

PROFESSIONAL SERVICES AGREEMENT

This **Professional Services Agreement** ("Agreement") is made this 20th day of March, 2023, by and between the **CITY OF FARMINGTON**, a Minnesota municipal corporation, whose business address is 430 3rd St, Farmington, MN 55024 (hereinafter "City") and **HOISINGTON KOEGLER GROUP INC**, whose business address is 800 Washington Ave. Nm Suite 103, Minneapolis, MN 55401 (hereinafter "Consultant").

PRELIMINARY STATEMENT

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Engineer for engineering services, hereinafter referred to as the "Work", and as outlined on Exhibit "A" attached hereto.

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Consultant to furnish the services set forth on the attached Exhibit "A". The Consultant agrees to perform the services. Consultant shall provide all personnel, supervision, services, materials, tools, equipment and supplies and do all things necessary and ancillary thereto specified on Exhibit "A". The Work shall be performed in accordance with the Contract Documents, which includes this Agreement and the attached Exhibits: Exhibit "A" – Scope of Services, Exhibit "B" – Schedule of Payment and Fee Schedule. In the event any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the following order: (i) this Agreement; (ii) Exhibit "A", (iii) Exhibit "B".

2. REPRESENTATIVES. City has designated Deanna Kuennen, Community Development Director (the "City Representative"), and the Consultant has designated Lance Bernard (the "Consultant Representative"). The City Representative and the Consultant Representative shall be available as often as is reasonably necessary for reviewing the Services and Work to be performed.

3. COMPENSATION FOR SERVICES. Consultant shall be paid by the City for the services described in Exhibit "A" on an hourly basis in accordance with the attached fee schedule, Exhibit "B", but not to exceed \$97,300 inclusive of taxes and reimbursable costs.

- A. Any changes in the scope of the Work which may result in an increase to the compensation due the Consultant shall require prior written approval by the authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.

B. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.

C. The City and Consultant may agree in writing to amend this Agreement for additional service related to the Project and compensation for such services. The following services have not been requested by the City but are available upon written authorization.

1. Meetings in addition to those specified in Exhibit A.
2. Services for deliverables not specifically identified in Exhibit A.

D. Invoices will be submitted electronically (PDF form) to the City via email on a monthly basis as work is completed and shall be payable within 30 days in accordance with this Agreement. Invoices will include a listing of individuals that work on the plan, hours worked, rate of pay, and budget remaining.

4. COMPLETION DATE/TERM. The Consultant must complete the Work Services within twelve months of the date that the City issues a notice to proceed, absent of causes beyond the control of the Consultant. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.

5. CITY RESPONSIBILITIES. The City shall be responsible for the following:

1. Assembly of background information including, but not limited to digital copies of all files, pertinent plans, aerial photographs, base maps, inventory data, available GIS mapping, limited to those that are reasonably available.
2. Arrangements and notification for public meetings and stakeholder meetings.
3. Reproduction and distribution of Project reports as deemed necessary and not otherwise specified in Exhibit A.
4. Participation in team workshops as identified in work scope.
5. Presentation of draft materials to stakeholder groups as identified in work scope.
6. Provide traffic and municipal engineering support to the project as needed.

6. OWNERSHIP OF DOCUMENTS. All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of the City, but Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.

7. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Consultant shall abide by all statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules, and regulations pertaining to the Services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement. Consultant's books, records, documents, and accounting procedures and practices related to services provided to the City are subject to examination by the legislative auditor or the state auditor, as appropriate, for a minimum of six years.

8. STANDARD OF CARE. Consultant shall exercise the same degrees of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. Consultant shall put forth reasonable efforts to complete its duties in a timely manner. Consultant shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Consultant shall be responsible for costs, delays, or damages arising from unreasonable delays in the performance of its duties. No other warranty, expressed or implied, is included in this Agreement. City shall not be responsible for discovering deficiencies in the accuracy of Consultant's services.

9. INDEMNIFICATION. The Consultant shall defend, indemnify and hold harmless the City, its officers, agents, and employees, of and from any and all judgments, claims, damages, demands, actions, causes of action, including costs and attorney's fees paid or incurred resulting from any breach of this Agreement by Consultant, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Consultant, its agents, contractors and employees, relative to this Agreement. City will indemnify and hold Consultant harmless from and against any loss for injuries or damages arising out of the negligent acts of the City, its officers, agents, or employees.

