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**Addendum 2**  
**Solicitation 24-99697**  
**RFP for Pre-design Services for Consolidated Maintenance Facility**

This addendum serves to notify all bidders of the following changes to the solicitation documents:

1. The scoring criteria for this solicitation are replaced with the following criteria:

Prior experience with similar work	40%
Qualifications of the bidder and personnel	20%
Work Plan/Schedule	20%
Cost	20%

2. Please include a rate sheet in the cost proposal.
3. Proposers should identify in the technical proposal what method would be used to determine and propose costs should a scope change be needed.

The following questions asked are answered in *italics* below.

1. **Has the City identified potential sites for the consolidated maintenance facility? If so, how many are under consideration?** *The City has done some preliminary searching, which will be shared with the awarded contractor. No decision has been made on any sites as we will be relying on the awarded proposer to help determine site needs.*
2. **Will the selected A/E firm be required to produce “several iterations of building concepts” (as identified on Page 7 of 7 in the RFP) for each potential site or just one preferred site?** *Proposal should assume two iterations at each of three sites and include a price per iteration so the awarded contract can be adjusted if needed.*
3. **Appendix C – The sample contract is specific to design phases beyond pre-design. Can the City provide an updated agreement specific to master planning services?** *An updated agreement is attached and replaces the original in its entirety, any planning services will be covered in the study and report phase.*

4. **What is the difference between Technical Proposal Items #4 and #9 (as identified on Page 5 of 7 in the RFP)?** *Delete item 9. Item 4 is replaced in its entirety with the following:*
- Scope of work envisioned, including but not limited to:*
- a. *Specific objectives*
  - b. *Detailed deliverables*
  - c. *Timeline of services*
  - d. *Work plan that identifies hours for each service needed (this can be the same as what is in the cost proposal with costs removed in the technical proposal).*
5. **Is the City of Duluth exploring zero-emission vehicles such as electric and/or hydrogen fuel vehicles?** *Yes. The City currently has four fully-electric and two hybrid vehicles. The new facility/facilities should be built to accommodate more in the future.*
6. **Do proposing firms need to provide resumes of key personnel who will work on phases beyond pre-design?** *Yes. Resumes should be provided for both key personnel and high-level members of the potential team. For this reason, the page limit has been increased to 25 pages.*
7. **In Part III – Criteria for Selection, is the 20% Cost criteria based on pre-design phase only or pre-design phase plus phases beyond pre-design?** *Evaluation will consider 10% cost criteria for pre-design phase, and 10% subjective cost criteria for all phases.*
8. **In Part II – Cost Proposal 12, are the phases beyond pre-design those indicated in Appendix C (Schematic Design, Design Development, Construction Documents, Bidding, Construction, and Post-Construction)?** *Yes. Please see the updated agreement attached.*
9. **Is the A&E firm responsible for developing construction cost estimates or will they be provided by the Construction Manager at Risk (CMAR)?** *The Construction Manager at Risk will provide construction cost estimates. The A&E firm is responsible for providing probable total costs including allowances for charges of all professionals and consultants, land, rights-of way (see paragraph 1.1.6.5. of updated agreement attached) as well as providing data, information, and support for the CMAR. The A/E firm and CMAR need to work together to provide accurate cost estimates.*
10. **With selection for all phases, is the City of Duluth’s intent to have the design team include services and/or team members for Geotechnical, Survey, Building Envelope Commissioning, and Building Systems Commissioning? Or are these services that Duluth will procure separately to support the design team?** *During the pre-design phase, the design team will be responsible for survey and geotechnical services. After*

*pre-design, the design team will be responsible for surveys. All other services will be contracted by the City, with the design team working with and providing support and any pertinent data to the City's consultants. Building systems commissioning will be addressed in the design phase.*

- 11. For Predesign and regarding site selection, would the city require the design team to have survey or geotechnical services included for potential site investigations, or are those services that Duluth will procure separately for as needed investigations?**

*The design team will be responsible for geotechnical and survey services for the pre-design phase. The city will provide services during the construction phase. Environmental assessments will need to take place for potential sites.*

- 12. We are anticipating only coordinating with any outside real estate resources for potential site evaluation, and not providing those as services for Predesign. Is that correct? The awardee will coordinate with City real estate resources. Should the City work with other real estate resources, the awardee will also need to work collaboratively with that consultant. The awardee will not be responsible for finding a site but will need to assess the suitability of each identified site. Proposers should assume analysis of all existing sites being replaced and five additional sites. Include a per-site cost in case adjustments are needed after contract award. The outcome of predesign is to have a site selected, and a concept and budget that we can bring into design.**

