

PURCHASING & LICENSING COMMITTEE

14-0070R

RESOLUTION AUTHORIZING AN AGREEMENT WITH CR-BUILDING PERFORMANCE SPECIALIST, INC., FOR PROFESSIONAL SERVICES IN THE IMPLEMENTATION OF A CITYWIDE ASSET MANAGEMENT SYSTEM FOR AN AMOUNT NOT TO EXCEED \$75,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with CR-Building Performance Specialist, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for professional services in the implementation of a citywide asset management system for an amount not to exceed \$75,000, in accordance with city-approved plans and specifications, and the consultant's proposal of \$75,000, dated January 2, 2014, payable as follows:

- (a) \$25,000 from Energy Management Fund 257, Dept./Agency 015 (Public Admin.), Object 5461 (Energy Efficiency Projects); and
- (b) \$50,000 from Capital Equipment Fund 250, Dept./Agency 015 (Public Admin.), Div. 2014 (Fiscal Year), Object 5580 (Capital Equipment).
Project No. CE250-E1410

Approved:



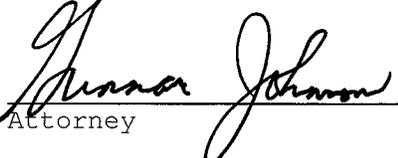
Department Director
Purchasing Agent DS

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution authorizes an agreement with CR-Building Performance Specialist, Inc., (CR-BPS) for professional services in the implementation of a citywide asset management system for \$75,000. The system will utilize the same VFA software and implementation program used by St. Louis County. VFA, Inc., will bill the county for the city's seat and in turn, the county will bill the city. (Essentially, the county is adding an addendum to the county license agreement and then, billing the county under that contract for the city seat.)

The proposed system will provide a platform for decision-making, capital program development, funding, and facility and energy reporting that will eventually include all major city facilities and skywalks.

CR-BPS is a full service architectural and engineering firm with an emphasis on asset management and is located in Isabella, Minnesota.

Requisition No. 14-0159

AGREEMENT FOR PROFESSIONAL SERVICES
CR-BUILDING PERFORMANCE SPECIALIST INC.
&
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 **CR-BUILDING PERFORMANCE SPECIALIST, INC.**, 9926 National Forest Lodge Road, Isabella, MN 55607, a Minnesota corporation, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the City has licensed a facility asset management software tool ("VFA asset management") through the City's Joint Powers Agreement with St. Louis County; and

WHEREAS, the Consultant is a full service architectural and engineering firm with an emphasis on asset management; and

WHEREAS, the City desires to utilize the Consultant's expertise in the implementation of a citywide VFA asset management system for the City;

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 the City's Property and Facilities Manager, perform all services in accordance with its proposal (**the "Proposal"**), **dated January 2, 2014, 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 a maximum of **Seventy-Five-Thousand and no 100 dollars (\$75,000.00)** inclusive of all costs and expenses, payable as follows:

\$25,000.00 from Energy Management Fund 257, Dept./Agency 015 (Public Administration), Object 5461 (Energy Efficiency Projects);

\$50,000.00 from Capital Equipment Fund 250, Dept. /Agency 015 (Public Administration), Div. 2014 (Fiscal Year), Object 5580 (Capital Equipment).

All Services provided shall be at the rates set forth in the attached Consultant's Proposal. All bills for services rendered shall be submitted monthly to the City's Property & Facilities Manager 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. 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.
 3. 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.
 4. 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.
 5. 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 and that the Services will conform in all material respects in accordance with the terms of this Agreement and Consultant's Proposal. Consultant also agrees to maintain an adequate number of qualified personnel to perform the Services who are knowledgeable with the Facility Management Software tool and are able to comply with the obligations hereunder.

E. Contract Period.

1. Consultant shall commence performance of this Agreement upon the execution thereof and performance shall be completed by **June 30, 2015**, unless terminated earlier as provided within. This Agreement may be extended for a period not to exceed of six months upon written notice to the Consultant by the Property and Facilities Manager.
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**
Attn: Erik Birkeland
Property & Facilities Manager
Facilities Management
1532 West Michigan Street
Duluth, MN 55806

Consultant **CR-Building Performance Specialist, Inc.**
(CR BPS)
Attn: Nancy Schultz, AIA, LEED AP
President
926 National Forest Lodge Road
Duluth, MN 55607

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 amended only by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

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

CITY OF DULUTH

**CR – BUILDING PERFORMANCE
SPECIALIST, INC.**

By _____

By _____
Company Representative

Mayor

Attest:
City Clerk
Date: _____

Its _____
Title of Representative
Date:

Approved as to form:

City Attorney

Countersigned:

Auditor

Department Director

Purchasing Agent

EXHIBIT A
Consultant's Proposal



January 2, 2014

RE: Asset Management – Facility Condition Assessments
Energy Efficiency and Conservation Planning
City of Duluth, Minnesota

Erik Birkeland
Property & Facilities Manager
City of Duluth
1532 West Michigan Street
Duluth, MN 55806

Dear Mr. Birkeland,

After several meetings and discussions with you, it is our understanding that you would like to implement a City-wide asset management system for the City of Duluth, MN. This program is to utilize the same software and implementation program for asset management as has been implemented by St. Louis County, MN. This system will provide a platform for decision-making, capital program development, funding, and facility and energy reporting that will include all major City facilities and skywalks over time. During our past meeting and subsequent discussions, the following strategies were determined as the appropriate plan to maximize your budget and facility/energy planning goals.

We greatly appreciate the opportunity to continue to working with you to complete assessments for the City. Thus, our proposed fee for auditing buildings, collecting energy data, and auditing the skywalks for the establishment of an asset management system for the City of Duluth is comprised as follows:

PROJECT UNDERSTANDING

The City of Duluth Property and Facilities Management Division (PFM) manages a broad array of facility assets owned by the City, including a number of skywalk bridges. It is our goal to assess each of these facilities and skywalks and enter all “baselines and systems” for each facility into an online Facility Management Software tool (VFA.facility), analyze the data collected, and determine appropriate initial capital plans that will serve the City over time as a reference, planning and facility condition assessment tool.

This asset management system will also be customized to include energy management and project considerations (and other sustainability attributes deemed important to the city). CR-BPS will also collect this information - working with the City's Energy Coordinator – to inform this integrated asset management system, use as a baseline energy data tracking mechanism, and to benchmark facilities when considering energy related improvements, funding, and capital planning for stand-alone projects

or to define solutions to be integrated in to larger infrastructure renewal and/or upgrades at each facility.

Summary of Assets to Audit:

The following is a list of City owned and managed assets requested to be audited:

- A. See the Facilities and Skywalk Asset List (City's Asset List) provided by the City.

Implementation Strategies

1. The City will purchase one VFA facility software seat using St Louis County's License. This will allow the city and the county to benchmark a wide range of buildings in their region using real-time relevant data, to cross-reference city and county facilities data, and to share the capital management of the Joint Law Enforcement Building while at the same time allowing the city to maintain its facility data separate from the county for the purpose of solely city-focused capital planning efforts.
2. CR-BPS will assist the City in the customization of the VFA facility software tool to allow for Conditions/Energy/Sustainability data for facilities, skywalks and energy reporting. A longer range strategy will be to include customizing VFA to import City of Duluth utility data from the Utility Department (Comfort Systems) and Minnesota Power data collection systems.
3. CR-BPS will complete a facility and energy assessment for each asset and enter the "systems and baselines" data into the VFA facility tool.
 - a. The City staff will assist as needed
4. After all the above listed items are complete, CR-BPS will complete the implementation of the assets outlined in the City's Asset List, which will include identifying of deficiencies, needs, costs, energy consumption/use/cost, etc. for the selected assets. A longer range strategy will be to train key City staff to run and operate the VFA facility tool.
5. After each of the assets has been fully assessed and all data entry complete, CR-BPS will meet with the City to conduct a brainstorming ideas session to inform capital plans and budgets for each facility.

Based on the above identified strategies we propose the following services and respective cost for the work described.

SCOPE OF SERVICES

Task 1 – VFA facility Software

The City is to purchase one VFA facility software seat that is linked to St. Louis County's VFA facility seat. One seat is estimated to be \$6,000 per year, (per conversation and quote from VFA sales representative). CR-BPS will work with VFA Corporation to establish the license and VFA will invoice the city directly for the "seat" under St. Louis County's license.

Task 2 – Customize the VFA facility software to allow for Energy/Sustainability reporting for facilities and skywalks

Using St. Louis County's facility management system as a guideline, CR-BPS will customize, within the limitations of the County's license software, the City's software to develop all standards and reports.

Task 3 – Coordinate and Collect (Project Kick Off meeting)

The City and CR-BPS will meet for a Project Kick-Off meeting to review the City's Asset List, assessment schedule, and data to be collected. We will also review the VFA facility data entry standards and protocols.

CR-BPS will also review all background information for each facility including historic condition and energy information.

