

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN**

**LHB, INC.
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as City, and LHB, Inc. located at 21 West Superior Street, Suite 500, Duluth, MN 55802, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for master planning for the Western Waterfront Parks and Trail, (the “Project”); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a proposal to provide services for the Project (the “Proposal”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the Manager of the Parks and Recreation Division (“Manager”). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees

It is agreed between the parties that Consultant’s maximum fee for the Project and Services shall not exceed the sum of Seventy Thousand Nine Hundred Ninety-Two and 00/100th dollars (\$70,992.00) inclusive of all travel and other expenses associated with the Project, payable from Fund 452-030-5530; Resolution No. 16-0485R passed on DATE. All invoices for services rendered shall be submitted monthly to the attention of the Manager. Payment of expenses is subject the City’s receipt of reasonable substantiation/back-up supporting such expenses.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be Joseph D. Litman (the "Primary Consultant"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant's obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be

original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Consultant Representation and Warranties

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by January 31, 2017, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement.

Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth
411 W First Street
City Hall Room #
Duluth MN 55802
Attn: Lindsay Dean

Consultant: LHB, Inc.
21 West Superior Street, Suite 500
Duluth, MN 55802
Attn: Joseph D. Litman

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage,

accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date of attestation shown below.

CITY OF DULUTH

LHB, Inc.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor Date

Approved as to form:

Assistant City Attorney Date



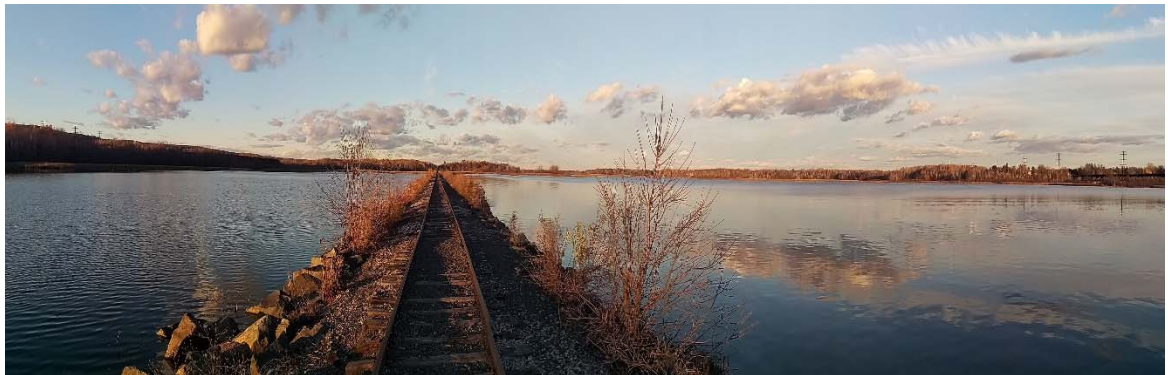
**PERFORMANCE
DRIVEN DESIGN.**
LHBcorp.com

July 12, 2016

Jim Filby Williams
Director, Department of Public Administration
City Hall
411 West First Street
Duluth, MN 55802

Lisa Luokkala
Parks & Recreation Department
City Hall
411 West First Street
Duluth, MN 55802

**PROFESSIONAL DESIGN SERVICES PROPOSAL FOR:
WESTERN WATERFRONT TRAIL, PARK & RECREATION MASTERPLAN
*REVISED***



Thank you for the opportunity to present a proposal for your upcoming planning project. We are confident that we can help you achieve your goals to come up with the best development option for the City-owned riverfront corridor consisting of the existing Western Waterfront Trail and an envisioned extension to Chambers Grove Park, water access points at Slag Point Peninsula and the riverfront opposite of Tallas Island, as well as at Munger Landing, Boy Scout Landing and Perch Lake in West Duluth.

The following proposal outlines a scope of services ranging from on-site field investigation, facilitating stakeholder planning workshops and public meetings, development of masterplan concepts to preliminary cost estimating for the Western Waterfront trail, park and recreation improvements. Based on our understanding of your needs, we have included a breakdown of anticipated steps with some assumptions; we hope that this information will assist you in defining how to best proceed with your project.

PROJECT UNDERSTANDING

The study limits encompass a 12.5 mile corridor from Grassy Point to Chambers Grove Park. The existing Western Waterfront Trail will mostly be addressed at a conceptual level focusing on improved visitor amenities, interpretative signage, etc. The trail from Stryker Bay to Grassy Point will be addressed only very preliminarily and conceptually without significant work on the ground.



