

EXHIBIT A

AGREEMENT

Damberg Scott Gerzina Wagner Architects, Inc. dba DSGW Architects
&
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 Damberg Scott Gerzina Wagner Architects, Inc. dba DSGW Architects located at 3479 Lake Elmo Avenue North, Lake Elmo, MN 55402, hereinafter referred to as “Architect” for the purpose of rendering services to the City.

WITNESSETH THAT:

WHEREAS, City is the Owner of the Lake Superior Zoo (the “Zoo”) and has entered into an operating agreement with the Lake Superior Zoological Society (the “Society”) to undertake certain management functions with regard to the Zoo; and

WHEREAS, in this capacity, the Society has entered into certain contracts with Architect as further described below for the design and construction administration of the hereinafter-described Project; and

WHEREAS, in order to expedite said Project, City has contracted for the services of Windsor MEP Engineers (“Windsor”) to provide design development phase services for the mechanical, electrical and plumbing design to Architect with regard to the Project, hereinafter referred to as “Support Services”; and

WHEREAS, as of December 27, 2018, Society and Architect entered into an Agreement for Phase I of the Bear Exhibit Renovation Project (the “Project”) which was amended as of February 5, 2019 by Amendment No. 1 and again as of April 8, 2019 by Amendment No. 2, which Agreement, Amendment No. 1 and Amendment No. 2 are hereinafter collectively referred to as the “Society Agreement”; and

WHEREAS, it is now the desire of the City, the Society and the Architect for the City to undertake development of the Project; and

WHEREAS, the City desires to engage the Architect as the master design entity for the Project to be in charge of providing all necessary architectural services in connection with the Project and to have Architect responsible for directing and to provision of all Support Services necessary thereto;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

- I. The Architect shall develop and prepare and/or administer the necessary design development, construction and bidding documents required for the “Project,” as directed by the Property & Facilities Manager. The specific services are those described below, as limited by the Proposal entitled “Proposal for Architectural and Engineering Services on the Bear Exhibit Renovation Project at the Lake Superior Zoo, revised” dated June 18, 2019 and identified as Exhibit A, which is made a part hereof, in accordance with the Terms and Conditions of this Agreement.
- II. This Agreement shall incorporate by reference the Society Agreement except as hereinafter set forth and all work performed by Architect performed on the Project shall be deemed to have been performed under this Agreement; except that to the extent that there is any difference between the terms and conditions of this Agreement and the Society Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.
- III. Architect acknowledges that, in order to expedite the Project, City has contracted with Windsor to perform the Support Services for the Project. Architect acknowledges that it has reviewed the Support Services performed by Windsor and has determined that they are acceptable as such services are necessary to design and construction of the Project. Architect further agrees that, to the extent that additional Support Services of nature and character of those previously provided by Windsor to the Project are needed to complete the Project, it will use its best efforts to secure such Support Services from Windsor, subject to reaching an acceptable agreement with the entity whose services are needed. Architect agrees, however, that if it cannot reach an agreement with Windsor, it will secure the services of another engineering entity to supply the necessary Support Services at no additional incremental cost to City.
- IV. The City shall compensate the Architect, in accordance with the Terms and Conditions of this Agreement.
- V. The City and Architect agree in accordance with the Terms and Conditions of this Agreement that, if the Scope of the Project is changed materially, compensation shall be subject to renegotiation.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN CITY AND ARCHITECT

ARTICLE 1.

Architect's Services

Basic Services

1.1 The Architect's Basic Services consist of the six phases described below and include normal structural, mechanical, electrical, and civil engineering services and any other services except "Additional Services" as defined in Article 1.2.

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants as enumerated in this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of City or its agent, the Architect shall submit for City or its agent's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for City or its agent's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by City or its agent shall be adhered to by the Architect.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in this Agreement or attachments made a part hereof. The deadline for project completion is December 31, 2020.

Schematic Design Phase

1.1.4 The Architect shall review the program requirements furnished by the City to ascertain the requirements of the Project and shall present such requirements to the City for approval.

1.1.5 Based on the mutually agreed upon program, the Architect shall prepare for approval by City Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components.

1.1.6 The Architect shall submit to the City a Statement of Probable Construction Cost based on current area, volume or other unit costs.

Design Development Phase

1.1.7 The Architect shall prepare from the Schematic Design Studies the Design Development

Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical, electrical and any other appropriate systems, and materials and such other essentials as may be appropriate. The Architect shall submit such Design Development Documents to the City for approval, and shall not commence work on the Construction Documents until such time as the City shall direct.

