

AGREEMENT FOR SERVICES ON A FIXED FEE BASIS
Red Hawk Ridge Elementary

This Agreement, effective as of July 31, 2013 (the “Effective Date”) is between Consilium Design, Inc. (“Consilium”) and Parker Jordan Metropolitan District (the “Client”).

Project Description

A. The Cherry Creek School District owns an approximately ~2 acre parcel of land located west of S. Cherokee Trail, north of E. Geddes Ave. Eldridge, south of S. Geddes Ln. and east of Cherry Creek Valley Ecological Park in Arapahoe County, Colorado. The Client intends to restore the landscape of, and make improvements to Red Hawk Elementary School playground (the “Project” and/or “School”).

B. Client has hired Consilium to provide services as described in this Agreement in connection with the Project.

SECTION I
SCOPE OF SERVICES

1.1. “Basic Services” under this Agreement are as follows:

1.1.1. Concept Planning

Based upon previous meetings, information, base mapping, topography provided by the project engineer, direction from the Client, advice from the School District, and site visits, Consilium will provide 2 preliminary concept drawings. These drawings will include concepts for a solution to the existing active and passive play areas as well as gathering areas and shaded locations. Upon presenting and meeting with the Client and preferably with the Principal of the school or designee, Consilium will prepare a revised concept plan for the property which will be based on Client direction from the 2 preliminary concepts. The concept plan will demonstrate the previously discussed items and any other elements that may come up in the preliminary concept design review.

Consilium will refine the concept plan per further direction from the client and will prepare a final concept plan. This final concept plan will be the basis for review with applicable jurisdictional staff at a pre-application conference and subsequent review and approval procedures as directed by staff. The final concept plan will be suitable for an initial review with the Cherry Creek School District, neighbors and other stakeholders.

Concept Planning Products:

2 preliminary concept plans

1 refined concept plan

1 final concept plan

Up to 3 meetings with the Client or School for review of concept plans

1 meeting with County staff for review and comment at a pre-application conference

1.2. “**Additional/Future Services**” are services on the Project requested by the Client and not set forth as Basic Services in Section 1.1 of this Agreement. Additional Services include without limitation: presentation models and photographs, drawings and renderings other than those included in the Basic Services.

1.2.1. Site Plan - Additional Service:

Based upon the final concept plan prepared per 1.1.1, Consilium will collaborate with the Client, School, and other consultants, as required by Client or School in the preparation of a Site Plan. The Site Plan will be in accordance with the County’s subdivision/zoning ordinances and the Cherry Creek School District criteria. The Site Plan shall indicate all proposed improvements within the property.

Authorship of development reports that are technical in nature (such as, but not limited to: grading, drainage, utilities, traffic, soils, geotechnical, wildlife, biological and wetlands, as well as preliminary architecture) as required for the Site Plan shall be the sole responsibility of the Client’s other consultants expert in those fields.

Additional meeting with County Staff is for review of initial comments from staff and referral agencies regarding the Site Plan submission.

County Staff, the Client, or other consultants shall be responsible for all required mailings, postings, or publications required for the neighborhood meeting and public hearings.

After submittal of the Site Plan to the County, Consilium will assist the Client with coordination and revisions to the submittal per comments from County staff, other agency referrals, and the Client’s other consultants. All additional work and revisions after the initial submittal will be billed as hourly services per rates as listed under Compensation or through separate work authorization.

Site Plan Products:

Site Plan, including landscape plan

Up to three meetings with the Client, School, and other consultants for plan review

Up to two meetings with County Staff

1.2.2. Neighborhood Meetings, Public Hearings and Power Point Presentation.

Consilium will attend neighborhood meetings and public hearings. This will include a Power Point presentation, hard copy presentation handouts, and full size, rendered, mounted exhibit as may be appropriate.

1.2.3. Landscape and Irrigation Construction Documents

Upon final approval of the Site Plan Landscape Plans, Consilium will prepare Landscape and Irrigation Construction Documents which may be necessary to implement improvements as shown on the approved plans.

Landscape and Irrigation CD (Define – is this abbrev for company or generic) Products:

Landscape Construction Documents

Irrigation Construction Documents

Coordination with civil engineer, irrigation consultant, structural engineer, lighting/electrical consultant, or sign company as required or directed by Client and/or school meetings

1.3. “**Excluded Services**” are not a part of Consilium’s Basic or Additional Services and are the responsibility of others. Excluded Services include, but are not limited to, the following: comprehensive plan amendment (if any, to be completed separately by County staff) subsurface conditions, soil issues (including suitability for plant material, soil content, level of compaction), lot line location, drainage, utilities location, street signage, security, lighting, and project or construction cost estimates.

