

CONSULTANT SERVICE CONTRACT

This Contract is made this 5th day of August, 2021, by and between the CITY OF WINONA, a Minnesota municipal corporation, 207 Lafayette Street, Winona, MN 55987, ("CITY"), and Hoisington Koegler Group Inc., 123 North Third Street, Suite 100, Minneapolis, MN 55401, ("CONSULTANT"); (collectively the "PARTIES").

WHEREAS, CITY requires certain professional services in conjunction with its Comprehensive Plan Update (the "Project"); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the PARTIES agree as follows:

SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the parties hereto pursuant to Section VI, Paragraph K of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY's authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT's effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph K of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

- D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. 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 Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.
1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Worker's Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
 2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, 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 (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's

coverage shall be primary and noncontributory in the event of a loss.

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 – per claim; \$4,000,000 – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$50,000 without the written approval of CITY. If CONSULTANT desires authority from CITY to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that CITY can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and CONSULTANT shall maintain such insurance for a period of at

least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
6. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
7. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
8. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.
9. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
10. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
11. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance and technology errors and omissions insurance, if applicable.
12. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
13. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
14. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless CITY and 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 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, CITY may require CONSULTANT to:

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

CONSULTANT will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

15. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

SECTION II – CITY'S RESPONSIBILITIES

- A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's City Planner, in accordance with Section III of this Contract.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.
- D. Carlos Espinosa, the City Planner for the CITY, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY'S policies with respect to the Project and CONSULTANT's services.

Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's City Planner and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.
- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's City Planner prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or

the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's City Planner as determined by CITY.

SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the

performance or nonperformance of services provided hereunder.

SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

CITY:

Carlos Espinosa
City Planner
207 Lafayette Street
Winona MN 55987
Phone: 507-457-8250
Email: cespinos@ci.winona.mn.us

CONSULTANT:

Jeff Miller, AICP
Associate
123 North Third Street
Minneapolis MN 55401
Phone: 612-338-0800
Email: jmill@hkgi.com

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically

identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.

- F. **Opinions or Estimates of Construction Cost.** Where provided by CONSULTANT as part of Exhibit 1 or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of CITY and CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. CITY acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.
- G. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein.

CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

- H. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated

requirements of this Contract.

- I. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- J. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- K. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- L. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- M. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- N. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- O. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for

CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.

- P. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- Q. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- R. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- S. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- T. **Governing Law.** This Contract shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- U. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.

- V. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.
- W. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- X. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- Y. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- Z. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- AA. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.

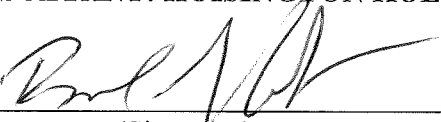
- BB. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- CC. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- DD. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

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SECTION VII –SIGNATURES

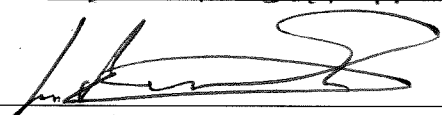
IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CONSULTANT: HOISINGTON KOEGLER GROUP INC.

By: 
(Signature)

Date: 8.5.2021

Title: B Vice President
Print Name: BRAD SCHER

By: 
(Signature)

Date: 08.5.2021

Title: ASSOCIATE
Print Name: Lance Bernard

CITY OF WINONA:

By: _____
Scott D. Sherman, Its Mayor

Date: _____

By: _____
Monica Hennessy Mohan, Its City Clerk

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

Work Plan

The following tasks comprise the work plan for an updated Comprehensive Plan for the City of Winona:

Task 1 - Project Launch

To launch the project, the HKGi team will conduct project orientation meetings. We will meet first with the City Staff team and Engage Winona to organize the project and establish a project management approach.

This meeting will include developing a detailed project schedule with key milestones, establishing recurring project management check-in calls, coordinating a project web site, steering committee management, and coordinating the overall stakeholder engagement approach.

This task will also be used to begin the data collection process and orient the consultant team with the City team and other partners. We will also conduct a project orientation meeting with the Planning Commission and Steering Committee.

Key deliverables include:

- » Detailed project schedule and key milestones including ongoing management/updates of the schedule over the duration of the project
- » Establish an on-line presence (website and socialmedia) to enable periodic updates over the duration of the project
- » Coordinate the stakeholder engagement plan with City Staff and Engage Winona
- » Establish on-going virtual meetings for project management check-ins (every two weeks) – agendas and follow up notes when applicable
- » Agree on database to coordinate and log data collection
- » Agree on approach to the Baseline Report and Key Topics

Meetings

- » Project orientation with Staff, Steering Committee, Planning Commission

Task 2 - Review and Update Background/Baseline Information

The HKGi team will review all relevant background information (plans/policies, studies, data) and summarize findings relevant to the Comprehensive Plan Update. We will also review, update, and expand the 2007 Baseline Report to align with the key topics identified for the Comprehensive Plan.

For the demographics and economics data, we will prepare a trend analysis and draft 2045 projections for population, households, and employment. The intent will be to update and expand the Baseline Report to provide a complete picture of existing conditions related to the key topic areas.