1.1.8 The Architect shall submit to the City a further Statement of Probable Construction Cost. Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the Architect represent his or her best judgment as a design professional familiar with the construction industry.

Construction Documents Phase

1.1.9 The Architects shall prepare from the approved Design Development Documents, and any changes in the scope of the Project then authorized by City, Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including the necessary bidding information, and shall assist in the preparation of bidding forms, the General Conditions and Special Conditions of the Contract or Contracts, and the form of the Agreement between the City and the Contractor, as requested by the City. The Architect shall prepare necessary specifications and related bidding documents in final form. The Architect shall submit such Construction Documents to the City for approval, and shall not commence to advertise for bids or prepare for construction of the Project until such time as the City shall direct.

1.1.10 The Architect shall advise the City of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.1.11 The Architect shall assist the City in filing the required documents for the approval of governmental authorities having jurisdiction over the project.

Bidding Phase

1.1.12 The Architect, following the City's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the City in obtaining bids or negotiated proposals, and in awarding and preparing contracts for construction.

Construction Phase

1.1.13 The Construction Phase will commence with the award of the Construction Contract or Contracts and will terminate when the final payment is issued to the Contractor or Contractors by the City.

1.1.14 During the Construction Phase, the Architect shall advise and consult with the City concerning the Contractor's or Contractors' compliance with the Drawings and Specifications setting forth the requirements for the construction of the entire Project.

1.1.15 To the extent set out in this Agreement, the Architect shall have authority to act on behalf of the City during or in connection with his visits to the site of the Work. The Architect shall have a duty to protect the interests of the City, or to observe conformance with Contract Documents.

1.1.16 The Architect shall at all-time have access to the Work wherever it is in preparation or progress.

1.1.17 The Architect shall visit the site of the work at intervals appropriate to the stage of construction in order to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Architect shall endeavor to guard the City against defects or deficiencies in the work of the Contractor or Contractors, but the Architect shall not be required to make exhaustive or continuous on-site inspections to examine the quality or quantity of the Work. Based on on-site inspections, Architect shall advise City of the progress and quality of the Work. The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.1.18 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

1.1.19 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the City, based on the Architect's observations at the site, and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the

issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

1.1.20 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the City or the Contractor, and shall render written interpretations, within a reasonable time, on all claims, disputes, and other matters in question between the City and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.1.21 Interpretations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by the Contractor.

1.1.22 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.

1.1.23 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.1.24 The Architect shall prepare change orders for the City's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which changes are not inconsistent with the intent of the Contract Documents.

1.1.25 The Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive and forward to the City for the City's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall

issue a final Certificate for Payment.

1.1.26 The extent of the duties, responsibilities, and limitations of authority of the Architect as the City's representative during construction shall not be modified or extended without written consent of the City and the Architect.

Post Construction Phase

1.1.27 Assist in project orientation of City and users and conduct warranty inspections.

Additional Services

1.2 The following services shall be provided when authorized in writing by the designated representative of the City. An additional service is one that is not described in Section 1 of this Agreement or documents referred to therein. The Architect shall advise the City when any service is considered additional, and the method and/or amount of compensation shall be determined prior to any additional services being undertaken. Any additional service performed without prior approval of the City, in writing, shall be done at no additional charge to the City. Accurate records of all expenses attributed to additional services shall be maintained by the Architect.

1.2.1 Providing analyses of the City's needs, and programming the requirements of the Project.

1.2.2 Providing financial feasibility or other special studies other than construction cost.

1.2.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites in addition to those set out in the construction documents or this Agreement.

1.2.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

1.2.5 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.

1.2.6 Preparing documents for alternate bids or out-of-sequence services requested by the City.

1.2.7 Providing detailed quantity surveys or inventories of material, equipment and labor.

1.2.8 Providing interior design and other services required for or in connection with the selection of furniture and furnishings.

1.2.9 Providing services for planning tenant or rental spaces.

1.2.10 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of the Architect.

1.2.11 Preparing supporting data and other services in connection with change orders, provided the change orders are due to causes beyond the control of the Architect and require architectural services beyond the preparation and distribution of the change order documents.

1.2.12 Making investigations involving detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by the City.

1.2.13 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Paragraph 1.1 as may be required in connection with the replacement of such Work.

1.2.14 Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.

1.2.15 Preparing a set of reproducible record prints of drawings showing significant changes in the Work made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

1.2.16 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

1.2.17 Providing services after issuance to the City of the final Certificate for Payment, except as delineated in Paragraph 1.1.27.

