

Exhibit A

AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN

HOISINGTON KOEGLER GROUP 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 HKGi, located at 123 N Third St, Suite 100, Minneapolis, MN, 55401, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for professional services to prepare a master plan for the Cross City Trail from Sister Cities Park to Becks Road (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 the Proposal 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 the following 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 Director of Public Administration (“Director”). 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 Thirty-Seven Thousand Eight Hundred and 00/100 Dollars (\$37,800.00) inclusive of all travel and other expenses associated with the Project, payable from Capital Improvements 450; Finance 030; Improvements Other than Buildings; Project: CP450-ccity-0676tr-Capital Projects- Other Fund Contributions, Cross City Trail folder, Cross City Trail – Phase IV 2015. All invoices for services rendered shall be submitted monthly to the attention of Director. 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

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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 Lil Leatham (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 to 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.

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- 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

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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 June 30, 2016, 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

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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.

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.

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- 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 Engineer'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:

Exhibit A

City: City of Duluth
411 W First Street
City Hall Room 322
Duluth MN 55802
Attn: Jim Filby Williams

Consultant: Hoisington Koegler Group Inc
123 N Third St
Suite 100
Minneapolis MN 55401
Attn: Lil Leatham

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

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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.

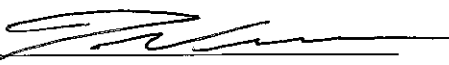
16. Counterparts

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.

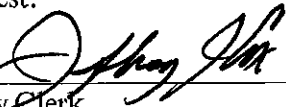
Exhibit A

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

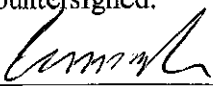
By: 
Mayor

Attest:

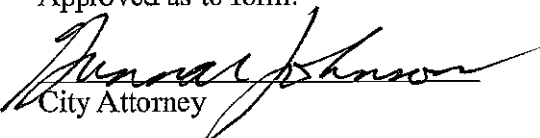
By: 
City Clerk

Date: 3/24/15

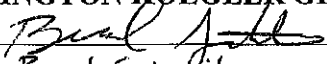
Countersigned:


City Auditor

Approved as to form:


City Attorney

HOISINGTON KOEGLER GROUP INC

By: 

Brad Schelb

Its: VICE PRESIDENT

Title of Representative

Date: 5/14/2015

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EXHIBIT A

Consultant's Proposal

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ATTACHMENT A

HOISINGTON KOEGLER GROUP INC.

2015 HOURLY RATES

Principal	\$160-215/hr
Associate	\$110-155/hr
Senior Professional	\$90-155/hr
Professional II	\$80-100/hr
Professional I	\$50-80/hr
Technical.....	\$40-60/hr
Secretarial	\$55/hr
Litigation Services	\$190/hr
Testimony	\$275/hr

Incidental Expenses:

Mileage	current federal rate/mile
Photocopying BW	15¢/page
Photocopying Color	\$1.00/page
Outside Printing	Actual Cost
Large Format Scanning.....	Actual Cost
B/W Bond Plots	\$5.00 each
Color Bond Plots.....	\$20.00 each
Photo Paper Color Plots	\$40.00 each

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Creating Places that Enrich People's Lives

Hoisington Koegler Group Inc.



April 23, 2015

Kathy Bergen
Parks and Recreation Manager
12 East Fourth Street
Duluth, MN 55805

Re: **Cross City Trail Master Plan**

Dear Kathy,

Thank you for contacting HKGI about preparing a master plan for the Cross City Trail. The following proposal summarizes our understanding of the project, our proposed approach, fees, and schedule. Please review and if the proposal is acceptable get back to me with any questions or revisions.