1.3.1 Surveying

1.3.2 Preliminary Plat/Final Plat

1.3.3 Engineering plans and studies

1.3.4 Architectural plans and specifications

1.3.5 Structural engineering for landscape features and sign monuments

1.3.6 Photometric, lighting and electrical plans

1.4. The Basic Services shall be subject to modification or supplement upon the written direction of Client and agreement of Consilium. If Client desires to modify or add to the Basic Services after design approval of any portion thereof has previously been given by Client, then any services provided by Consilium to implement the changes or additions shall constitute Additional Services, and Consilium shall be entitled compensation from Client as set forth in Section 4.2 of this Agreement.

1.5. Consilium represents that it shall provide its professional services under this Agreement in a manner consistent with the care and skill ordinarily used by members of Consilium’s profession practicing under similar circumstances, at the same time, and in the same locality as the Project. Consilium does not provide any warranty, expressed or implied as to any products, construction, etc. which is used, prepared or presented by third parties under this Agreement or otherwise, in connection with Consilium’s services.

SECTION II
CLIENT OBLIGATIONS

2.1. Client agrees to provide Consilium with all information, surveys, reports, professional recommendations, and any other related items requested by Consilium in order to provide its professional services, including but not limited to: topographical and boundary maps, previously created planning documents, and existing and/or ongoing environmental/engineering studies and designs. Consilium may rely on the accuracy and completeness of these items, except that Consilium

agrees not to rely on clearly erroneous errors contained in any documentation provided to Consilium by Client.

2.2. Client shall furnish, at Client's expense, the services of the following consultants:
None.

2.3. Client agrees to advise Consilium of any known or suspected contaminants at the Project site. Cherry Creek School District shall be solely responsible for all subsurface soil conditions.

2.4. Client will pay for all necessary costs and/or expenses related to applications and permits.

2.5. Client agrees to provide the items described in Section 2.1 of this Agreement and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Consilium's services.

SECTION III **PROJECT SCHEDULE**

3.1. Consilium shall render its services under this Agreement as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact the Project schedule.

SECTION IV **COMPENSATION AND PAYMENT**

4.1. Basic Services. Client shall compensate Consilium for Basic Services performed under this Agreement in the fixed amount of \$15,500.00, as summarized below. Client expressly agrees that this fixed amount is a reasonable fee for Consilium's Basic Services to be provided under this Agreement and understands this fixed amount does not include any Additional Services as set forth in Paragraph 1.2 herein.

Fixed fee services:	
2 preliminary concept plans	\$7,000.00
1 refined concept plan	\$5,500.00
1 final concept plan	\$3,000.00
Total fixed fee	\$15,500.00

4.2. Additional Services. Client shall compensate Consilium for Additional Services performed under this Agreement on an hourly fee basis, in accordance with the following fee schedule:

Principal:	\$140/hr.
Assistant Planner/ Landscape Architect:	\$75-\$105/hr.
Professional Support Staff:	\$55-\$65/hr.
Administrative:	\$45/hr.

4.3. Reimbursable Expenses. "Reimbursable Expenses" are reasonable out-of-pocket and overhead expenses incurred by Consilium arising from its performance of the Basic Services and Additional Services under this Agreement. Reimbursable Expenses include, but are not limited to: reproduction costs (either in-house or third-party), postage, long distance telephone and facsimile charges, travel expenses, deliveries, the hiring of consultants, and materials used in renderings and models. Client shall compensate Consilium for reasonable Reimbursable Expenses incurred on a cost plus ten (10) percent basis. Compensation for reasonable Reimbursable Expenses shall be paid in addition to compensation for Basic Services and Additional Services.

4.3.1. Consultants. In addition to compensation for Basic Services and Additional Services, Consilium will bill Client on a pass through basis for the reasonable fees charged by all independent consultants hired by Consilium for the Project. Consilium and Client agree that Consilium will hire the following independent consultants for the Project: None.

4.4. Billing and Payment. Consilium will bill Client for Basic Services, Additional Services, and Reimbursable Expenses once a month. Payment in full is due upon receipt of invoice. Balances outstanding more than thirty (30) days from the date of invoice shall bear interest at the rate of 1.5% per month.

SECTION V

TERMINATION OF AGREEMENT

5.1. Either Consilium or Client may terminate this Agreement without cause upon seven (7) days written notice. Neither Consilium nor Client shall be liable to the other as a result of a termination of this Agreement pursuant to this Section V, other than as is expressly set forth elsewhere in this Agreement.