1.2.18 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

1.2.19 Providing services of professional consultants for other than the normal structural, mechanical, electrical, and civil engineering services for the Project.

1.2.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 2.

The City's Responsibilities

2.1 The City shall provide full information, including a complete program, regarding his requirements for the Project.

2.2 The City shall designate, when necessary, a representative authorized to act in his behalf with respect to the Project. The City shall examine documents submitted by the Architect and shall render

decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

2.3 The City shall furnish a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

2.4 The City shall furnish the services of a soils engineer or other consultant when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional recommendations.

2.5 The City shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.6 The City shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as he may require to ascertain how or for what purposes the Contractor has used the monies paid to him under the Construction Contract.

2.7 The services, information, surveys and reports required by Paragraphs 2.3 through 2.6 inclusive shall be furnished at the City's expense, and the Architect shall be entitled to reasonably rely upon the accuracy and completeness thereof.

2.8 If the City becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Architect.

2.9 The City shall furnish information required of him as expeditiously as necessary for the orderly progress of the Work.

ARTICLE 3.

Construction Cost

3.1 A fixed limit Construction Cost of Five Hundred Fifty Thousand and no/100ths Dollars (\$550,000.00), which includes a bidding contingency of 10%, has been established, and it shall be the Architect's responsibility to work with the City to endeavor to maintain the cost of construction within

that amount, unless another amount is agreed upon in writing. The construction cost is the total cost to the City of all Work designed or specified by the Architect and shall be determined as follows:

3.1.1 The lowest bona fide bid received from a qualified bidder for any or all of such work.

3.1.2 Construction Cost does not include the compensation of the Architect and his consultants, the cost of land, right-of-way, or other costs which are the responsibility of the City as provided in Paragraph 2.3 through 2.6 inclusive.

3.1.3 If the Bidding or Negotiating Phase has not commenced within six (6) months after the Architect submits the Construction Documents to the City, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices which may have occurred in the construction industry for the area in which the Project is located. The adjustment shall reflect changes between the date of submission of the Construction Documents to the City and the date on which proposals are sought.

3.1.4 If the fixed limit of Construction Cost, including the bidding contingency (adjusted as provided in subparagraph 3.1.3, if applicable) is exceeded by the lowest bona fide bid, the City shall cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. The Architect shall modify the Drawings and Specifications and assist in rebidding the Project as necessary to bring the Construction Cost within the fixed limit. Additional compensation for these services to be based on the rates established in Exhibit B, and added to this agreement by execution of an amendment signed by both Parties.

ARTICLE 4.

Compensation

4.1 It is expressly agreed and understood that in no event shall the total amount to be paid under this Agreement exceed Seventy-Three Thousand Three Hundred Eighty-Four and no/100ths Dollars (\$73,384.00) for full and complete satisfactory performance, unless specified by means of written amendments to this Agreement as provided for herein. Architect acknowledges that, of this amount, \$43,564.00 has already been paid to Architect with regard to the Project by Society and that therefore the total amount owed to Architect by the City for completion of the Project hereunder shall not exceed Twenty-Nine Thousand Eight Hundred Twenty and no/100ths Dollars (\$29,820.00).

4.2 For Additional Services, as described in Paragraphs 1.2.1 through 1.2.20 above, if such services are authorized and if funds are provided therefore in Paragraph 4.4 below, compensation up

to the authorized amount shall be based on the rates in Exhibit B.

4.3 Reimbursable Expenses, if such expenses are authorized and if funds are provided therefore in Paragraph 4.4 below, are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect, his employees or his professional consultants in accordance with the provisions of any written amendments to this Agreement, for the expenses listed in the following Subparagraphs:

- a. Expense of transportation and living when traveling in connection with the Project (does not include travel from Architect's office to Duluth if Architect's business is not located in the Duluth metro area); and fees paid for securing approval of authorities having jurisdiction over the Project.
- b. Expense of Bid Document reproductions in the number of sets as requested by City.
- c. If authorized in advance by the City, expense of overtime work requiring higher than regular rates and expense of renderings or models for the City's use.

4.4 It is agreed and understood that Additional Services and Reimbursable Expenses shall be compensated by the City only up to the following amounts:

- a. Additional Services \$0.
- b. Reimbursable Expenses \$0.

ARTICLE 5.