- 13. As a physical submission, is the 20-page limit referring to page faces (10 physical pages) or 20 physical pages? The page limit refers to page faces and has been increased to 25 pages.**

- 14. Are there any format restrictions? Ex: is an 11x17 or landscape 8.5x11 page acceptable formats? If 11x17 was acceptable, would there be a physical page limitation on that paper size? The expectation is that 8.5x11 pages will typically be used except for large tables which are easier to read on 11x17 pages. Additionally, if tables in the technical proposal contain so much content that they are difficult to read even at 11x17, a separate flash drive containing that info is requested and should NOT be sealed with the cost submittal. If the table is only part of the cost proposal, there is already a requirement to include a flash drive sealed within the cost proposal. The flash drive sealed with the cost proposal will not be available during technical proposal review, thus the request for an additional flash drive if needed.**

15. **With only one physical copy, is there a preferred binding method if the city was going to reproduce for distribution?** *A binding method that allows for easy unbinding (i.e., large paper clip) is preferred.*

The sample contract for Architect's services begins at the Schematic Design Phase, with the Pre-Design considered an additional service per 1.2. Sections of 1.2 include services such as survey and environmental studies of prospective sites (1.2.3) and making measured drawings of existing facilities (1.2.5), as well as other later phase activities. Two primary questions in Article 1:

16. **Execution of this sample contract would be for all basic services with the pre-design as additional service, is this the correct contract format for pre-design?** *Please see the revised contract attached. Additionally, the City will work with the awarded proposer to finalize an agreed-upon scope of work document prior to be included as a contract exhibit.*
17. **Does the city require survey, environmental study of sites (1.2.3), and measured drawings (1.2.5) as part of the design team's services for pre-design?** *Survey and a cursory environmental review of potential sites is required to determine if any further environmental review is necessary. There is no need to provide measured drawings of the existing buildings.*
18. **5.1.1 – Is the intent of Duluth to have the pre-design phase be an additional service per 1.2 and thus be an addition to the fee percentage breakdown schedule, or have pre-design services be part of the total Schematic Design Phase for the complete project?** *See the updated agreement attached.*
19. **8.1 – This section requires the Architect to release copyright to the City of Duluth of all work products. Work Product is not specifically defined as “Instruments of Service”, but items stated are considered deliverables of the intellectual property of the Architect.** *The City has historically used the language in the updated agreement without issue. However, the City will review section 8.1 and determine if any adjustments to the language can be made.*
20. **Would the City agree to an edit which would align more closely with the AIA contract documents regarding copyright, in which the Architect remains copyright holder, granting the City nonexclusive license to use all Work Products, provided the City has performed its obligations under this agreement for the purpose of this project and subsequent maintenance and improvements of the project?** *See the answer to #19.*
21. **We would also request that while the City has the ability for reuse under this section with the nonexclusive license, that the final phrase “and which damage is directly**

caused by such abuse.” be removed from the section, or minimally the last word changed to “reuse”. *The updated agreement attached has new language and no longer refers to “abuse.”*

22. **13.1 Hold Harmless and Insurance**— This article includes the word “defend”, which renders the section uninsurable from a professional liability perspective. It is our interpretation that this section refers to events that would be covered primarily by Architect’s general liability policy, for which the City will be an additional insured, and for which defense is covered as part of the policy and thus no reason to add “defend” in reference to Professional Liability. We request at a minimum that the word “defend” be removed from this section, with necessary edits to language as required by the removal. The remainder of the section would thus be insurable and remain without objection. If the city does not remove “defend” from this section, would the city be willing to either limit liability to the Architect for defense to a percentage of Architect’s fee? *The updated agreement has revised hold harmless and insurance language and is not subject to negotiation.*
23. **If the city does not agree to remove "defend" or limit liability, would the city agree to adding language to define Architect's liability such as: “to the extent Architect’s obligations in 13.1 are covered by Architect’s Professional Liability Insurance as described in 13.2(c).** *See the answer to question 22.*
24. **14.1 – General Conditions.** This section refers to City Part II, “Supplemental General Conditions for Federally Assisted Activities”. Is this project a Federally assisted facility in actions or funding that needs to adhere to these conditions? Can these conditions be provided in addendum for review? Do these conditions have any project process requirements that need to be addressed by the design team? *This language is no longer in the updated agreement attached.*
25. **Can the city provide a roster, or a number of people or roles within the City of Duluth that will be evaluating the technical proposals?** *The evaluation team will consist of City staff members who have a stake in the process and outcome. No specific information will be provided.*
26. **In the cost proposal evaluation, how are costs being evaluated (lowest lump sum, tasks proposed / hours per task, etc)?** *Costs will only be reviewed for the top three proposers after review of the technical proposals. The three costs that will be reviewed will be analyzed to determine what is the best value for the City.*
27. **The evaluation and award is stated as based on a 100 point scale at the weighting stated. Is there any weighting to the interview process?** *Three firms will be selected*