10. INSURANCE.

- a. General Liability. Prior to starting the Work, Consultant shall procure, maintain, and pay for such insurance as will protect against claims or loss which may arise out of operations by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph or required by law.
- b. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 per employee

	\$500,000 per disease policy limit
Commercial General Liability	\$2,000,000 per occurrence \$3,000,000 general aggregate \$300,000 damage to rented premises \$15,000 medical expenses
Umbrella Liability	\$1,000,000 per occurrence \$1,000,000 general aggregate \$10,000 self-insured retention

Commercial General Liability requirements may be met through a combination of umbrella or excess liability insurance.

The City shall be named as an additional insured on the general liability and umbrella policies.

- c. Professional Liability Insurance. In addition to the coverages listed above, Consultant shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name the City as an additional insured.
- d. Consultant shall maintain “stop gap” coverage if Engineer obtains Workers’ Compensation coverage from any state fund if Employer’s liability coverage is not available.
- e. All policies, except the Worker’s Compensation Policy, Automobile Policy, and Professional Liability Policy, shall name the “City of Farmington” as an additional insured.
- f. All policies, except the Professional Liability Policy, shall apply on a “per project” basis.
- g. All policies shall contain a waiver of subrogation in favor of the City.
- h. All policies, except for the Worker’s Compensation Policy and the Professional Liability Policy, shall be primary and non-contributory.
- i. All policies, except the Worker’s Compensation Policy, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement.
- j. Consultant agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following City’s written acceptance of the Work.
- k. It shall be Consultant’s responsibility to pay any retention or deductible for the coverages required herein.

- l. The Consultant's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the City.
- m. Engineer shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing and all insurance policies shall be on ISO forms acceptable to the City.
- n. **A copy of the Consultant's Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with City prior to the start of Consultant's Work.** Upon request a copy of the Consultant's insurance declaration page, rider and/or endorsement, as applicable shall be provided. Such documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such Certificate of Insurance, declaration page, rider, endorsement, certificates, or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations hereunder. City reserves the right to examine any policy provided for under this Agreement.
- o. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify, and hold harmless the City, the City's officials, agents, and employees from any loss, claim, liability, and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Consultant, its subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity in section p, the City may require Consultant to:

- i. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

11. INDEPENDENT CONTRACTOR. The City hereby retains the Consultant as an independent contractor upon the terms and conditions set forth in this Agreement. The Consultant is not an employee of the City and is free to contract with other entities as provided herein. Consultant shall be exclusively responsible under this Agreement for Consultant's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

12. SUBCONTRACTORS. To complete aspects of the project as described in Exhibit A, the Consultant will retain the services of SEH, Inc. The Consultant shall not add any Sub-Consultants without written consent from the City. Consultant shall comply with Minnesota Statute § 471.425.

13. WAIVER. Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

14. ENTIRE AGREEMENT. The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

15. CONTROLLING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. All proceedings related to this contract shall be venued in the Dakota County District Court.

16. COPYRIGHT. Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings, or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom.

17. RECORDS. The Consultant shall maintain complete and accurate records of time and expense involved in the performance of services.

18. MINNESOTA GOVERNMENT DATA PRACTICES ACT. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created,

collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement. Consultant is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Consultant receives a request to release data, Consultant must immediately notify City. City will give Consultant instructions concerning the release of the data to the requesting party before the data is released. Consultant agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Consultant's officers', agents', partners', employees', volunteers', assignees', or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

19. TERMINATION. This Agreement may be terminated by City on thirty (30) days' written notice delivered to Consultant at the address on file with the City. Upon termination under this provision if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and the City may retain another consultant to undertake or complete the work identified in Paragraph 1.

20. NON-DISCRIMINATION. During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

21. SURVIVAL. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

22. SERVICES NOT PROVIDED FOR. Claims for services furnished by the Consultant not specifically provided for herein shall not be honored by the City.

23. SEVERABILITY. The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.

24. CONFLICTS. No officer or salaried employee of the City and no member of the Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void.