Payments

5.1 The City shall make payments under this Agreement from Fund 452-030-5530; Project HANDHTAX - 1502.

5.1.1 Payments to the Architect for the services specified herein shall be made monthly upon presentation of a requisition for payment so that the compensation at the completion of each Phase shall equal the following percentages of the total compensation for services provided under Article 1, Paragraphs 1.1 through 1.1.12 inclusive:

- Schematic Design Phase --15%
- Design Development Phase --20%
- Construction Documents Phase --40%
- Completion of Bidding Phase --5%.
- Construction Administration Phase--20%

5.1.2 If the Contract Time initially established in the Construction Contract is exceeded by more than thirty days through no fault of the Architect, compensation for Basic Services performed by Principals, employees and professional consultants required to complete the Administration of the Construction Contract beyond the thirtieth day shall be computed as set forth in Paragraph 4.4.

5.1.3 Payments for Additional Services of the Architect as defined in Paragraphs 1.2 through 1.2.20 and Paragraphs 1.1.13 through 1.1.28, and for Reimbursable Expenses as defined in Paragraph 4.3, shall be made monthly upon presentation of the Architect's statement of services rendered.

5.1.4 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

5.1.5 If the Project is suspended for more than three months or abandoned in whole or in part, the Architect shall be paid his compensation for services performed prior to receipt of written notice from the City of such suspension or abandonment, together with Reimbursable Expenses then due and all termination expenses as defined in Paragraph 7.3 resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the Architect's compensation shall be subject to renegotiation.

ARTICLE 6.

Architect's Accounting Records

6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at reasonable times.

ARTICLE 7.

Termination of Agreement

7.1 This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than seven (7) calendar days prior written notice (delivered personally or by certified mail, return receipt requested) of intent to terminate.

7.2 This agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Architect is given (1) not less than seven (7) calendar days prior

written notice (delivered personally or by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the City prior to termination.

7.3 Upon receipt of a notice of intent to terminate from the City pursuant to this agreement, the Architect shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Architect in performing this agreement, whether completed or in process.

7.4 Upon termination pursuant to this agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

7.5 In the event of termination by City pursuant to Paragraph 7.2 above, the Architect shall be paid his compensation for services performed to termination date, including reimbursable expenses then due and all reasonable termination expenses.

7.6 Termination expenses are defined as reimbursable expenses directly attributable to termination, plus an amount computed as a percentage of the total compensation earned to the time of termination, as follows:

- 20 percent if termination occurs during the Schematic Design Phase; or
- 10 percent if termination occurs during the Design Development Phase; or
- 5 percent if termination occurs during any subsequent phase.

ARTICLE 8.

Ownership of Documents and Expression

8.1 All drawings, specifications, reports, records, rights to copyright, and other work product developed by the Architect in connection with this Project shall remain the property of the City whether the Project is completed or not. Reuse of any of the work product of the Architect by the City on extensions of this Project or any other Project without written permission of the Architect shall be at the City 's risk and the City agrees to defend, indemnify and hold harmless the Architect from all damages and costs including attorney fees to Architect arising out of any claim of a third party against Architect which claim arises out of such reuse by the City or others acting through the City and which damage is directly caused by such abuse.

ARTICLE 9.

Successors and Assigns

9.1 The City and the Architect each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Architect shall not assign, sublet, or transfer his or her respective interests in this agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Architect.

ARTICLE 10.

Extent of Agreement

10.1 This Agreement represents the entire and integrated agreement between the City and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument dated and duly signed by both City and Architect.

ARTICLE 11.

Governing Law

11.1 Unless otherwise specified, this Agreement shall be governed by the applicable laws of the City of Duluth and State of Minnesota.

ARTICLE 12.

Changes

12.1 The City or the Architect may, from time to time, request changes in the scope of the services to be performed hereunder. In order to be in force, such changes, including the increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by and between the City and the Architect, shall be incorporated in written amendments to this Agreement.

ARTICLE 13.

Hold Harmless and Insurance

13.1 Architect agrees to defend, indemnify and hold harmless the City and any of its agents or employees from and against any and all claims arising out of the performance of this Agreement by

Architect except to the extent that such indemnification is specifically prohibited by Minnesota Statutes Chapter 337 or Section 604.21. Architect shall not be required to indemnify City for claims of liability arising out of the sole negligent or intentional acts or omission of the City but shall be specifically required to and agrees to defend and indemnify City in all cases where claims of liability against the City arise out of acts or omissions which are passive or derivative of the negligent or intentional acts or omissions of Architect, such as, but including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such acts or omission by Architect and any other such source of liability. In the event the City consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved or ratified in writing by the Architect, the City recognizes that such changes and the results thereof are not the responsibility of the Architect. Therefore, the City agrees to release the Architect from any liability arising from the construction, use or result of such changes. In addition, the City agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of the Architect.