We understand that your overall project goals also include, but are not limited to:

- Increasing connectivity from adjacent neighborhoods to the St. Louis River and Estuary.
- Increasing recreational and development opportunities within and along the St. Louis River Corridor.
- Facilitating a stakeholder community engagement process to gain significant input on the future use of the area.
- Enhancing neighborhood quality of life.
- Restoring and protecting natural habitat along the trail corridor.

With these project goals in mind, LHB, along with the City, will go through a masterplanning process that explores options to:

- Extend and improve the Western Waterfront Trail as sited in the 1979 WWFT Master Plan.
- Rebrand the Western Waterfront Trail as a heritage trail that celebrates and interprets the rich cultural and natural heritage of the corridor.
- Develop potential new river access nodes opposite Tallas Island and at the area known as Slag Point.
- Develop potential new canoe/kayak watertrail entry points at Munger Landing, Boy Scout Landing, and Perch Lake.
- Decide the future use of the City-owned riverfront along the U.S. Steel site with options including rail, trail, and rail with trail.

1. **Site Plan for City-owned riverfront property along U.S. Steel site** will include:

- Option #1: Rail Only (Rail Restoration). This option will restore the rail line back to in-place conditions and will also include modest park and river access amenities for park users at key locations.
- Option #2: Trail Only (Parks & Trail Conversion). This option involves the conversion of the corridor to a multi-use trail system.

- Option #3: Rail & Trail (Rail Plus). This option is a combination of rail restoration along with the addition of a multi-use trail system with park and riverfront amenities.
 - Conceptual Park Plan. A conceptual site plan will be developed that includes but is not limited to modest park programming elements such as river access, inner trail loops, and recreational gathering space for small or large public events.
2. **Waterfront Trail Expansion East and West Plan** will include:
- Conceptual Trail Extension Plan:
 - a. The City desires to extend the trail to the west to Chambers Grove Park. This trail extension plan will study the potential alignments and will primarily focus on the feasibility of extending the trail taking into consideration site topography, legal parcel ownership and constructability issues.
 - b. The City also desires to preliminarily explore the possibility of extending the Western Waterfront Trail east to Grassy Point Park which will take place in conjunction with the Western Port Area Plan (currently being developed by others).
3. **Park Programming for Waterfront Trail Corridor & Plan for River Access Opposite Tallas Island, Munger Landing, Boy Scout Landing, & Perch Lake** will include:
- Waterfront Trail Inventory & Opportunities Plan: This plan will illustrate existing trail conditions and access points, and address current amenities along the trail corridor. The plan will also highlight opportunistic areas for future trailheads, and site features including but not limited to signage, wayfinding, as well as historical and cultural interpretation, and will provide recommendations on how to make it a signature heritage trail for West Duluth.
 - River Access for canoe/kayak watercraft: Conceptual site plans will be developed for City-owned land opposite of Tallas Island located near Spirit Mountain and will be consistent with the Riverside Small Area Plan, as well as for canoe and kayak water trail entry points located at Munger Landing, Boy Scout Landing, and Perch Lake.
 - Riverside and Morgan Park neighborhoods: Desired elements will be explored during the community engagement process.

SCOPE OF WORK

In order to best achieve your project goals, we have prepared the following detailed work plan by task.



Task 1.0 Project Start Up – Kick Off, On-Site Field Investigation

- Task 1.1 Previous WWFT studies review, background information, research on rail to trail and rail with trail success stories
- Task 1.2 Create Field Base Map based on City contours, aerial & GIS
- Task 1.3 Site Visit with handheld GPS for site and topographic analysis (12.5 mile corridor)
- Task 1.4 City Staff Kick-off Meeting

Task 2.0 Site Inventory & Analysis

- Task 2.1 Site Analysis Diagrams; Trail/Rail, US Steel Site, Tallas Island, WWFT/Wayfinding.
- Task 2.2 Provide assessment of existing conditions, opportunities, issues & constraints.
- Task 2.3 Develop diagrammatic concepts including but not limited to associated costs, preliminary construction cost opinions, usership information, potential access points to be used for initial public meeting and online survey.

Task 3.0 Community Engagement and Public Meetings

- Task 3.1 Stakeholder Meeting #1: Conduct a ½ day workshop with selected stakeholders focused on rail and trail options.
- Task 3.2 Stakeholder Meeting #2: Conduct a ½ day workshop with selected stakeholders focused in the vicinity of Slag Point.

