

## Standard Professional Services Agreement Form

***THIS FORM SHOULD NOT BE USED FOR AN INDEPENDENT  
CONTRACTOR ENGAGED IN COMMERCIAL BUILDING  
CONSTRUCTION OR IMPROVEMENTS***

Minneapolis Park and Recreation Board Contract Number \_\_\_\_\_  
 Minneapolis Park and Recreation Board Department PLANNING  
 Contractor Social Security Number \_\_\_\_\_  
 OR Contractor Federal Identification Number 41-1434676

### I. OPENING PARAGRAPH

THIS AGREEMENT is made between the Minneapolis Park and Recreation Board, hereinafter referred to as MPRB, and **Hoisington Koezler Group, Inc.**, referred to as the Contractor, for preparation of construction documents.

### II. SCOPE OF AGREEMENT

Contractor agrees to perform the following services for the MPRB:

Complete landscape architectural services related to design development, identification and confirmation of the phase one scope, and preparation of construction documents for phase one of the Lake Calhoun South Shore Parking and Plaza project. See attached scope of services.

III. **COMPENSATION** Contractor shall be compensated at rate of (see attached rate schedule). The total compensation under this Agreement shall not exceed **\$47,200.00**. Contractor shall submit itemized invoices for services rendered.

IV. **EXPENSE REIMBURSEMENT** Reimbursable expenses shall be paid upon submission of itemized invoice to the person signing this Agreement. The MPRB agrees to pay for reimbursable expenses, if reasonably and necessarily incurred. The parties agree that in no event shall the total amount for reimbursable expenses exceed **\$1,650.00**. This sum is not included in the compensation set out in Paragraph III, Compensation.

V. **EFFECTIVE DATE AND TERMINATION DATE** This Agreement shall be in full force and effect from **8/29/08** through **12/31/09** unless otherwise extended by the MPRB or terminated earlier under Paragraph XVIII, Cancellation, Default and Remedies.

VI. **SUBSTITUTIONS AND ASSIGNMENTS** The following person(s) will perform services by the Contractor:

Upon prior approval by the MPRB, the Contractor may substitute other persons to perform the services. If substitution is permitted by the MPRB, the Contractor shall furnish information to the person signing this Agreement to allow proper review of the qualifications of the substituted person. No assignment of this Agreement shall be permitted without the written amendment signed by the MPRB and the Contractor.

- VII. **CONTRACT ADMINISTRATION** All provisions of this Agreement shall be coordinated and administered by the person identified in Paragraph XIX.
- VIII. **AMENDMENTS** No amendments may be made to this Agreement after signing by the parties, except for extensions of time, increases in compensation or increases or reduction of the services to be performed so long as the limit of \$50,000 is not exceeded. If that amount is to exceed \$50,000, the Mayor and the Minneapolis Park and Recreation Board must approve the amendment by formal Board action.
- IX. **INDEPENDENT CONTRACTOR** The MPRB and the Contractor agree that the relationship created by this Agreement is that of independent contractor, and not of employer and employee, a joint venture or a partnership. The Contractor retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Agreement. The Contractor shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the performance of services hereunder. The Contractor shall be responsible for the compensation and benefits of the Contractor's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to the Contractor under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the Contractor, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax. Therefore, neither the Contractor nor its employees shall acquire rights to tenure, wages, workers' compensation benefits, unemployment compensation benefits or other rights or benefits offered to employees of the MPRB, its departments or agencies. The Contractor and its employees shall not act as or represent themselves to be an agent, representative or employee of the MPRB.
- X. **CONTRACTORS'S INSURANCE** If any insurance is required under this Agreement the Contractor shall maintain that insurance identified in Exhibit A, which is attached and made part of this Agreement.
- XI. **DATA PRACTICES** The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor will immediately report to the MPRB any requests from third parties for information relating to this Agreement. The MPRB agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the MPRB, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure of use of data protected under state and federal laws.
- XII. **COMPLIANCE WITH THE LAW** Contractor agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. C.363), the Minneapolis Civil Rights Ordinance (Ch 139), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, religion and sexual harassment. In the event of questions from the Contractor concerning these requirements, the MPRB agrees to promptly supply all necessary clarifications. Violation of any of the above laws can lead to termination of this Agreement.
- XIII. **AUDITS** The Contractor agrees that the MPRB, 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, and records that are relevant and involve transactions relating to this Agreement.