13.2 The Architect shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota unless Architect shall have successfully demonstrated to the City Attorney, in the reasonable exercise of his or her discretion that such insurance is not reasonably available in the market. If the Architect demonstrates to the reasonable satisfaction of the City Attorney that such insurance requires hereunder is not reasonably available in the market, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City which is reasonably available.

- a. Worker's Compensation Insurance in accordance with the laws of the State of Minnesota.
- b. Commercial General Liability Insurance in an amount not less than **\$1,500,000** combined single limit.
- c. Automobile Liability coverage in an amount not less than **\$1,500,000** combined single limit.

d. Professional liability (errors and omissions) insurance in an amount not less than \$1,500,000 combined single limit property damage in any year or such greater amounts the City determines is necessary to protect it; 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, Service Provider 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 statute 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. The City Attorney reserves the right and the Architect agrees to revisions upward or downward in the minimum insurance requirements set forth above, provided that any such revisions shall be reasonable.

13.3 Such insurance shall be maintained in full force and effect during the life of the agreement and shall protect the Architect, its employees, agents and representatives from claims for damages including but not limited to personal injury and death and any covered act by the Architect, its employees, agents and representatives in the performance of the work covered by the agreement.

13.4 Certificates showing that the Architect is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this agreement.

13.5 The City shall be named as an "additional insured," with the same coverages as Architect, on General and Automobile Liability policies other than the Professional Liability and Worker's Compensation policies of Architect. The additional insured coverage required by this agreement is coverage for any claim arising out of the Architect's performance of this agreement. *An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.* **The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG2010 pre 2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**

13.6 The certificates shall provide that the policies shall not be changed or canceled during the life

of the agreement without at least thirty (30) days advance written notice to the City.

ARTICLE 14.

General Conditions

14.1 This Agreement is subject to and incorporates the City Part II, "Supplemental General Conditions for Federally Assisted Activities" (latest edition), which is incorporated by reference.

14.2 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.

ARTICLE 15.

Miscellaneous

15.1 Exhibit "A," Architect's Proposal dated June 18, 2019, is hereby incorporated into this Agreement.

15.2 Exhibit "B," Hourly Rate Schedule and Reimbursable Expenses, is hereby made a part of this Agreement.

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

CITY OF DULUTH

DAMBERG SCOTT GERZINA, WAGNER
ARCHITECT, INC. dba DSGW
ARCHITECTS

By: _____
Mayor

Attest:

By: _____

By: _____
City Clerk

Its: _____
Title of Representative

Date: _____

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney

EXHIBIT A



3479 Lake Elmo Ave N, Lake Elmo, MN 55042

June 18, 2019

Amanda Ashbach, Purchasing agent
City of Duluth
411 W First Street
Duluth, MN 55802

Re: Proposal for Architectural and Engineering services on the Bear Exhibit renovation project at the Lake Superior Zoo, revised

Dear Ms. Ashbach,

DSGW Architects is pleased to submit this proposal for services on the Lake Superior Zoological Gardens, Bear Exhibit renovation. This proposal provides additional support services to the Phase 1 (dated 12/27/2018) and Phase 2 (dated 4/8/2019) contracts between the Lake Superior Zoological Gardens and DSGW Architects.

The services requested and included in this proposal are

- Project consultant coordination (DSGW Architects)
 - Total fee: \$10,000
- Structural Engineering (Northland Engineering Consultants)
 - Total fee: \$8,320
- Mechanical, Electrical and Plumbing engineering (Windsor Engineering)
 - Total fee: \$4,800
- Civil Engineering (Northland Engineering Consultants)
 - Total fee: \$6,700

The individual consultant proposals are included as an attachment.

Our fee proposal total for the scope of services listed above is \$29,820 plus reimbursable expenses

Any services outside the identified scope of work listed above will be performed on a time and materials basis with prior approval. Please review and if all is acceptable, note your approval and I'll draft an AIA contract agreement for execution.

We are prepared to start work immediately.

On behalf of DSGW Architects, thank you for your consideration.

Sincerely

Randy Wagner LEED AP, AIA
DSGW Architects

Structural Engineering Fee Proposal - 5-22-2019

Page 1


Northland

Consulting Engineers L.L.P.