5.1.1. If Client terminates this Agreement pursuant to this Section V, Consilium's Compensation for Basic Services that were completed to the Client's satisfaction shall be equal to an amount not less than fifty percent (50%) of the fixed fee for Basic Services set forth in Section 4.1 of this Agreement. However, if the product of: (a) the actual number of hours spent by Consilium on Basic Services, multiplied by (b) the applicable hourly rates set forth in Section 4.2 of this Agreement is greater than fifty percent (50%) of the fixed fee for Basic Services, then Consilium shall be entitled to that amount. Client shall compensate Consilium for Additional Services and Reimbursable Expenses in the event of a termination by Client pursuant to this Section V as set forth in Sections 4.2 and 4.3 of this Agreement, respectively

5.1.2. If Consilium terminates this Agreement pursuant to this Section V, Consilium's compensation for Basic Services that were completed to the Client's reasonable satisfaction shall be an amount equal to the product of (a) the actual number of hours spent by Consilium on Basic Services, multiplied by (b) the applicable hourly rates set forth in Section 4.2 of this Agreement, but not to exceed one hundred (100) percent of the fixed fee for Basic Services set forth in Section 4.1 of this Agreement.

5.2. If Client fails to make payments to Consilium in accordance with this Agreement, Consilium may, at its option, suspend or terminate the performance of its services under this Agreement upon seven (7) days written notice. Consilium shall have no liability to Client for any delay or damage caused to Client because of such suspension or termination of services.

SECTION VI **OWNERSHIP AND USE OF WORK PRODUCT**

6.1. All work product prepared by Consilium and/or its consultants in connection with the Project, including but not limited to drawings, photographs, power point presentations, documents, models, renderings, and specifications whether in electronic format or otherwise for the Project (collectively, "Consilium's Work Product") are owned by Client; however, Client hereby grants to Consilium a limited license to use the Work Product for any and all marketing Consilium deems appropriate.

SECTION VII **LIMITATION OF LIABILITY**

7.1 Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance of the Project may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Consilium shall not be liable for any actions which may arise out of the Project resulting from any action or lack of actions unrelated to Consilium's obligations as set forth in Paragraph 1.5 of this Agreement.

7.2. Irrespective of any other terms of this Agreement, Consilium shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another person's errors or omissions or for another person's failure to complete their work or services in accordance with the Consilium design.

7.3 Consilium shall not be responsible for any delays to the Project not caused by Consilium or resulting from forces outside of Consilium's control.

7.4. The obligations of Consilium under this Agreement do not constitute personal obligations of the individual directors, officers, or shareholders of Consilium. The obligations of Client under the agreement do not constitute personal obligations of the individual directors, officers, managers or agents of the Client.

SECTION VIII
DISPUTE RESOLUTION

8.1. The parties hereto agree that prior to submitting any dispute to litigation that they will submit the dispute to one day mediation at Judicial Arbiters Group or any similar dispute resolution group and will participate in good faith in the resolution of the dispute with each party to pay their own fees for the mediation. Thereafter venue shall be proper in the County or District Court in and for Arapahoe County, Colorado.

SECTION IX
MISCELLANEOUS PROVISIONS

9.1. Governing Law. The construction, interpretation, and performance of this Agreement shall be governed by the laws of the State of Colorado, without regard to its conflicts of laws and principles. Venue shall be in the District Court in and for Arapahoe County, Colorado.

9.2. Attorney Fees. The prevailing party in any action brought to enforce the terms and provisions of this Agreement shall be entitled to an award of reasonable attorney fees, costs, and other expenses incurred in such action.

9.3. Modification. The terms and conditions of this Agreement may not be modified in any manner, unless such modification is made in a writing signed by the duly authorized representatives of both Client and Consilium, and unless such writing expressly and unambiguously expresses the intent of both Client and Consilium to modify this Agreement.

9.4. Entire Agreement. This Agreement is the entire agreement of Consilium and Client with respect to the Project, and shall replace and supersede all prior negotiations, proposals, understandings, and agreements, whether verbal, written, or otherwise, if any, including letters of intent and proposals for services between Consilium and Client.

9.5. Severability. If any term or provision of this Agreement is found to be unenforceable or invalid for any reason by a court or forum of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect, and the parties agree and specifically request the court or arbitrator to modify such provision to the minimum extent required to make such term or provision enforceable and valid.

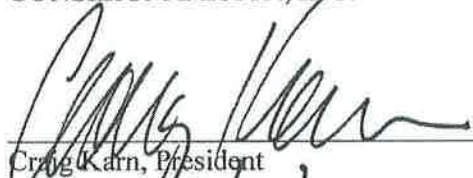
9.6. Waiver. If at any time Consilium or Client, as the case may be, shall have consented to any waiver, modification, or alleged breach by the other party of any covenant, condition, or provision of this Agreement, Consilium or Client, as the case may be, shall not thereafter be deemed to have consented to any further waiver, modification, or alleged breach by the other party, whether new or continuing, of the same or any other covenant, condition, or provision of this Agreement.

9.7 Binding Effect. This Agreement shall bind and benefit the successors, subsidiaries, affiliates and assigns of Consilium and Client.


9.8. No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Consilium or Client.

9.9. Authority. Consilium and Client expressly warrant to each other that they have authority to enter into this Agreement.

CONSILIUM DESIGN, INC.



Craig Karn, President
Date: 8/20/13



By: _____
Title: President
Date: 8/20/2013