- XIV. **APPLICABLE LAW** The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise under this Agreement will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Contractor.
- XV. **OWNERSHIP** All materials prepared for the MPRB by Contractor and for which Contractor has been paid (the "Materials"), shall be remitted to the MPRB by the Contractor upon completion, termination or cancellation of this Agreement. The Contractor shall not use, willingly allow, or cause to have such Materials used for any purpose other than performance of the Contractor's obligations under this Agreement without the prior written consent of MPRB. It is further agreed that all right, title and interest in all copyrightable material which the Contractor shall conceive or originate, either individually or jointly with others and which arises out of the performance of this Agreement, will be the property of the MPRB and are by this Agreement assigned to the MPRB along with ownership of any and all copyrights in the copyrightable material. Where applicable, works of authorship created by the Contractor for the MPRB in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act except as provided in this provision.
- XVI. **CONFLICT AND PRIORITY** In the event that material conflict is found between provisions in this Agreement, the Contractor's Proposal, if any, or the MPRB's Request for Proposals, if any, the provisions in the following rank order shall take precedence: 1) Agreement; 2) Proposal; and last 3) Request for Proposals.
- XVII. **DEFENSE AND INDEMNIFICATION** The Contractor will take all reasonable precautions necessary to protect the public against bodily injury or property damage, and will defend, release, indemnify, and hold the MPRB harmless from all claims, damages and losses that may result in bodily injury or property damage by reason of any willful or grossly negligent act or omission on the part of the Contractor or any of its subcontractors, agents or employees, while engaged in the performance of this Agreement; any and all claims, liens, and the claims of liens for labor services performed or equipment or materials furnished under this Agreement.
- XVIII. **CANCELLATION, DEFAULT AND REMEDIES** Either party to this Agreement may cancel this Agreement upon thirty (30) days written notice, except that if the Contractor fails to fulfill its obligations under this Agreement in a proper and timely manner, or otherwise violates the terms of this Agreement, The MPRB has the right to terminate this Agreement, if the Contractor has not cured the default after receiving seven (7) days written notice of the default.

Notwithstanding the above, the Contractor shall not be relieved of liability to the MPRB for damages sustained by the MPRB as a result of any breach of this Agreement by the Contractor. The MPRB may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the MPRB is determined. The rights or remedies provided here shall not limit the MPRB in case of any default, error or omission, by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute. Nothing in this Agreement shall be construed as a waiver of any right, remedy, liability limit or immunity of the MPRB under law.

XIX. **NOTICES** Any notice or demand, authorized or required under this Agreement shall be in writing and shall be sent by certified mail to the other party as follows:

To the Contractor:

Name Paul Paige  
Address Hoisington Koegler Group, Inc.  
123 North Third Street, Suite 100  
Minneapolis, MN 55401

Payable to:

Name Hoisington Koegler Group, Inc.  
Address 123 North Third Street, Suite 100  
Minneapolis, MN 55401

To the MPRB:

Name Judd Rietkerk  
Address 2117 West River Road  
Minneapolis, MN 55411

The parties being in Agreement, have caused this Agreement to be signed as follows:

FOR THE CONTRACTOR

By 

Its VICE PRESIDENT


By 

Its PRESIDENT

FOR THE MPRB:

By 

Its General Manager

By   
Secretary to the Board

Date 08 September 2006

Coding Structure:

Fund 14300 Department 9101000 Activity PC104

Account 801601 Job/Proj. Number 910AP487