 Structural, Civil And Forensic Engineering Services
 102 South 21st Ave West. Duluth, MN 55806.
 (218)727-5995

Project Title:	Duluth Zoo - Black Bear Exhibit Project
Location:	Duluth, MN
Client:	DSGW - Tiersa Wodash
Address:	2 West First Street, Suite 210, Duluth, MN 55802
E-Mail:	twodash@dsgw.com

Project Description

The Lake Superior Zoo Intends to renovate what was previously the Grizzly Bear and Puma Exhibit space. Our previous schematic work has been completed. Under this proposal we propose to provide limited structural design services and construction documents suitable for inclusion into the architectural construction document set. Scope includes repair design for existing damaged concrete, new framing and foundation for NW exhibit access, new framing for new glazing support at the viewing area. This proposal also includes limited construction phase services including a site visit, communications and shop drawing review of structural elements.

Scope of Structural Engineering Services

1. Site visit, communications
2. Detailed site visit and photographs to document the existing conditions.
3. Prepare a written report and repair procedures for pricing by others.

Proposed Fee Calculation Table	Estimated Hours					
	Partner	PE	Tech.	Clerical	Other	
Activity	\$180.00	\$130.00	\$80.00	\$50.00		Extended Cost
Schematic Design: Site visit and dicussions	6	0				\$ 1,080.00
Design development: Preliminary design and detailing for repair of existing concrete walls, and floor. Preliminary design and drafting for new NW entrance and glazing sub-structure.	6	0	16			\$ 2,360.00
Construction Documents: Final design and detailing for repair of existing concrete walls, and floor. Final design and drafting for new NW entrance and glazing sub-structure.	8	0	16			\$ 2,720.00
	Subtotal:					\$ 5,080.00
Construction Engineering Services- Limited						
Communications	8	0				\$ 1,440.00
(1) Site Visit During Construction	4					\$ 720.00
	Subtotal:					\$ 2,160.00
Sub Consultant Fees / Other Reimbursable Charges						
	Subtotal:					\$ -
	Total Proposed NCE Fee:					\$ 8,320.00
Assumptions, Terms and Conditions:						

1. Compensation for limited services described above will be performed on a Lump-Sum-Fee Basis based on the above described scope of construction and services.
2. Additional services can be performed at the request of the client and billed per the attached fee schedule.

Submitted By**Accepted By**

 Jon E. Aamodt PE
 Principal Partner
 Northland Consulting Engineers LLP

 Printed Name: _____
 Title: _____
 Representing: _____

BASIS OF COMPENSATION - 2019

FEE SCHEDULE

The Compensation of Northland Consulting Engineers for professional services is based upon straight hourly rates as indicated below.

CLASSIFICATION	HOURLY RATE
Partner Engineer	\$160.00
Registered Project Engineer (Civil / Structural)	\$130.00
Principal Forensic	\$180.00
Expert Witness / Testimony - PE	\$210.00
Engineer	\$110.00
Structural Engineering Technician	\$80.00
Civil / Structural Drafting	\$80.00
Secretary/Clerical	\$50.00

REIMBURSEABLE EXPENSES

Expenses connected with the work such as, but not limited to, travel, vehicle rental, equipment rental, meals, lodging will be charged at cost. Outside consultants, material testing and geotechnical services will be charged at cost plus 10 percent. Vehicle mileage will be charged at \$.62 per mile.

Reproduction expenses will be charged as follows:

Copy or Scan (large format)	\$4.00/sheet
Copy or Scan (up to 11x17)	\$.25 each

Effective: 1/1/2019



WINDSOR
MEP ENGINEERS

Fee Proposal • 19004

May 28, 2019

Erik Simonson
Lake Superior Zoo
7210 Fremont St
Duluth, MN 55807

Project: Lake Superior Zoo

Dear Erik,

Windsor MEP Engineers is pleased to provide the Lake Superior Zoo with this fee proposal based on the scope indicated in the preliminary documents you sent us and the following design discussions and decisions made while in schematic design. We look forward to having a chance to review this proposal with you at your convenience.