- Task 3.3 Stakeholder Meeting #3: Conduct a ½ day workshop with selected stakeholders focused on the riverfront opposite Tallas Island and canoe/kayak entry points at Munger Landing, Boy Scout Landing, & Perch Lake.
- Task 3.4 Stakeholder Meeting #4: Conduct a ½ day workshop with selected stakeholders focused on trail wayfinding and interpretation.
- Task 3.5 Develop and facilitate an online survey for public input.
- Task 3.6 Public Meeting #1: Present diagrammatic concepts including but not limited to approximate costs, usership information, and potential access points for public input.
- Task 3.7 Public Meeting #2: Present 3 masterplan concepts with varying alternates for rail/trail alignment and public open space/park amenities.
- Task 3.8 Presentation of final recommended masterplan to Parks Commission for recommendation.
- Task 3.9 Presentation of final recommended masterplan to City Council for review and approval.

Task 4.0 Develop Concept Alternatives, Final Masterplan and Report

- Task 4.1 Develop masterplan concepts for Railroad Corridor and Slag Point, Trail Extension, Trail Inventory & Opportunities, canoe/kayak entry points at Munger Landing, Boy Scout Landing, & Perch Lake & the riverfront opposite Tallas Island Riverfront Park.
- Task 4.2 Refine Final Recommended Masterplan for City review and approval.
- Task 4.3 Develop additional details, imagery and narrative for final report.

Task 5.0 Opinion of Probable Project Costs

- Task 5.1 Conduct calculations, general quantity take-offs and approximate costs for masterplan concepts to be used as a comparison and decision-making tool.
- Task 5.2 Provide opinion of probable project cost for final recommended masterplan.

Task 6.0 Project Management

- Task 6.1 Provide general project management including establishing a schedule, arranging meetings, correspondence with City, agendas, monitor project budget and billing.
- Task 6.2 Project coordination meetings (4).

FEE

We can provide these services to you on an hourly, not to exceed basis and recommend budgeting **\$70,992.00** for the above listed scope of work. We have based our Scope of Work and associated fees on our current understanding of your needs, and feel these are the minimum tasks required to achieve your goals. We are willing and able to reconsider our assumptions after meeting with you to determine the most efficient methods to achieve your goals. A breakdown by task is below and a fee estimate sheet is attached for additional information.

Task	Description	Subtotal
Task 1.0	Project Start Up, Kick-off, On-site Field Investigation	\$ 8,980.00
Task 2.0	Site Inventory & Analysis	\$12,477.00
Task 3.0	Community Engagement & Public Meetings	\$15,672.00
Task 4.0	Develop Concept Alternatives, Final Masterplan & Report	\$22,158.00
Task 5.0	Opinion of Probable Construction Costs	\$ 6,983.00
Task 6.0	Project Management	\$ 3,865.00
	(Reimbursables)	\$ 657.00
	TOTAL	\$70,992.00

ASSUMPTIONS

1. All mapping and R.O.W. ownership information will be based on recorded information furnished by the City or readily available from St. Louis County. The City will provide a copy of their G.I.S. mapping and aerial imagery to be used for the creation of the Base Map.
2. Topographic, boundary, utility and wetland survey are not included as part of this work but can be provided as an additional service if desired.
3. Construction Documents are not included as part of this work.
4. Prior to the on-site field investigation, the City will provide LHB with a property access permission written notice for all lands not owned by City.
5. No Phase I or Phase II Environmental Review has been included as a part of this workscope.



SCHEDULE

Please note, we are aware that this project is on a very tight timeline and we have carefully assessed the project needs. Due to the amount of analysis and design work necessary to explore the many options along with providing ample time between Public Meetings we believe the following schedule will be necessary.

Project Kick-off Meeting with City Staff	July 28, 2016
On site field investigation & base map creation	July 29-August 15, 2016
Existing Conditions & Diagrammatic Analysis	August 5-August 15, 2016
Stakeholder Meetings	August 25-29, 2016
Public Meeting #1	Late August, 2016
Online Survey Period	Late August, 2016
Development of Masterplan Concept Alternatives	August 15-Sept. 30, 2016
Public Meeting #2	Late Sept., 2016
Refinement of Masterplan & Final Report Compilation	Sept. 29 – Oct 24, 2016
Public Comment Period	October 24-November 4, 2016
Special Parks Commission Presentation	November 9, 2016
City Council Presentation	November 28, 2016

We can begin working on this project immediately once a contract agreement is in place. Upon your review, if you would like us to make any modifications, please contact Heidi at (218) 279-2429. If our proposal is acceptable to you, please notify us and we will work with you to execute an agreement.

Thanks again for the opportunity to continue working with the City!

LHB



Heidi Bringman
Landscape Architect Project Manager



Joe Litman
Vice President

C: LHB#150625-100F