Based on our high level review of the 2007 Baseline Report, we anticipate expanding the housing data and analysis, as well as adding baseline data and analysis related to the historic preservation, accessible government, arts & culture, and park & recreation topic areas.

Key deliverables include:

- » Updated and expanded Baseline Report
- » GIS map package
- » Excel spreadsheets with compiled data

Meetings

- » Staff
- » Steering Committee

Task 3 - Identify Issues & Opportunities (Engagement Phase 1)

The HKGi team will collaborate with the Steering Committee and Engage Winona on the initial phase of community engagement. Engagement Phase 1 will focus on asking:

What are the issues and opportunities that the community wants to address looking into the future?

This engagement effort will occur in tandem with the consultant team's update and analysis of background/baseline data. This two-pronged approach will ensure a comprehensive assessment of the issues and opportunities facing Winona.

Key topic teams will be created, launched, and trained to ensure effective use of their time and energy and that meaningful input is generated to influence the Comprehensive Plan. Key stakeholder groups will be identified and invited to provide input from their unique perspectives.

We will also work with Engage Winona to "mine" previous community input that is relevant to the Comprehensive Plan's key topics before seeking new input. This step is critical to prevent redundancy, identify topics that warrant additional input, and ensure meaningful input is received.

Key deliverables include:

- » Summary of relevant previous community input in text and infographic format
- » Summary of new community input in text and infographic format
- » Identification of issues and opportunities to address in the Comprehensive Plan Update
- » Identification of two additional key topics to include in the updated Comprehensive Plan

Meetings

- » Staff and Engage Winona
- » Steering Committee
- » Key stakeholder groups
- » Update meetings with Planning Commission, City Council, and other commissions
- » General public engagement event

Task 4 - Converge on Key Directions / 2045 Vision (Engagement Phase 2)

Using the Baseline Report, recent topical plans, previous community input, new community input from Engagement Phase 1, and supplemental data collected to date through the planning process, the HKGi team will collaborate with City staff on drafting an updated vision, city values, and guiding principles (or equivalent) that will serve as a framework for preparation of the key topics of the Comprehensive Plan.

Engagement Phase 2 will focus on asking:

What are the ideas/visions for what Winona could be like in 2045?

We will collaborate with Engage Winona to engage the Steering Committee, key stakeholder groups, and the general public to get their ideas. The vision, city values, and guiding principles will be drafted with an eye towards graphic interpretation and iconic identity that can permeate throughout the plan document. This task will also begin to identify potential transformative projects.

Note: The key principles of equity, technology, and sustainability will be threaded throughout the plan.

Key deliverables include:

- » Summary of new community input in text and infographic format
- » Draft Vision, City Values, and Guiding Principles (in document format, electronic format, and presentation format)

Meetings

- » Staff and Engage Winona
- » Steering Committee
- » Key stakeholder groups
- » Update meetings with Planning Commission, City Council, and other commissions
- » General public engagement event

Task 5 - Explore Growth, Development, and Reinvestment Policy Approaches and Priorities (Engagement Phase 3)

Based on the vision, city values, and guiding principles established in Task 4, the HKGi team will facilitate exploration of potential growth, development, and reinvestment scenarios within the City. The HKGi team will work with City Staff to explore and agree upon projected population, household, and employment growth scenarios. The HKGi team will work collaboratively with the City to prepare a series of growth scenarios and subarea concepts. Growth scenarios will look generally at the entire city. The City's existing and traditional development patterns will be identified, described, and used as foundations for the future growth concepts. This task will define potential growth, development, and reinvestment scenarios looking at the following geographies:

1. **Infill Growth** – Infill areas are areas within the current city limits and surrounded by existing physical development or areas that have some development constraints. Generally, these areas include overlooked parcels of land that currently lack structures, are not contaminated sites, and are ready for development.
2. **Redevelopment and Revitalization** – These areas generally include underutilized properties with structures on them that require a more extensive effort to accommodate redevelopment and growth potential. These areas may include more detailed assessment of key community districts, corridors, or nodes. Primary factors that we will explore in these areas include:
 - a. Size of area (acres)
 - b. General condition of property and infrastructure serving the property
 - c. Value (particularly the value of the building improvements as a function of the land value)

- d. Adjacent land uses
 - e. Access to infrastructure, services, and amenities
 - f. Property owners' plans
3. **Edge Growth** – Growth on the edge includes lands either at the edge of the city limits or in relatively close proximity to the city limits. These areas will be evaluated with the following factors in mind:
- a. Topographical and natural resource constraints/amenities
 - b. Existing roadway and utilities capacity
 - c. Known property owner interest/plans
 - d. Existing vacant parcels and platted lots that are already served by infrastructure

Following development of these growth scenarios and concepts, we will conduct community engagement activities to get input on the community's preferences. Engagement Phase 3 will focus on asking:

Which ideas/visions rise to the top and are attainable?

This task will identify and explore the transformative projects to be focused on in the Comprehensive Plan Update.