Project Size: Building Area: roughly 3,600 SF, Exhibit Area: roughly 11,000 SF
Approximate Construction Budget: ~\$550,000

Mechanical System Scope

- Heating, Ventilating, and Air Conditioning
 - Ventilation and den exhaust via energy recovery ventilator
 - Ductwork, Grilles, Registers, and Diffusers
 - Building heating system for freeze protection (semiheated space)

Electrical System Scope

- Lighting photometric design
- Lighting replacement of all existing fixtures with LEDs
- Lighting fixture selection and specification
- Updated lighting controls per code
- New feeders and circuits as required to power new equipment
- Electrical service load calculations and verification

Plumbing System Scope

- Design water systems for 3 exhibits (Bear, Puma, and Porcupine)
 - Water supply for exhibit water features – excluding pump selection and sizing, filtration system design
 - Hose bibbs in animal dens
 - Heat trace as needed on supply piping
 - Sanitary drainage for exhibit water features
 - Floor drains in animal dens
- Civil coordination
- Investigate existing drainage for the pool and den floor drains

- Determine if they properly drain into city sanitary system
- If the drainage system is not code compliant, provide design of proper sanitary system

Design Services and Deliverables

General:

- All construction drawings will be provided in Revit at a Level of Development (LOD) 200 level.

Construction Documents:

- Finalize remaining design calculations and civil and utility coordination
- Provide MEP permit-ready construction documents including the following:
 - Equipment locations and routing
 - Equipment schedules including sizing, capacities, and specifications
 - Ductwork, piping, conduit routing and sizing
 - City of Duluth Energy compliance forms
- Complete State of MN plumbing plan review and approval process

Bidding and Construction Administration

- Review shop drawings
- Provide design clarifications where necessary
- Perform one (1) final punch

Following is a complete list of all project deliverables:

Deliverable	Date	Description
Construction Documents	TBD	100% Complete Drawings and specifications suitable for permit and construction. This includes Minnesota compliance forms, prescriptive option, for Mechanical, Electrical, and Plumbing systems.

Exclusions

- Pool and Exhibit Water Feature Design
- Opinions of Probable Construction Costs
- Commissioning

Additional Services

Services outside of the scope described above will be billed at an hourly rate.

Professional Fees

Windsor MEP Engineers LLC will be compensated on a fixed-fee basis as shown in the table below. In addition to the fixed fee for engineering services, a maximum of \$500 will be invoiced with no markup for reimbursable expenses. Reimbursable expenses include air travel, mileage, rental cars, lodging and per diem, plotting, and messenger services.

We will bill monthly based on hours worked. Fees will be due within 30 days of billing. Fees not paid when due are subject to one (1) percent interest per month starting from the time of billing.

Phase (MP Engineering)	\$ Fixed Fee
Construction Documents	\$3,100
Construction Administration	\$1,700
Total	\$4,800

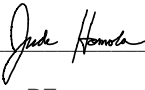
Agreement

We look forward to working with the Lake Superior Zoo and supporting your needs.

Thank you for the opportunity!

Proposed by:

Accepted by:



Jude Homola, PE
President

Signature

Name and Title

Date

Additional Info Attached:

- Hourly Rates
- Level of Development (LOD) explanation



WINDSOR
MEP ENGINEERS

Hourly Rate Sheet

Windsor Engineers
2019 Standard Hourly Bill Rates

Engineering Services

Classification	Rate/Hr
Project Manager	\$150
Lead Engineer	\$120
EIT	\$100
BIM Tech	\$80
Construction Liaison	\$120
Project Assistant	\$65

Rev. 1/2019



WINDSOR
MEP ENGINEERS

Level of Development Specifications

Version 2017 • www.bimforum.org/lod

2.3.2 LOD 200

The Model Element is graphically represented within the Model as a generic system, object, or assembly with approximate quantities, size, shape, location, and orientation. Non-graphic information may also be attached to the Model Element. BIMForum interpretation: At this LOD elements are generic placeholders. They may be recognizable as the components they represent, or they may be volumes for space reservation. Any information derived from LOD 200 elements must be considered approximate.

2.3.3 LOD 300

The Model Element is graphically represented within the Model as a specific system, object or assembly in terms of quantity, size, shape, location, and orientation. Non-graphic information may also be attached to the Model Element. BIMForum interpretation: The quantity, size, shape, location, and orientation of the element as designed can be measured directly from the model without referring to non-modeled information such as notes or dimension call-outs. The project origin is defined and the element is located accurately with respect to the project origin.

2.3.4 LOD 350

The Model Element is graphically represented within the Model as a specific system, object, or assembly in terms of quantity, size, shape, location, orientation, and interfaces with other building systems. Non-graphic information may also be attached to the Model Element. BIMForum interpretation. Parts necessary for coordination of the element with nearby or attached elements are modeled. These parts will include such items as supports and connections. The quantity, size, shape, location, and orientation of the element as designed can be measured directly from the model without referring to non-modeled information such as notes or dimension call-outs.

