

PURCHASING AND LICENSING COMMITTEE

11-0137R

RESOLUTION AUTHORIZING AGREEMENT WITH E. O. JOHNSON COMPANY, INC. FOR INVENTORY, ANALYSIS AND RECOMMENDATIONS RELATED TO THE CITY'S IMAGING REPRODUCTION FACILITIES IN THE AMOUNT OF \$29,500.

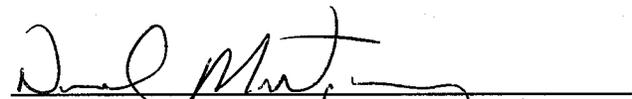
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with E. O. Johnson Company, Inc. for professional services related to the inventorying and analysis of the city's needs for printing and other image reproduction services and for developing a comprehensive plan to meet the city's needs for such facilities along with recommendations for implementing that plan in the amount of not to exceed \$29,500, payable from Fund 110-117-1107-5319 (General Fund, Management Information Services, MIS).

Approved:

  
Department Director

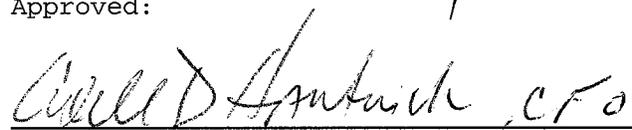
Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

PRCH/ATTY REA:dma 03/08/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with E. O. Johnson Company, Inc. to provide professional services related to evaluating the City's needs for on-site printing and image reproduction facilities and to help the City to develop and implement a comprehensive plan for acquiring, installing and using such facilities.

Under this contract, Johnson would compile a complete and comprehensive inventory of all equipment owned or leased by City which is used to print or reproduce text or other images from whatever source, including computer generated text or images, and to create or receive such text or images whether by photocopying, as documents created or received in portable document format or by facsimile. They will determine the number, size and length of the work product generated from each such piece of the equipment, analyze the need for use of the equipment by each City staff person using the equipment to determine the type of use they make of the equipment, the volume of their use, the type and character of their use, the frequency of their use and the time involved in their use and develop a recommended inventory of equipment which will meet the City's needs including but not limited to the recommended type, size, configuration and capabilities of equipment to be used, its recommended placement and location within City facilities. They will also develop a recommended ownership or leasing or program or combination thereof along with a maintenance program and scheduled replacement program which will most efficiently and cost-effectively meet the City's needs and assist the City in developing a competitive bidding specifications to implement the plan.

Johnson was selected for this contract because of their expertise in assisting users in selecting, placing and installing image reproduction equipment based on an extensive expertise and experience in selling and placing such equipment with other users. But to insure their objectivity in providing these services to the City, Johnson has agreed that it will be ineligible to compete for any contract to sell or lease such equipment to the City for 5 years.

**AGREEMENT FOR PROFESSIONAL SERVICES  
(SERVICES)**

**E.O. JOHNSON COMPANY, INC.**

THIS AGREEMENT, entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City", and E. O. JOHNSON COMPANY, INC., a Wisconsin corporation, hereinafter referred to as "Consultant".

WHEREAS, City owns, maintains, services and uses a large number and variety of pieces of office equipment for the purposes of printing, photocopying, creating and receiving documents in portable document format and sending and receiving documents by means of facsimile transmission; and

WHEREAS, City is in need of professional services to analyze the City's needs for such equipment and services and to assist the City in meeting those needs in the most effective and cost-efficient manner; and

WHEREAS, Consultant it is qualified to provide such services to City related to the work; and

WHEREAS, Consultant is willing to provide these services under the terms and conditions hereinafter set forth

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 and in cooperation with City's Chief Information Officer (the "CIO"), perform the follow-described services:

A. General Services

Consultant shall provide the follow generally-described services:

1. Compile a complete and comprehensive inventory of all equipment owned or leased by City which is used to print or reproduce text or other images from whatever source, hereinafter referred to as the "Equipment", including but not limited to computer generated text or images, and to create or receive such text or images whether by photocopying, as documents created or received

in portable document format or by facsimile; the product of all such uses of the Equipment shall be collectively referred to hereinafter as the "Product".

2. Determine the number, size and length of the Product generated from each such piece of the Equipment.
3. Analyze the need for use of the Equipment by each City staff person using the Equipment to determine the type of use they make of the Equipment, the volume of their use, the type and character of their use, the frequency of their use and the time involved in their use.
4. Develop a recommended inventory of Equipment which will meet the City's needs for generation of Product which will meet the City's needs including but not limited to the recommended type, size, configuration and capabilities of Equipment to be used, its recommended placement and location within City facilities.
5. Develop a recommended ownership or leasing or program or combination thereof along with a maintenance program and scheduled replacement program which will most efficiently and cost-effectively meet the City's needs.
6. Assist the City in developing a competitive bidding specifications which will assist the City in accomplishing the goals set forth in Subparagraphs D and E above.
7. Perform such other related services as shall, from time to time, be requested by the CIO.

B. Consultant's Proposal

Consultant's services shall be performed in a manner more specifically described in its proposal as described on that document dated December 13, 2010, attached hereto and made a part hereof as Exhibit A (the "Proposal"), 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 Exhibit A and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling.

## ARTICLE II

### Professional Fees and Payment and Consideration

#### A. Payments

In consideration of the provision of the services referenced in Article I above in an acceptable manner, City hereby agrees to reimburse Consultant for said services as set forth on Exhibit A, attached hereto and made a part hereof, up to a maximum amount of Twenty-nine Thousand Five Hundred Dollars (\$29,500) to complete the services. Requests for reimbursement of expenses 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 approved expenses up to the amount set forth above. All payments under this Agreement shall be made out of General Fund, Information Services, MIS 110 117 1107 5319.

#### B. Additional Consideration

In order to insure the completeness, objectivity and integrity of the services to be provided to City by Consultant under this Agreement, as additional consideration under this Agreement, Consultant agrees that it shall be ineligible to participate in any process having the objective of supplying to City all or a part of any equipment used to create or reproduce any of the Product addressed in this Agreement for a period of Five (5) years from the date of Consultant's work under this Agreement.

## 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 be deemed to have commenced performance of this Agreement upon the date of execution thereof by the City, and shall complete performance thereof no later than June 30, 2011, unless the time for performance therefore is extended by the CIO.

## 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.

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.

## 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 or any Team member while performing the work specified by this Agreement.

## ARTICLE IX

### Indemnity and Insurance

#### A. Indemnity

Consultant agrees 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, and limits of One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars for Leased Premises damage liability. 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. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. 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 Lessee'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, for itself and all Team members and their 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  
Chief Information Officer  
411 West First Street  
Room 202 City Hall  
Duluth, MN 55802

Consultant: E. O. Johnson Company, Inc.  
8440 West Stewart Avenue  
Wausau, WI 54401

#### 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  
development authority

E. O. JOHNSON COMPANY, INC. a  
Wisconsin Corporation

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved:

Countersigned:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Auditor