

FINANCE COMMITTEE

10-0639R

RESOLUTION AUTHORIZING AN AGREEMENT FOR APPRAISAL SERVICES WITH THE VALUATION GROUP, INC. RELATED TO THE VARIOUS TAX COURT PROCEEDINGS TOTALING NOT TO EXCEED \$37,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with The Valuation Group, Inc., for appraisal services anticipated to be needed during 2011 related to various tax court proceedings in the total amount of not to exceed \$37,000, payable from the Assessor's Budget, Account 110-125-1213-5441.

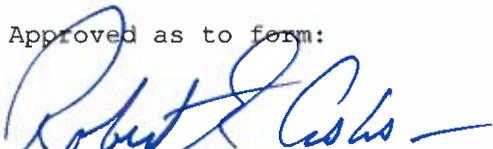
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ASSESSOR/ATTY REA:blj 12/8/2010

STATEMENT OF PURPOSE: This resolution authorizes an agreement with The Valuation Group, Inc., to provide appraisal services necessitated by various tax court proceedings during the year 2011 on an as-needed basis.

At this point in time the City Assessor is anticipating a significant number of classification or valuation appeals during 2011, very nearly all of which involve commercial or industrial properties. As the Assessor's Office has only one commercial appraiser on staff and some commercial and industrial properties require evidence and analysis of value on a regional to national level, additional services required by these tax court proceedings must be contracted for.

Normally, negotiations with the property owner and his or her attorney will continue until shortly before the date set for trial at the tax court. To keep costs down, the Assessor tries to avoid using the services of the outside appraiser until trial appears inevitable and so, when the decision is made that trial preparations must be made, swift implementation is required.

This resolution will allow the administration to react quickly when it becomes evident that trial preparation must be undertaken so that the City's position can be protected without incurring unnecessary cost.

(Appraisal service costs of \$10,000 from The Valuation Group were incurred in 2010 related to tax court petitions on both K Mart stores in Duluth.)

**AGREEMENT FOR PROFESSIONAL SERVICES
APPRAISAL SERVICES
THE VALUATION GROUP, INC.**

THIS AGREEMENT, entered into this ___ day of _____, 2011, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", and THE VALUATION GROUP, INC., a Minnesota corporation, hereinafter referred to as "Consultant".

WHEREAS, City's Assessor's Office, in conformance with its obligations under Minnesota law, has furnished a determination of value of various properties in Duluth, Minnesota for property tax purposes ; and

WHEREAS, certain property owners have disputed that determination and has filed an appeal from the imposition of property taxes on the above property based on that dispute; and

WHEREAS, City is in need of professional appraisal services to independently support the Assessor's determination of value; and

WHEREAS, Consultant has represented that it is qualified to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I

Scope of Professional Services

Consultant agrees that it will, at the direction of the City Assessor and in cooperation with City, conduct an independent appraisal of various properties to establish the value of such properties for real estate tax purposes in accordance with industry standards and provide other professional services generally relating thereto as City staff may, from time to time, request. In the event of any conflict between the terms of the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.

ARTICLE II

Professional Fees and Payment

City hereby agrees to reimburse Consultant for "Eligible Costs" incurred by it in the performance of the work as so directed by the City Assessor under the terms and conditions of this Agreement in an amount not to exceed Thirty-seven Thousand and

00/100ths Dollars (\$37,000) to complete the services. For the purposes of this Agreement, "Eligible Costs" shall mean the costs incurred by Consultant for salaries, wages and fringe benefits paid to or on behalf of employees providing services relating to the work provided hereunder at the rates set forth in attached Exhibit A and those out-of-pocket expenses related thereto which have been previously approved by City's Assessor (the "Assessor"). Requests for reimbursement shall be made no more frequently than monthly and shall be accompanied by such documentation as City shall reasonably request. Upon receipt of said request and the appropriate documentation, City shall promptly reimburse Consultant for the "Eligible Costs" up to the amount set forth above. All such reimbursement payments shall be made out of the Assessor's Budget, 110-125-1213-5441.

ARTICLE III

Assignability

Consultant shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

ARTICLE IV

Term

Consultant shall commence performance of this Agreement upon the signing thereof, shall meet the reasonable time frames established in writing by the City Assessor and shall complete performance thereof by December 31, 2011.

ARTICLE V

Termination of Services

City may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of City and Consultant shall promptly deliver the same to City. Consultant shall be entitled to compensation for services properly performed by it to and including the date of written notice of termination of this Agreement, including reimbursable expenses.

ARTICLE VI

Standard of Performance

Consultant agrees that all services to be provided to City pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

ARTICLE VII

Records and Inspections

A. Establishment and Maintenance of Records

Records shall be maintained by Consultant in accordance with requirements prescribed by City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of three (3) years after receipt of final payment under this Project.