25. NOTICES. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

26. WAIVER. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

27. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

Dated: _____, 20__

CITY: CITY OF FARMINGTON

By: _____
Joshua Hoyt
Mayor

By: _____
Lynn Gorski
City Administrator

Dated: _____, 20__

CONSULTANT:

By: _____
_____ [print name]
Its _____ [title]

EXHIBIT “A”

SCOPE OF SERVICES

Work Program

Task 1: Organize the Effort

We will begin the planning process by organizing the effort and developing a thorough understanding of the project and existing conditions. We will work with City staff to collect background materials, solidify responsibilities and project goals, evaluate the project area, and confirm or refine the stakeholder engagement and visioning approach.

Activities and Deliverables:

- Conduct a kick-off meeting with City staff to review roles, determine project goals, confirm assumptions, and discuss key aspects of the project.
- Conduct check-in meetings every two weeks (typically 30-minute phone calls) between HKGi’s project manager and the City’s project manager to discuss project deliverables, coordinate meetings, and confirm schedule and budget adherence.
- Agree on an approach and process for community visioning, including creation of a stakeholder engagement plan.
- Conduct a preliminary review and an audit of the 2040 Comprehensive Plan to confirm specific areas that will require updating.
- Update maps depicting existing conditions, property ownership, and development constraints (e.g., natural resources, topography, wetlands, and waterways).
- Review recent planning efforts (e.g., Dakota County 2040 Transportation Plan) and document key aspects of those plans (e.g., future roadway systems or greenway corridors) that need to be considered when developing alternative land use plans.
- Review existing utility infrastructure to determine its ability to serve future desired land use alternatives within the project area.
- Coordinate with local, regional, and state agencies (e.g., Dakota County, Metropolitan Council, MnDOT, and adjacent jurisdictions) to ensure their plans are taken into consideration in the development of alternative land use plans.

Task 2: Establish an Understanding of the Local Context and a Shared Community Vision

We will work with City staff to initiate interactions with key land owners, stakeholders, and the broader community.

Activities and Deliverables:

- Conduct one-on-one (or small group) meetings (up to 6) with key stakeholders to identify community vision and development interests, issues and opportunities.
- Prepare materials for staff (or other community leaders) to facilitate discussion with other stakeholders and stakeholder groups as needed.
- Conduct a series of developer/real-estate interviews (up to 4) to determine potential markets and trends that may influence short-term land use planning decisions.
- Prepare analysis diagrams that summarize existing conditions, stakeholder input (including vision elements), and the team’s own impressions of the physical site, amenities and opportunities.
- Create a project website for information sharing and gathering general public input. The link will be shared on the City’s website. We will create a section focused specifically on developing a shared

community vision. We anticipate using Social Pinpoint, an application that provides survey functions and interactive maps that allow people to pinpoint a location-based comment.

- A draft document (in graphic and narrative form) will be assembled that highlights a shared community vision. The document will include key terminology (definitions), goals/objectives, and policy directions. We will organize this document to comply with the Metropolitan Land Planning Act and the required plan elements as guided by the regional system plans.

Task 3: Explore the Possibilities

This task will explore and evaluate a range of land use types and patterns. We will create up to three (3) alternative land use plans that respond to the shared community vision and other community input received in the previous task, including the development interests of land owners and the broader community's goals and objectives. The land use plans will be a composite view of how the City might look in the future given a certain set of interrelated assumptions (e.g., Metropolitan Council population, household, job forecasts, and infrastructure capacities). The alternative land use plans will also begin to establish a systematic approach to public infrastructure (roads and utilities) and amenities (parks and open spaces) for the area.

Activities and Deliverables:

- Facilitate a roundtable discussion/workshop to review what we've heard from key stakeholders as well as lessons learned from similar planning work and to kick off the preparation of alternative land use plans.
- Establish criteria that will be used in creating and evaluating alternative land use plans.
- Develop up to three (3) alternative land use plans using GIS and an interactive database/GIS model that documents the assumptions for each alternative. This interactive database will allow City staff to adjust development assumptions (e.g., density ranges) "on-the-fly" to determine their potential impact on population, household, and job forecasts, and infrastructure needs. This tool will also be used to document the City's development capacity (2040 and full build out).
- Begin a risk assessment of the system components for each alternative using previous studies and past plans as a basis:
 - Provide a risk assessment of utility service options and expansion needs to serve the area based on each alternative's development yield.
 - Complete a planning-level analysis and determination of the street network appropriate for the area. This analysis will look into the expected traffic volumes, access spacing, and other factors that impact the roadway network needs.
 - Provide stormwater management strategies at a district-wide level rather than on a project-by-project basis as the area develops.
 - Investigate the possibility of providing parks or open spaces (public or private) as part of future development.
 - Provide planning level cost estimates for future infrastructure needs.
- Create a matrix highlighting each alternative land use plan's development yield, benefits, and challenges.
- Identify strategies or implementation tools for implementing the community's vision and a preferred land use plan.

