

PURCHASING & LICENSING COMMITTEE

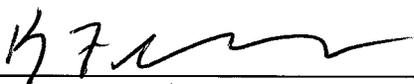
14-0056R

RESOLUTION AUTHORIZING A CONTRACT WITH SUIT, LLC, FOR OFFICE SPACE LAYOUT, DESIGN, AND COORDINATION SERVICES FOR AN AMOUNT NOT TO EXCEED \$45,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Suit, LLC, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for office space layout, design and coordination services in the phase one remodeling of Duluth city hall, first floor and part of fourth floor, in accordance with city-approved plans and specifications, and the consultant's proposal of \$45,000, dated December 15, 2013, terms net 30, payable from the Capital Improvements Fund 450, Dept./Agency 025 (Stimulus Act ARRA), Object 5520 (Buildings & Structures), Project CP2009-0929b, 2009 Capital Projects, city hall remodeling.

Approved:



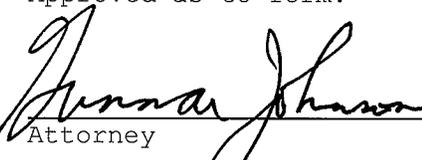
Department Director
Purchasing Agent 

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution approves a contract with Suit, LLC, for office space layout, design and coordination services, for the first phase of the Duluth city hall remodeling project to include first floor and part of 4th floor, for an amount not to exceed \$45,000.

Project work consist of the design of work spaces per the master plan, coordination of moves, identification of and working with existing furniture, meeting with the project team, and prioritizing with facilities management.

The consultant Suit, LLC, is located on Haines Road in Duluth.

Requisition 14-0136

AGREEMENT FOR PROFESSIONAL SERVICES

SUIT, LLC & 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 **SUIT, LLC, 4007 Haines Road, Duluth, Minnesota 55811**, a Minnesota corporation, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the Consultant is an architectural design consulting firm; and

WHEREAS, the City desires to utilize the Consultant's expertise and *office space layout, design and coordination services in the Phase I Remodeling of Duluth City Hall First Floor and Part of 4th Floor*; and

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 **December 15, 2013, 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 **Forty-Five-Thousand and no 100 dollars (\$45,000.00)** inclusive of all costs and expenses, payable from the Capital Improvements Fund 450, Dept. /Agency 025 (Stimulus Act ARRA), Object 5520 (Buildings & Structures 5520), Project CP2009-0929b – 2009 Capital Projects, City Hall remodeling, Vendor Code 7420, Requisition 14-0136. 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.

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 **June 30, 2015**, 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
Attn: Erik Birkeland
Property & Facilities Manager
Facilities Management
1532 West Michigan Street
Duluth, MN 55806

Consultant

Suite, LLC

Attn: Rose Sorensen
President
4007 Haines Road
Duluth, MN 55811

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

SUIT, LLC

By

Mayor

Attest:

City Clerk

Date: _____

Approved as to form:

City Attorney

Department Director

Purchasing Agent

By

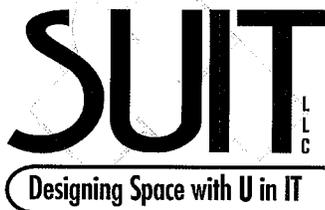
Company Representative

Its

Title of Representative

Date:

EXHIBIT A
Consultant's Proposal



4007 Haines Road
Duluth, MN 55811

Office: 1.218.722.7204
FAX: 1.218.727.2633
E-Mail: rose@suitllc.com

ESTIMATE

Prepared For:

Erik Birkeland
City of Duluth
Facility Management
1532 West Michigan Street
Duluth, MN 55806

Date	Client Code	Project #	Sub-Account
12/15/2013	DCH13	130234	M-01

Project: Duluth City Hall Building / Remodeling Project - Phase I

Line	Qty	Unit	Description	Unit Price	Net Total
1	1.0	Lot	Design Services: (Non-Taxable) Phase I : 1st Floor and part of 4th Floor Design work spaces per master plan; Coordinate moves; identify & work with existing furniture; Meetings w/ Project Team; prioritize per Facility Mgmt. Time & Expenses to be billed monthly at the following rates: Labor: Regular: \$95 per Hour Overtime & Holiday: \$142.50 per Hour Mileage: Duluth: No Charge Other: Current Mileage Rate Parking: Duluth: No Charge Other: 100% of Actual Travel Expenses: Lodging: 100% (not to exceed GSA Max. per Month) Meals: 100% (not to exceed GSA Max. per Month)		\$ 45,000.00
2	0.0	Lot	Sales Tax: MN (Lines 1 @ 6.875%) (Non-Taxable) Design of Existing Space & Product is Non-Taxable	\$ 45,000.00	\$ -
3	0.0	Lot	Sales Tax: Duluth (Lines 1 @ 1%) (Non-Taxable) Design of Existing Space & Product is Non-Taxable	\$ 45,000.00	\$ -
Total Estimate					\$ 45,000.00

Terms:

- 1) A Valid Purchase Order (or signature & date below) is required prior to starting the project
- 2) Payment for additional design and consulting will be based on \$90 per hour plus expenses.
- 3) Estimate is valid for 30 days.
- 4) Invoice balance(s) are due upon receipt and will be submitted monthly.
- 5) A 10% late fee will be assessed on any unpaid balance after 30 days.
- 6) It is the responsibility of the Client to ensure all approved designs are sound Architecturally, Electrically, and Mechanically, including HVAC, Ergonomics, Information Technology and so forth.
- 7) It is the Responsibility of the Client to ensure design compliance to all governing codes and regulations.
- 8) Field measurements and data collected is limited to what is visible and readily accessible at the time it is taken; the Client is responsible to make sure the field information is accurate & to provide information for 'hidden' items, which are relevant to the design.
- 9) Applicable taxes will be added to the Total unless proof of Tax Exempt status is provided prior to invoicing.
- 10) Receipt of a Purchase Order, signature (below) and/or payment, constitutes agreement to these terms, the project scope and the Contract for Services

Authorized Signature & Title

Date