City Deliverables for each asset:

1. City's Asset List – list of all assets to be assessed (with square footages and location) and priority (the order in which assets will be assessed)
2. Based on available existing information and plan sets by the City, provide CR-BPS with base data for each asset. This data should include location, asset number, name, date of construction, number of floors, gross area, uses, types of heating and cooling systems, site maps, principal asset activities, and occupancy schedules. Much of this information is found in existing drawings from past projects that have occurred with the respective asset. Also, lease information for each facility.
3. Base data for the skywalks
4. Base energy, water, etc. data for each asset. We understand that energy, gas, and water, data have already been collected by your Energy Coordinator

CR-BPS Deliverables for each asset:

1. Customized VFA facility software with baseline data entered
2. Develop and identify key standardized reports for facilities and skywalks as well as energy, water, waste (other sustainability metrics), etc.

Task 5 – On-site Assessments and Energy Audit

CR-BPS staff will conduct an on-site assessment for each asset. CR-BPS will need to be escorted by a City Facilities Team representative; preferably the building manager or operations director. The goal of this is to gain access to the building as well as interview the City Facilities Team representative about the building's current condition, operations, maintenance and any other historical information. CR-BPS will document the facility information in the form of notes and photographs.

CR-BPS will also collect from the city energy (and other sustainability attributes as decided by the City) for each asset. By benchmarking the buildings Energy Usage Index (EUI) (kbtu's/sq-ft), water usage, etc. and by comparing that benchmark with what is normal for a building of similar quality, and occupancy we are able to diagnosis not only problems in the system, but we are also able to help direct the team towards achieving the best opportunities for building improvements.

City Deliverables for each asset:

1. Available staff and baseline documents for the asset. Provide an escort for each assessment for building access and information – preferably an individual who knows the building best (historical, operational, maintenance, etc. information)

CR-BPS Deliverables for each asset:

1. Assessment
2. Preliminary data entry

Task 6 – Data Entry

CR-BPS staff will enter all facility, skywalk and energy data into the VFA.facility software tool.

City Deliverables for each asset:

1. Coordination of staff for answers to respective questions about each asset

CR Deliverables for each asset:

1. VFA.facility software that has each asset's "system and baseline" data entered
2. VFA.facility software with "systems and baseline" data entry completed
3. Develop standardized reports for energy/water/waste info
4. VFA.facility software that has each asset "requirements and actions" data entered

Task 7 – Analyze the Data (Brainstorming Sessions Ideas)

CR-BPS staff will meet with the City to analyze all data collected for each asset. These brainstorming idea sessions are valuable in determining the most viable course of action for building improvements.

Because we also collected utility data, we will also consider life-cycle thinking during the brainstorming process to come up with ways to reduce consumption, cost and size of systems.

City Deliverables for each asset:

1. Available City staff

CR Deliverables for each asset:

1. Data entry for all respective brainstorming ideas including actions, requirements and identified projects
2. Develop an initial capital plan for each asset
3. Identify plausible energy improvement projects

Task 8 – Complete more assessments of remaining assets and implement long range strategies for optimization of the VFA.facility tool. as approved by the City Such as but not limited to the following:

1. Continue adding facilities, skywalks and energy data to the Asset Management System as needed
2. Train respective staff.
3. Customize utility department & Minnesota Power usage and bills into software to port into the VFA.facility tool.

SCHEDULE

Mindful that this will be a multi-year implementation process spanning all of 2014, 2015, and perhaps 2016; our proposed schedule for 2014 is to proceed with work upon authorization from the City and

complete Tasks 3-7 for as many buildings as time and budgets allow within the scope of this Phase 1 – 2014 professional services contract (approximately 1-3 assets per month [Depending on the size and complexity of the asset] – assessed, data entry, analyze data and brainstorming session for each asset). CR-BPS will work with the City to determine which buildings will be assessed first. The number of buildings assessed may change depending on schedules, timing and building size/location.

The following is the anticipated phasing of the work:

Notice to proceed: February 1, 2014
Task 1-2: February 13 – 31, 2014
Task 3-7: March 1 – December 31, 2014
Task 8: To be reviewed in December 2014

COMPENSATION

Compensation shall be on an hourly basis, based on actual hours worked for CR-BPS personnel assigned to the project, plus reimbursable expenses, to be billed monthly. Our total estimated fee for the identified Scope of Services listed above is a **not-to-exceed amount of \$75,000**. This fee includes all reimbursable expenses. This fee is based on a breakdown of \$50,000 General Facilities assessment; and \$25,000 energy and sustainability assessments.

This fee includes completion of Tasks 1-7 using an Asset Fee Schedule that will be provided to the city upon their request. Cost for Task 8 (Additional buildings) will be determined based on the difficulty of the assets and the direction the City would like to proceed regarding completion of the work.

We look forward to working with you on this project. I can provide a formal contract to you upon request. If you have any questions, or need additional information, please do not hesitate to call me at my office at 218.323.7710 or on my cell at 612.360.3889.

Respectfully Submitted,

CR-BUILDING PERFORMANCE SPECIALISTS, INC.



Nancy Schultz, AIA, LEED AP
President