Task 4: Converge on a Preferred Plan

This task will focus on an engagement process to help stakeholders understand the components of each alternative land use plan and the challenges and opportunities with each. This task will also facilitate a discussion around the design details and system components that could be incorporated with each alternative in order to address major concerns or issues. Input will be combined with the technical

analysis completed in Task 3 to refine and converge the alternatives into a preferred future land use plan and the resulting infrastructure and system recommendations.

Activities and Deliverables:

- Prepare a simple survey to gauge high-level political and community acceptance of each alternative.
- Facilitate an agency meeting (e.g., Dakota County, Metropolitan Council, and adjacent jurisdictions) to discuss the alternative land use plans and system components.
- Facilitate a neighborhood workshop with existing land owners within the project area to discuss the alternative land use plans and system components.
- Facilitate a workshop with City Council/Planning Commission/EDA to review the alternative land use plans and system components.
- Prepare materials for City staff to facilitate discussion with other advisory commissions as needed (e.g., Parks and Recreation Commission or the Water Board).
- Meet with City staff to finalize a preferred land use plan.
- Finalize a system plan framework that articulates the infrastructure needs for the preferred land use plan by providing planning level cost estimates.
- Summarize findings from the public engagement activities.

Task 5: Assemble the Plan

This task will include assembling the preferred land use plan based on the technical review of the alternatives and the engagement process. The preferred land use plan will include a revised land use plan map and an illustrative system plan framework depicting future roadways, development yield data, and development strategies for addressing public infrastructure needs. Additional design details/policy/guidelines will be developed as a mechanism to facilitate future site plans and entitlements. Final deliverables will be prepared to facilitate the comprehensive plan update and amendment processes including materials for submittal to the Metropolitan Council.

Activities and Deliverables:

- Conduct a full assessment of the potential changes to the City's Comprehensive Plan based on the preferred land use plan and system components.
- Conduct a meeting with Metropolitan Council staff to review potential amendments to the Comprehensive Plan. Metropolitan Council staff should include key staff from the transportation, water resources, and utilities sections and others as they may see fit. The purpose of the broader meeting is to identify any issues that may need addressing during this final phase.
- Meet with City staff to finalize the preferred land use plan and recommended changes to the Comprehensive Plan.
- Facilitate a community open house to present draft plans and recommendations.
- Present draft updates and community input to Planning Commission for feedback and recommendation to City Council. We will assist in preparing materials for City staff's presentation to City Council.
- Prepare and update the City's Comprehensive Plan.
- Assist City staff in preparing a Major Comprehensive Plan Amendment application to submit to the Metropolitan Council. City staff can facilitate the subsequent amendment process.

EXHIBIT “B”

SCHEDULE OF PAYMENT AND FEE SCHEDULE

The Consultants scope of work and budget is based on the following task breakdown. The Final Project budget shall adhere to a not to exceed total fee of \$97,700. Actual time spent and fee may vary on a task by task basis.

Task	Task Description	Rounded Hours	Fee Estimate
1.0	Organize the Effort	90	\$ 11,300
2.0	Establish an Understanding	240	\$ 27,600
3.0	Explore the Possibilities	270	\$ 30,200
4.0	Converge on a Preferred Plan	100	\$ 12,100
5.0	Assemble a Preferred Plan	130	\$ 15,200
	Fee HKGI-Total	820	\$ 96,300

expenses \$ 1,000

Grand Total \$ 97,300

HKGi 2023 HOURLY RATES

Principal \$200-290/hr

Associate \$150-200/hr

Senior Professional \$110–160/hr

Professional II \$90-135/hr

Professional I \$50–90/hr

Technical..... \$50-90/hr

Litigation Services \$250-350/hr

Testimony \$275-375/hr

Incidental Expenses:

Mileagecurrent federal rate/mile
Photocopying BW.....5¢/page
Photocopying Color.....25¢/page
Outside Printing..... Actual Cost
Large Format Scanning..... Actual Cost
Lodging and meals..... Actual Cost