*based on a 100-point scale before interviews. Should interviews be required, the interviewed firms will then be ranked as 1<sup>st</sup> choice, 2<sup>nd</sup> choice, 3<sup>rd</sup> choice.*

**28. Does the city anticipate interviewing the stated top three scored technical proposals regardless of cost evaluation?** *The City will perform cost evaluation of the top three technical proposals and determine whether to interview any, or all, of those three firms. Tentative interview dates have been narrowed down to November 14 and 15.*

**29. Should we be asked to interview would you like us to interview with the predesign project team members or should we bring the entire project team (Predesign and Schematic Design through Construction)?** *We expect the project manager and anyone else the firm feels necessary for the interview, limited to 10 people. We expect firms selected to interview to do so in person, although accommodations could be made for any consultants outside the area the firms would like to include in the interview process.*

Please acknowledge receipt of this Addendum by including a copy of it with your proposal. The pages included will not count toward any page limitation, if any, identified in the RFP.

Posted: **October 17, 2024**

**Attachments:**

Architect Agreement Rev. 10.16.2024

AGREEMENT FOR ARCHITECTURAL SERVICES

ARCHITECT  
&  
CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the CITY OF DULUTH, hereinafter referred to as Owner, and ARCHITECT, located at ADDRESS, hereinafter referred to as Architect for the purpose of rendering services to the Owner.

WITNESSETH THAT:

WHEREAS, subject to necessary agreements and approvals as hereinafter set forth, it is the intention of the Owner to undertake description of project (the “Project”), located at address, the scope and character of the Project is described as identified in the Request for Proposals RFP #; and

WHEREAS, if the proposal was solicited by means of a Request for Proposals (RFP), the said RFP and any addenda shall be deemed to be part of this contract and have been incorporated by reference hereto. However, in the event of a conflict between the Request for Proposals, the Architect's response to the Request for Proposals or the terms and conditions of this Agreement, the terms of this Agreement shall be controlling.

WHEREAS, the Owner desires to engage the Architect to render those architectural services in connection with the Project as are hereinafter specified below to be included in this Agreement;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. The Architect shall perform and provide those architectural services specified below with regard to the Project” as directed by the Owner’s Property & Facilities Manager. Subject to the terms and conditions of this Agreement, the specific services are further described in Architect’s Proposal entitled “title of proposal”, dated date of proposal, and attached hereto as Exhibit A, which is made a part hereof, provided that in the event of a conflict between the Proposal and any of the terms

and Conditions of this Agreement, the terms and conditions of this Agreement shall govern.

II. The Owner shall compensate the Architect, in accordance with the Terms and Conditions of this Agreement.

## TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

### ARTICLE 1

#### Architect's Services

##### **BASIC SERVICES**

1.1. The Architect's Basic Services consist of up to six phases described below as Phases A through G; the specific services included in this Agreement are checked below and include normal structural, mechanical, electrical, and civil engineering services and any other services except "Additional Services" as defined in Section 1.2 below.

1.1.2. A more particular description of each phase is contained in this Article I, "Basic Services", of the agreement:

<u>Phase</u>	<u>Description</u>
<input type="checkbox"/> A.	Study and Report Phase/Pre-Design Phase
<input type="checkbox"/> B.	Schematic Design Phase
<input type="checkbox"/> C.	Design Development Phase
<input type="checkbox"/> D.	Construction Document Phase
<input type="checkbox"/> E.	Bidding Phase
<input type="checkbox"/> F.	Construction Phase
<input type="checkbox"/> G.	Post Construction Phase

1.1.3 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants as enumerated in this Agreement and any other services included in Section 1.2.