To the degree that any subarea or transformative project is the focus of a concurrent planning/ design project, we will incorporate the results of those planning studies into the growth concepts. These concepts will explore both physical change areas as well as more programmatic/action plan ideas. Concepts will include a narrative description, general character mapping, precedent imagery, illustrative vignettes, and general feasibility assessment (market, financial, infrastructure). The concepts will be tied to the draft vision, city values, and guiding principles.

Key deliverables include:

- » Identification of key growth areas and transformative projects
- » Growth scenario and transformative project area depictions (presentation board and online electronic format with narrative, graphics, and data)
- » Summary of new community input in text and infographic format
- » Technical memorandum documenting growth scenario methodologies and outcomes
- » GIS map package containing analysis and maps highlighting vacant land and underutilized land with redevelopment potential
- » Excel spreadsheets with data and assumptions regarding development potential

Meetings

- » Staff and Engage Winona
- » Steering Committee
- » Key stakeholder groups
- » Update meetings with Planning Commission, City Council, and other commissions
- » General public engagement event

Task 6 - Prepare Draft 1 of Updated Comprehensive Plan (Engagement Phase 4)

This task includes assembling a full draft of the updated plan document. This project's goal is to update the 2007 Comprehensive Plan rather than produce a completely new plan. All of the 10 key topics will be integrated into the plan document, plus two additional topics to be determined during the process. Many of the 10 key topics align with the chapters of the 2007 Comprehensive Plan. While all of the chapters of the existing plan will be updated, we anticipate the following updates to be more significant:

- » Incorporating/consolidating the Downtown Revitalization Plan/Chapter with the Land Use & Development Plan Chapter
- » Incorporating/consolidating the Riverfront Revitalization Plan/Chapter with the Economic Development Chapter
- » Expanding the Housing Chapter to better address contemporary housing challenges
- » Expanding the Environment Chapter to better address current environmental challenges
- » Adding an Accessible Government Chapter
- » Adding a Transformative Projects Chapter
- » Adding two additional chapters to be determined during the process, which could be new topics or potentially the downtown revitalization and riverfront revitalization topics
- » Weaving the equity, technology, and sustainability themes into all chapters

Fiscal sustainability will be evaluated and incorporated into each chapter to ensure that the updated plan is achievable.

Engagement Phase 4 will occur at the end of Task 6 to enable broad public input into the draft plan and will focus on asking:

What concerns and ideas do you have for making the plan effective and achievable?

Key deliverables include (2 total rounds of document edits):

- » Draft 1 of full plan document
- » Summary presentation materials

Meetings

- » Review session with Staff and Engage Winona
- » Review session with the Steering Committee
- » Key stakeholder groups
- » General public engagement event

Task 7 - Prepare Draft 2 of Updated Comprehensive Plan

Based on input from Staff, the Steering Committee, and the public, we will complete Draft 2 of the plan document.

Key deliverables include:

- » Draft 2 of full plan document
- » Meeting and online engagement presentation materials

Meetings

- » Review session with Staff and Engage Winona
- » Update meetings with Planning Commission, City Council, and other commissions

Task 8 - Prepare Final Plan and Seek Approvals

This task includes making final edits and preparing a final plan document to facilitate the City's formal review and adoption process.

Key deliverables include:

- » Edit and prepare final plan document for review and adoption process
- » Final Plan Document (one electronic PDF print ready and 40 printed copies)
- » All files in electronic form packaged for future use

Meetings

- » Conduct PC meeting presentation and public hearing
- » Conduct City Council meeting presentation and adoption

EXHIBIT 2

CERTIFICATES OF REQUIRED INSURANCE COVERAGES

[Certificates of Insurance attached hereto]

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, CITY will compensate CONSULTANT in accordance with the schedule of fees below for the for time spent in performance of services under this Contract, provided that under no circumstances shall CONSULTANT's total charges to CITY, including expenses, exceed \$200,000.00 ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the CITY before they are incurred by CITY.

CITY shall make periodic payments to CONSULTANT, as provided herein, for time spent and expenses incurred by CONSULTANT upon completion of each of the following project phases, provided however that the respective project phase has been completed by CONSULTANT to the satisfaction of the CITY's City Planner:

Task One – Project Launch	\$10,000
Task Two – Review and Update Background/Baseline Info.	\$30,000
Task Three – Identify Issues and Opportunities	\$15,000
Task Four – Converge on Key Directions/2045 Vision	\$20,000
Task Five – Explore Growth, Development, and Reinvestment	\$30,000
Task Six – Prepare Draft 1 of Updated Comprehensive Plan	\$40,000
Task Seven – Prepare Draft 2 of Updated Comprehensive Plan	\$20,000
Task Eight – Prepare Final Plan and Seek Approvals	\$10,000
Expenses	\$7,000
Contingency	\$18,000
TOTAL	<u>\$200,000</u>

Subject to the foregoing, payment in accordance with the above payment schedule shall be made by CITY to CONSULTANT within thirty (30) days of receipt by CITY of an invoice from CONSULTANT for each phase completed to the satisfaction of CITY's City Planner.

CITY shall be entitled to withhold five percent (5%) of the maximum price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of CITY's City Planner.