2.3.5 LOD 400

The Model Element is graphically represented within the Model as a specific system, object or assembly in terms of size, shape, location, quantity, and orientation with detailing, fabrication, assembly, and installation information. Non-graphic information may also be attached to the Model Element. BIMForum interpretation. An LOD 400 element is modeled at sufficient detail and accuracy for fabrication of the represented component. The quantity, size, shape, location, and orientation of the element as designed can be measured directly from the model without referring to non-modeled information such as notes or dimension call-outs.

2.3.6 LOD 500

The Model Element is a field verified representation in terms of size, shape, location, quantity, and orientation. Non-graphic information may also be attached to the Model Elements. BIMForum interpretation. Since LOD 500 relates to field verification and is not an indication of progression to a higher level of model element geometry or non-graphic information, this Specification does not define or illustrate it.

2.4 Example – Light Fixture:

- 100 cost/sf attached to floor slabs
- 200 light fixture, generic/approximate size/shape/location
- 300 Design specified 2x4 troffer, specific size/shape/location
- 350 Actual model, Lightolier DPA2G12LS232, specific size/shape/location
- 400 As 350, plus special mounting details, as in a decorative soffit

NCE CIVIL DESIGN FEE ESTIMATE WORKSHEET

Job No.:	19-0605	Title:	Lake Superior Zoo, Black Bear Exhibit
Date:	6/5/2019	Client:	Tiersa Wodash, DSGW Architects

Activity	Estimated Hours					Extended Cost
	Principal	PE	Tech.	Clerical	Other	
Design Engineering Services						
Project Meetings & Coordination with Disciplines	2	4				\$ 840.00
Existing Conditions and Removals Plan		2	6			\$ 740.00
Site and Grading Plan	2	4	16			\$ 2,120.00
Utility Plan (Sanitary and Storm)		4	8			\$ 1,160.00
Prepare General Notes, Details, and Specifications		2	4			\$ 580.00
Design Engineering Subtotal:	4	16	34	0	0	\$ 5,440.00

Construction Engineering Services (**This is an estimate only.**)						
Shop Drawing Review and Answer Construction Questions		2				\$ 260.00
Construction Inspection and Construction Meetings		4				\$ 520.00
Record Drawing Preparation			6			\$ 480.00
Construction Engineering Subtotal:	0	6	6	0	0	\$ 1,260.00

NCE RATES/HOUR	
Principal	\$ 160.00
PE	\$ 130.00
Technician	\$ 80.00
Clerical	\$ 50.00
Other	\$ -

NCE REIMBURSABLE EXPENSES		QTY.	EXTENDED COST
Mileage (per mile)	\$0.62		\$0.00
Bond Plan Copies (each)	\$3.00		\$0.00
Photocopies	\$0.15		\$0.00
Photographs (each)	\$3.00		\$0.00
TOTAL REIMBURSABLE EXPENSES:			\$0.00

Design Engineering Fee:	\$ 5,440.00
Const. Engineering Fee:	\$ 1,260.00
Contingency: 0%	\$ -
Total NCE Fee:	\$ 6,700.00

Assumptions:

- 1.) Construction Engineering is only an estimate and will be billed hourly at the rates listed above.
- 2.) Boundary and Topographic Survey are not included in this proposal.
- 3.) Wetland work is not included in this proposal.
- 4.) Construction staking is not included in this proposal.
- 5.) Permit fees are to be paid by the owner.

EXHIBIT B



Hourly Rate Schedule and Reimbursable Expenses

	RATE
Principal	\$ 150.00
Architect	\$ 120.00
Intern Design Professional	\$ 95.00
Certified Interior Designer II	\$ 120.00
Certified Interior Designer I	\$ 110.00
Interior Designer	\$ 95.00
Specifications Writer	\$ 105.00
Senior Project Manager	\$ 120.00
Project Manager	\$ 95.00
Cad Technician Senior	\$ 95.00
Cad Technician	\$ 90.00
Graphic Artist	\$ 90.00
Administrative Support	\$ 65.00
REIMBURSABLES	
Mileage	IRS Standard Mileage Rate
Meals & Accommodations	Cost + 10%
Long Distance Telephone	Cost + 10%
Outside Services	Cost + 10%
Blueprint / Mylar Reproductions	Cost + 10%
Shipping Charges	Cost + 10%
Specification Reports	Cost + 10%
Report Reproductions (In-House):	
B/W	\$.15 / per sheet
Color	\$.99 / per sheet
Large Format Printing	\$.26 / sq. ft.
Large Format Color Printing	\$ 7.50 / sq. ft.
Archival Retrieval Fee	\$ 50.00
	As of June 2016