

PURCHASING & LICENSING COMMITTEE

12-0445R

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH SCALZO ARCHITECTS, LTD., TO PERFORM A CONDITION SURVEY AND FEASIBILITY STUDY OF EXISTING MAINTENANCE BUILDINGS IN VARIOUS DULUTH LOCATIONS FOR AN AMOUNT NOT TO EXCEED \$38,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement with Scalzo Architects, Ltd., substantially the same as Public Document No. _____ on file in the office of the city clerk, for performance of a condition survey and feasibility study of existing maintenance buildings in various locations, for an amount not to exceed \$38,000, payable from the Capital Improvements Fund 450, Dept./Agency (Finance) 030, Object 5520 (Buildings & Structures), Project No. CP2012-1202b).

Approved:



Department Director

Purchasing Agent 

Approved as to form:



Attorney

Approved for presentation to council:



Chief Administrative Officer

Approved:



Auditor

FAC MGMT/PRCH DS:le 12/24/2012

STATEMENT OF PURPOSE: This resolution authorizes a professional services agreement with Scalzo Architects, Ltd., for performance of a condition survey and feasibility study of existing maintenance buildings for an amount not to exceed \$38,000.

The project scope involves:

- (a) A condition survey and current use evaluation for each of the seven

maintenance buildings; the information gathered will be used as a reference to complete the feasibility study.

- (b) A feasibility study to determine the best use of existing buildings and evaluate the anticipated cost of required updates and modifications. The study will also include an evaluation of options related to a centralized location for maintenance facilities and the feasibility for a centralized fueling station, including alternative fuel options, possibly shared among city, county, DTA (Duluth Transit Authority) and others.

Scalzo Architects is a full-service architecture and interior design firm located in Duluth, Minnesota.

Requisition 12-0508

AGREEMENT FOR PROFESSIONAL SERVICES

SCALZO ARCHITECTS, LTD. AND CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is made by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City," and SCALZO ARCHITECTS, LTD, 1901 South Street, Duluth, Minnesota 55812, a corporation, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the Consultant is a full-service architecture and interior design firm;

WHEREAS, the City desires to utilize Consultant's professional services for performance of a condition survey and feasibility study of existing maintenance buildings in various locations (the "Project");

WHEREAS, Consultant has represented that it is qualified and willing to perform services set forth in its proposal;

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

I. Scope of Professional Services

Consultant agrees that it will, at the direction of and in cooperation with City's Facilities Project Specialist, perform all services in accordance with its proposal (the "Proposal") dated June 1, 2012, attached hereto as Exhibit "A," and incorporated herein by reference. 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.

II. Professional Fees and Payment

In consideration of the provision of the services referenced in Article I above, City hereby agrees to reimburse Consultant for said services as set forth on Exhibit A up to maximum amounts specified as follows - (1) Thirty-Seven-Thousand, Seven-Hundred-Fifty and 00/100 (\$37,750.00) dollars to complete services; and (2) Two-Hundred Fifty and 00/100 (\$250.00) dollars for expenses limited to document reproduction - all payable from the Capital Improvements Fund 450, Dept./Agency 030 (Finance), Object 5520 (Buildings & Structures), Project CP2012-1202b), Vendor Code 6981, Requisition No. 12-0508. All Services provided shall be at the rates set forth in the Consultant's April 1, 2012 Fee Schedule attached Consultant's Proposal. All bills for services rendered shall be submitted monthly to the City's Facilities Projects Specialist and shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall reimburse Consultant up to the amounts set forth above.

III. General Terms and Conditions.

- A. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.
- B. Assignment. Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.
- C. Data and Confidentiality.
1. 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 six (6) years after receipt of final payment under this Agreement.
 2. 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.
 3. 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.
 4. 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.
 5. 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.
 6. Ownership of Data
Consultant agrees that all work created by Consultant for the City is a "work

made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work (“City Property”). Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

D. Standard of Performance.

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

E. Contract Period.

1. Consultant shall commence performance of this Agreement upon the execution thereof and performance shall be completed by December 31, 2012, unless terminated earlier as provided within.
2. The 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 the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved of payment of any fees with respect to the services of Consultant which gave rise to such breach.