PROJECT UNDERSTANDING

The 2011 City of Duluth Trail and Bikeway plan sets the ambitious goal of Duluth becoming the "premier trail destination in North America" and provides a framework for the City's trail and bikeway system. The Plan identifies four across the city trail corridors (Cross City Trail/Lakewalk, the Superior Hiking Trail, Duluth Traverse). The City would like to prepare a master plan for the Cross City Trail. The Cross City Trail will extend from Becks Road to the western end of the Lakewalk. The primary focus of this master planning effort will be for a continuous multi-use trail for bicycle and foot traffic. Other trail based recreation (horseback riding, single-track mountain biking, or other uses) may be accommodated as space / conditions within the corridor allows. From the Lakewalk to the Munger Trail, the Cross City Trail will be a paved surface. West of Warwick Street it is anticipated the trail will be a crushed aggregate surface. For the 10 miles from 63rd Avenue West to Becks Road, the trail will follow the city-owned Duluth Winnipeg and Pacific (DWP) railroad corridor, which is currently used as an informal trail. A master plan is needed to help secure Federal, State and regional funding.

The City would like to apply for Regional Trail Designation from the Greater Minnesota Regional Parks and Trails Commission, in order to apply for Legacy funding. An adopted master plan is one of the regional trail designation requirements. The master plan must meet the content requirements outline in the Greater Minnesota Regional Parks and Trails Strategic Plan.

The City of Duluth would like the assistance of a professional planning consultant to prepare a master plan for the Cross City Trail. The plan must be adopted by the City of Duluth City Council before June 30th, 2016 in order to meet the 2016 regional designation application deadline.

EXPERTISE

HKGI (Hoisington Koegler Group Inc.) has extensive experience in trail planning and facilitation throughout Minnesota and has recent and direct experience working with the City of Duluth staff and Duluth's trail user groups (St. Louis Corridor Visioning and concepts, West Duluth Sports Corridor Mini Master Plan, preparation of the Duluth Trail and Bikeway Plan, and Mission Creek and Magney Snively Trail Planning and Facilitation). This local knowledge and recent experience will be of great benefit to efficiently complete this project.

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SCOPE OF WORK, SCHEDULE AND FEES

The following scope of work assumes significant work has already been or will be accomplished by the City of Duluth that can be integrated into the master plan. HKGi will utilize pertinent information from the City's horseback and ATV feasibility studies, route analysis done to date by the City and other organizations for the trail segment between Heritage Sports Complex and 63rd Avenue West, and other planning, engineering, field verification, and cost estimating done by the City to date.

We anticipate 6-8 month mini master planning process and suggest starting in the May 2015 to allow for identification of potential issues or questions that might be investigated as part of the horseback and ATV feasibility studies or for additional field assessment over the summer, if needed. This schedule assumes that the horseback and ATV studies will be completed by the end of June 2015 and will inform Tasks 3, 4 and 5 of the work plan below.

PHASE AND SCHEDULE	FEE
TASK 1. ORGANIZE THE EFFORT (MAY-JULY 2015) 1. Facilitate kick-off meeting with City staff (Parks and Recreation, Planning, Engineering, and Maintenance Operations) and tour (<i>Trip #1</i>) 2. Acquire Data and background information acquisition (route and bridge evaluations, MLCCS, Topo, Ownership, Streams, MCBS, other concurrent trail planning projects, trestle and tunnel information, demographic info, trends influencing demand, planning and engineering studies, etc.) 3. Summarize background information 4. Prepare project introduction presentation for City staff use in introducing the project to City Council, Parks and Recreation Commission, other city commissions, and user groups 5. Prepare base and existing conditions mapping	\$5,800
TASK 2. UNDERSTAND WHAT EXISTS (JULY – AUGUST 2015) 1. Prepare corridor context map to understand desired uses within the context of the regional and city-wide trail networks 2. Prepare issues and opportunities summary covering existing trails, ownership, existing natural, water, and cultural resources, as well as creek and road crossings (summary will be a combination of text and graphic maps) 3. Summarize general demographic, recreation, and tourism trends influencing future trail demand 4. Identify potential areas for parallel trails for secondary uses (i.e. single track mountain biking, horseback riding) 5. Facilitate workshop with City staff and other potential agency partners to review existing conditions and issues, finalize approach to alignment options between Heritage Sports Complex and 63rd Avenue West, as well as identify opportunities and preliminary trail program & facility needs (<i>Trip #2</i>)	\$6,500

