.00 per hour
Principal	$140.00 - $185.00 per hour
Associate Principal	$130.00 - $160.00 per hour
Associate	$110.00 - $150.00 per hour
Senior Project Manager	$100.00 - $140.00 per hour
Project Manager	$90.00 - $110.00 per hour
Senior Landscape Architect	$90.00 - $110.00 per hour
Landscape Architect	$80.00 - $100.00 per hour
Senior Project Planner	$90.00 - $110.00 per hour
Planner II	$80.00 - $100.00 per hour
Planner I	$70.00 - $90.00 per hour
Landscape Architect-In-Training	$70.00 - $90.00 per hour
Landscape Architect Intern	$60.00 - $75.00 per hour
Draftsperson	$50.00 - $75.00 per hour
Graphic Designer	$70.00 - $90.00 per hour
Clerical / System Staff	$42.00 - $70.00 per hour

REIMBURSABLE EXPENSES

Filing Fees	1.15 x cost
Long Distance Telephone Calls	1.15 x cost
Materials and Supplies	1.15 x cost
Meals and Lodging	1.15 x cost
Mileage	$.535 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
Compact Discs	$2.50 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 1/1/2017

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_____ 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.