F. Independent Contractor.

1. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker’s Compensation Act of the State of Minnesota on behalf of Consultant’s employees while so engaged, and any and all claims whatsoever on behalf of Consultant’s employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant’s employees shall not be entitled to

any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

2. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
3. Contractor expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

G. Indemnity.

Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

H. Insurance.

1. Consultant shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.
 - (a) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - (b) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
 - (c) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 30 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the

City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state 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 this Agreement.

- (d) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.
 - (e) 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.
 - (f) 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.**
2. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Consultant, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Consultant, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
 3. Certificates showing that Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
 4. The City shall be named as an additional insured on each liability policy other than

the professional liability and the workers' compensation policies of the Consultant.

5. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

I. Laws, 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 the City with respect to their respective agencies which are applicable to its activities under this Agreement.

J. 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.

K. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth
1532 W. Michigan Street
Duluth, MN 55806
Attn: Facilities Projects Specialist

Consultant Scalzo Architects, Ltd
1901 South Street,
Duluth, Minnesota 55812
Attn: William B. Scalzo, President

L. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or

failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

M. Severability

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

N. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits 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.

O. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Signatures on next page.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers, duly authorized.

CITY OF DULUTH

SCALZO ARCHITECTS, LTD

By

By

Mayor

Company Representative

Attest:
City Clerk
Date: _____

Its
Title of Representative
Date: _____

Approved as to form:

City Attorney

Department Director

Purchasing Agent

EXHIBIT A
Consultant's Proposal



June 1, 2012

Ms Tari Rayala, AIA
Facility Projects Specialist
City of Duluth
1532 West Michigan Street
Duluth, Minnesota 55806

Re: **Architectural Services Proposal**
Condition Survey/Feasibility Study
City of Duluth Maintenance Buildings

Scalzo Architects, Ltd. is pleased to present our proposal to complete a **Condition Survey and Feasibility Study of the existing Maintenance Buildings for the City of Duluth.** Professional fees to be invoiced at current hourly rates not to exceed a maximum of Thirty-Seven Thousand Seven Hundred and Fifty Dollars (\$37,750.00) plus reimbursable expenses limited to document reproduction.

Project Scope

Provide Condition Survey and current use evaluation for each of the seven (7) Maintenance Buildings operated by the City of Duluth. Condition Survey to include the site and site access, building envelop, structure and systems such as HVAC, plumbing and electrical. The evaluation to identify the current usage and complete needs assessment. Information gathered during this phase of the Project to be compiled into a comprehensive report to be used as reference to complete the Feasibility Study.

The Feasibility Study will determine the best use for the existing buildings and evaluate the anticipated cost of required upgrades and modifications. The Study will also include prioritizing modifications necessary to improve efficiency and reduce the cost of operations.

Maintenance Buildings include:

1. East Toolshed (Tree Farm) 3525 Riley Road
2. Street Maintenance (East Toolhouse) 1123 Mesaba Avenue
3. Facility Management 1532 West Michigan Street
4. Street Maintenance (West Toolhouse) 105 North 40th Avenue West
5. Park Maintenance (Parks Toolhouse) 110 North 42nd Avenue West
6. Fleet Services 4825 Mike Colalillo Drive
7. Traffic Maintenance (Lund Toolhouse) 2407 Commonwealth Avenue

In addition to the evaluation of existing buildings the Feasibility Study is to include an evaluation of options related to a centralized location for maintenance facilities and the feasibility for a centralized fueling station, including alternative fuel options, possibly shared between City, County, DTA and others.

Basic Services

Phase I – Conditions Survey

Task

- Site visits and facility observation.
- Documentation of current use.
- User meeting and needs assessment.
- Existing site plan and assessment.
- Existing building plans.
- Building condition assessment.
- Energy use assessment.
- Building code evaluation and assessment
- Unified Development Code (UDC) evaluation and assessment
- Prepare preliminary report
- Coordination with Facility Projects Specialist.