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TASK 3. EXPLORE THE ALTERNATIVES (AUGUST - SEPTEMBER 2015) 1. For full cross city trail, identify corridor program elements, facility needs, bridge needs, habitat preservation areas, water quality zones, storm water infiltration zones, trail connections and trail surface types and uses for the main multi-use trail 2. Assess and illustrate alternatives where route options or opportunities for parallel trails for secondary uses exist 3. Facilitate Community Open House #1 to introduce project, and receive input on issues and opportunities and alternatives <i>(Trip #3)</i> 4. Package open house information into a summary presentation for staff use in updating City Council, Park and Recreation Commission, and other groups as needed	\$6,600
TASK 4. DRAFT MASTER PLAN (SEPTEMBER 2015-OCTOBER 2015) 1. Prepare development master plan. Content will include overall project map(s) 2. Identify land protection needs 3. Prepare ecological stewardship plan 4. Prepare research plan 5. Prepare Draft Master Plan document that assembles all materials generated as part of the effort into a cohesive package. Content will include all sections as required for master plans for Greater Minnesota Regional Trails: • Chapter 1 – Introduction and Regional Context • Chapter 2 - Existing Conditions (physical and natural resource) • Chapter 3 - The Plan (development, ecological stewardship, research) • Chapter 4 - Implementation (phasing/priorities, management, sustainability plan, and cost estimates for capital development, programming, operations and maintenance, and ecological sustainability) 6. Meeting with City Staff – Review Draft Master Plan <i>(On-Line Go To Meeting)</i>	\$10,600
TASK 5. FINAL MASTER PLAN AND APPROVALS (OCTOBER-DECEMBER 2015) 1. Facilitate Community Open House #2 to Review Draft Master Plan <i>(Trip #4)</i> 2. Package open house information into a summary presentation for staff use in updating City Council, Park and Recreation Commission, and other groups as needed 3. Master Plan Revisions 4. Present to the Parks and Recreation Commission (City Staff) 5. Presentation to City Council (City Staff)	\$6,500
Expenses (mileage, travel, printing and plotting)	\$1,800
Total	\$37,800

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CITY RESPONSIBILITIES

Our fee and process is based on the following City responsibilities:

- Provide all background information in digital format (master plan concept base information, cost information, existing natural resources, project area boundaries, bridge/tunnel evaluation, etc., findings from the horseback riding and ATV feasibility studies)
- Work with HKGi to efficiently understand Cross-City alignment route options and analysis done to date from the Heritage Sports Complex to 63rd Street West and develop an efficient strategy to address the issues within the master planning process. *Note: this issue may require work beyond the scope of this proposal.*
- Provide area base information and current user group and agency trail plans/priorities/cost estimates and work done thus far by City Staff to HKGi
- Notifications for all community input
- Needed individual stakeholder and agency communication/meetings
- All presentations to and distribution of plans to Parks and Recreation Commission and City Council
- Provide staff input and direction on master plan needs and review
- Pay HKGi within 30 days of receipt of an invoice for services rendered

STAFFING AND FEES

Lil Leatham, Landscape Architect and Trail Planner with HKGi, will lead the master planning effort. She will be assisted by Bryan Harjes, Kevin Clarke, and Sarah Ash. HKGi will complete the above scope of work for a consulting services fee, including expenses of \$37,800. Two in person meetings/workshops with staff and two Community Open Houses for a total of four one-day trips to Duluth are included in this proposal. Additional meetings or tasks beyond the scope of work will be provided on an hourly basis. Preparing for and facilitating additional staff, stakeholder and community meetings is estimated at \$1,500 - \$5,000 per meeting (including meeting prep, travel to Duluth, and expenses) depending upon meeting complexity.

We are available to begin work upon authorization of this proposal.

Sincerely,



Lil Leatham, Associate
Landscape Architect
Hoisington Koegler Group Inc.
Lil@HKGi.com
(612) 252-7127

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SIGNATURE OF ACCEPTANCE: City of Duluth, MN

By: _____ Title: _____

Date: _____