1.1.4 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the construction work related to the Project (the "Work").

Upon request of Owner or its agent, the Architect shall submit for Owner's or its agent's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for Owner or its agent's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by Owner or its agent shall be adhered to by the Architect.

1.1.5 The services covered by this Agreement are subject to the time limitations contained in this Agreement or attachments made a part hereof. The deadline for project completion is **date**.

**1.1.6. Phase A. Study and Report Phase/Pre-Design Phase**

\_\_\_ Included in this Agreement

\_\_\_ Not included in this Agreement.

1.1.6.1. The Architect shall review the program requirements furnished by the Owner to ascertain the requirements of the Project and shall present such requirements to the Owner for approval.

1.1.6.2. Advise the Owner as to the necessity of the Owner providing or obtaining from others data or services of the types described in Section 1.2. in order to evaluate or complete the Project and, if directed by the Owner's representative, act on behalf of the Owner in obtaining such other data or services.

1.1.6.3. Provide analysis of the Owner's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

1.1.6.4. Provide a general economic analysis of various alternatives based on economic parameters and assumptions provided by the Owner.

1.1.6.5. Prepare a report containing conceptual renderings and design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to the Owner and setting forth the Architect's findings and recommendations with opinions of probable total costs for the Project, including construction cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

1.1.6.6. Furnish an electronic copy and one hard copy of the report and present and review the

report in person with the Owner as the Owner Representative shall direct. The cost of report reproduction shall be considered a reimbursable expense and paid in accordance with 4.4 of this Agreement.

1.1.6.7. The duties and responsibilities of Architect during the Study and Report Phase shall also include any additional duties and responsibilities to be provided pursuant to the Architect's Proposal attached as Exhibit A.

1.1.6.8. The Study and Report Phase shall be completed and report submitted by **date**.

**1.1.7. Phase B. Schematic Design Phase**

Included in this Agreement

Not included in this Agreement.

1.1.7.1. Based on the mutually agreed upon program, the Architect shall prepare for approval by Owner Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components.

1.1.7.2. The Architect shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

1.1.7.3. The Schematic Design Phase shall be completed by **date**.

**1.1.8. Phase C. Design Development Phase**

Included in this Agreement

Not included in this Agreement.

1.1.8.1. The Architect shall prepare from the Schematic Design Studies the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical, electrical and any other appropriate systems, and materials and such other essentials as may be appropriate. The Architect shall submit such Design Development Documents to the Owner for approval, and shall not commence work on the Construction Documents until such time as the Owner shall direct.

1.1. The Architect shall submit to the Owner a further Statement of Probable Construction Cost. Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the Architect

represent the Architect's best judgment as a design professional familiar with the construction industry.

11.8.3. The Design Development Phase shall be completed by **date**.

**1.1.9. Phase D. Construction Documents Phase**

Included in this Agreement

Not included in this Agreement.

1.1.9.1. The Architect shall prepare from the approved Design Development Documents, and any changes in the scope of the Project then authorized by Owner, Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including the necessary bidding information, and shall assist in the preparation of bidding forms, the General Conditions and Special Conditions of the Contract or Contracts, and the form of the Agreement between the Owner and the Contractor, as requested by the Owner. The Architect shall prepare necessary specifications and related bidding documents in final form. The Architect shall submit such Construction Documents to the Owner for approval, and shall not commence to advertise for bids or prepare for construction of the Project until such time as the Owner shall direct.

1.1.9.2. The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.1.9.3. The Architect shall ~~Choose an item.~~assist the Owner in be responsible for filing the required documents for the approval of governmental authorities having jurisdiction over the project.

1.1.9.4. The Construction Document Phase shall be completed by **date**.

**1.1.10. Phase E. Bidding Phase**

Included in this Agreement

Not included in this Agreement.

1.1.10.1. The Architect, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and in awarding and preparing contracts for construction.

1.1.10.2. The Bidding Phase shall be completed by **date**.

**1.1.11. Phase F. Construction Phase**

\_\_\_ Included in this Agreement

\_\_\_ Not included in this Agreement.

1.1.11.1. The Construction Phase will commence with the award of the Construction Contract or Contracts and will terminate when the final payment is issued to the Contractor or Contractors by the Owner.