Deliverables

- Assessment Report

Phase II – Feasibility Study

Task

- Meeting / coordination with Facility Projects Specialist.
- Prioritize needs.
- Cost analysis and evaluation for centralized facility.
- Determine Action Plan.
- Evaluate prospective locations.
- Develop facility program and space requirements.
- Develop preliminary site layout.
- Coordinate with facility partners.
- Refine planning documents.
- Final review with Facility Projects Specialist and appropriate City Staff.

Deliverables

- Final Report / Graphics.
- PowerPoint presentation.

Owner Provided Information

- Provide information regarding the requirements and limitations for the project
- Existing building and site plan documents.
- Hazardous materials assessment
- Site Survey, (if required).
- Geotechnical Exploration, (if required).

- Fixtures, Furnishings and Equipment (FF & E).
- Access to facilities for activities necessary to the performance of services

Additional Services

Additional Services outside the Basic Services outlined by this Proposal will be provided upon authorization, and will be compensated for on an hourly rate basis in accordance with the current Hourly Rate Schedule.

Hourly Rate Schedule/Reimbursable Expenses

Authorized reimbursable expenses, plan review fees, and preparation of as-built record drawings (if required); will be billed in addition to the Basic Services.

- Refer to the attached schedule

Termination of Services

Either party may terminate this Agreement upon 10 days written notice should the other fail to perform obligations. In the event of termination, the amount owing for services rendered and reimbursable expenses will be due to the Architect within 7 days.

Ownership of Documents

Documents prepared by Scalzo Architects, Ltd. and Consultants shall remain the property of the Architect and may not be used by the Owner without written consent of the Architect.

Payments

Invoices will be submitted monthly for services and reimbursable expenses and are due upon receipt. Amounts that are unpaid thirty (30) days after the invoice date shall bear interest at the rate of 1.5% per month. A minimum charge of \$10.00 shall be assessed on all overdue payments.

Should the account remain unpaid for 90 days after the date of the invoice, the Owner shall be responsible for the cost of collection, including attorney fees. Scalzo Architects Ltd. may without waiving any claim or rights against the Owner and without liability to the Owner terminate professional service without notice.

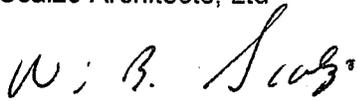
Special Conditions

Scalzo Architects, Ltd. assumes responsibility for the Work performed directly by this firm or consultants as outlined by this Proposal.

The Architect shall perform services consistent with professional skill and care ordinarily provided by architects practicing in the same or similar services. Work to be performed as expeditiously as is consistent with such professional skill and care to maintain orderly progress of the project.

This proposal or any agreements resulting from this Proposal are subject to negotiation if the Scope of Work is significantly increased.

Scalzo Architects, Ltd



William B. Scalzo, CCS, CSI, AIA
President/CEO

Should this Agreement be satisfactory, please sign, date and return one copy to this office as our authorization to proceed.

Authorized Signature

Date



FEE SCHEDULE

Principal Architect	\$ 155.00 /hr
Project Manager	\$ 100.00 /hr
Designer	\$ 83.00 /hr
Lead CADD Technician	\$ 83.00 /hr
CADD Technician	\$ 72.00 /hr
Administrative	\$ 60.00 /hr
Expert Witness/Testimony	\$ 220.00 /hr

REIMBURSABLE EXPENSES

Mileage	\$ 0.55.5 cents/mile
Travel, Meals & Accommodations	Cost
Telephone (long distance)	Cost
Outside Services	Cost
Shipping Charges	Cost
Plotting/Large Format Copies	\$ 1.00 /sf or Cost
Specification/Report	\$ 0.15 /face or Cost
Reproduction	Cost
Photography	Cost
Other	Cost

Effective April 2, 2012 (Subject to change without notice)

1901 South Street
Duluth, Minnesota 55812
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Fax: 218 /222 3535