B. Documentation of Costs

Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Reports and Information

Consultant shall be responsible for furnishing to City records, data and information as City may require pertaining to matters covered by this Agreement.

D. Audits and Inspections

Consultant shall ensure that at any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

E. Confidentiality of Information

All reports, data, information, documentation and material given or prepared by the Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from City except as required for the

performance of Consultant's services or as required by law. Pursuant to Minnesota Statutes chapter 13 (Minnesota Government Data Practices Act), Contractor agrees to maintain and protect data on individuals received, or to which Contractor has access, according to the statutory provisions applicable to the data. No private, public, or confidential data developed, maintained or reviewed by Contractor under this agreement may be released to the public by Contractor or its employees or representatives. It is further understood that Contractor shall not, unless otherwise authorized by the St. Louis County Attorney's Office, disclose any information to the media or other third parties relating to the specific details of any documents, discussions, or meetings which may arise during the performance of services under this Agreement. All requests for data or information from third parties shall be directed to said County Attorney's Office for response.

F. Ownership of Data

All survey notes, reports, design plans, specifications, special studies, records and other data prepared under this Agreement shall become the property of City upon completion or termination of the services of Consultant. Consultant can maintain its own work file of the above described data in a manner which allows Consultant to meet the standards of its accrediting agencies.

ARTICLE VIII

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Consultant as an agent, representative or employee of City for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Consultant while so engaged and any and all claims whatsoever on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the

intentional or negligent acts or omissions of Consultant while performing the work specified by this Agreement.

ARTICLE IX

Indemnity and Insurance

A. Indemnity

Consultant agrees on behalf of itself that it shall defend, indemnify and save harmless, City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or of Consultant, by reason of the death of or injury to person or persons or the loss of or damage to property arising out of Consultant's performance of its obligations under this Agreement. On ten (10) days' written notice from any of City, Consultant will appear and defend all lawsuits against City growing out of such injuries or damages.

B. Insurance

1. Liability Insurance

Consultant shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability.
- b. Automobile liability coverage.
- c. Independent contractors--protective contingent liability.
- d. Personal injury.
- e. Contractual liability covering the indemnity obligations set forth herein.

2. Workers' Compensation

Consultant shall procure and maintain continuously in force Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees liability insurance shall be carried in limits meeting or exceeding the requirements of the State of Minnesota for such insurance.

3. Professional Liability Insurance

Consultant shall procure and maintain continuously in force Professional Liability Insurance in an amount not less than \$1,000,000 combined single limit in any year; and if the "Accord Form" of certificate is used, the words "endeavor to" shall be stricken therefrom. Provided further, that in the event that the Professional Malpractice Liability Insurance is in the form of "Claims Made" insurance, sixty (60) days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide City with either evidence of new insurance coverage conforming to the provisions of this Paragraph which will provide unbroken protection to City or, in the alternative, to purchase, at its own cost, extended coverage under the old policy for the period the Statute of Repose runs; the protection to be provided by said "Claims Made" insurance shall remain in place until the running of the Statute of Repose for claims related to services provided under this Agreement.

C. Requirements for All Insurance

All insurance required in this Article IX shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. City shall be named as an "additional named insured" on each liability policy other than the Professional Liability and Workers' Compensation policies of Consultant.

D. Certifications

Lessee to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. City does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) – or equivalent, as**

approved by the Duluth City Attorney's Office. Lessee shall be permitted to obtain the insurance required under this Lease Agreement on a "blanket" basis, and shall be entitled to satisfy any insurance requirements with a combination of primary liability and umbrella coverage.

ARTICLE X

Civil Rights Assurances

Consultant and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

ARTICLE XI

Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City and their respective agencies which are applicable to its activities under this Agreement.

ARTICLE XII

Notices

Notice to City or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City: City of Duluth Assessor
Department of Public Administration
Room 108 City Hall
Duluth, MN 55802

Consultant: Paul G. Bakken
The Valuation Group, Inc.
3655 Plymouth Blvd.
Suite 105
Plymouth, MN 55426

ARTICLE XIII

Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE XIV

Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

ARTICLE XV

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XVI

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

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

CITY OF DULUTH, a Minnesota
municipal corporation

THE VALUATION GROUP, INC.,
a Minnesota Corporation

By: _____
Mayor

By: _____
Its: _____

Attest:

By: _____
City Clerk

Approved:

Countersigned:

Assistant City Attorney

City Auditor

EXHIBIT A

Proposed Hour Charges for Appraisal Services Rendered
By The Valuation Group, Inc.

Staff Member Hourly Charge

Paul Bakken	\$275.00
Senior Staff	\$140.00
Junior Staff	\$ 80.00