1.1.11.2. During the Construction Phase, the Architect shall advise and consult with the Owner concerning the Contractor's or Contractors' compliance with the Drawings and Specifications setting forth the requirements for the construction of the entire Project.

1.1.11.3. To the extent set out in this Agreement, the Architect shall have authority to act on behalf of the Owner during or in connection with the Architect's visits to the site of the Work. The Architect shall have a duty to protect the interests of the Owner, or to observe conformance with Contract Documents.

1.1.11.4. The Architect shall at all-time have access to the Work wherever it is in preparation or progress.

1.1.11.5. The Architect shall visit the site of the work at intervals appropriate to the stage of construction in order to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Architect shall endeavor to guard the Owner against defects or deficiencies in the work of the Contractor or Contractors, but the Architect shall not be required to make exhaustive or continuous on-site inspections to examine the quality or quantity of the Work. Based on on-site inspections, Architect shall advise Owner of the progress and quality of the Work. The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Architect shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.1.11.6. The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

1.1.11.7. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

1.1.11.8. The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written interpretations, within a reasonable time, on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.1.11.9. Interpretations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by the Contractor.

1.1.11.10. The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.

1.1.11.11. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for conformance

with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.1.11.12. The Architect shall prepare change orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which changes are not inconsistent with the intent of the Contract Documents.

1.1.11.13. The Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

1.1.11.13. The extent of the duties, responsibilities, and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Architect.

1.1.11.14. The Construction Phase shall be completed by **date**.

**1.1.12. Phase G. Post Construction Phase**

Included in this Agreement

Not included in this Agreement.

1.1.12.1. Assist in project orientation of Owner and users and conduct warranty inspections.

1.1.12.2. Preparing a set of reproducible record prints of drawings showing significant changes in the Work made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

**ADDITIONAL SERVICES**

1.2 The following services shall be provided when authorized in writing by the designated representative of the Owner. An additional service is one that is not described in Section I of this Agreement or documents referred to therein. The Architect shall advise the Owner when any service is considered additional, and the method and/or amount of compensation shall be determined prior

to any additional services being undertaken. Any additional service performed without prior approval of the Owner, in writing, shall be done at no additional charge to the Owner. Accurate records of all expenses attributed to additional services shall be maintained by the Architect.

1.2.1 Providing analyses of the Owner's needs, and programming the requirements of the Project.

1.2.2 Providing financial feasibility or other special studies other than construction cost.

1.2.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites in addition to those set out in the construction documents or this Agreement.

1.2.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

1.2.5 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

1.2.6 Preparing documents for alternate bids or out-of-sequence services requested by the Owner.

1.2.7 Providing detailed quantity surveys or inventories of material, equipment and labor.

1.2.8 Providing interior design and other services required for or in connection with the selection of furniture and furnishings.

1.2.9 Providing services for planning tenant or rental spaces.

1.2.10 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of the Architect.

1.2.11 Preparing supporting data and other services in connection with change orders, provided the change orders are due to causes beyond the control of the Architect and require architectural services beyond the preparation and distribution of the change order documents.

1.2.12 Making investigations involving detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by the Owner.

1.2.13 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Paragraph 1.1 as may be required in connection with the replacement of such Work.

1.2.14 Providing professional services made necessary by the default of the Contractor or by major

defects in the Work of the Contractor in the performance of the Construction Contract.

1.2.15 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

1.2.16 Providing services after issuance to the Owner of the final Certificate for Payment, except as delineated in Paragraph 1.1.27.

1.2.17 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

1.2.18 Providing services of professional consultants for other than the normal structural, mechanical, electrical, and civil engineering services for the Project.

1.2.19 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

## ARTICLE 2

### The Owner's Responsibilities

2.1 The Owner shall provide full information, including a complete program, regarding Owner's requirements for the Project.

2.2 The Owner shall designate, when necessary, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall examine documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

2.3 The Owner shall furnish a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

2.4 The Owner shall furnish the services of a soils engineer or other consultant when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and

other necessary operations for determining subsoil, air and water conditions, with appropriate professional recommendations.

2.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.6 The Owner shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as the Owner may require to ascertain how or for what purposes the Contractor has used the monies paid to him/her under the Construction Contract.

2.7 The services, information, surveys and reports required by Paragraphs 2.3 through 2.6 inclusive shall be furnished at the Owner's expense, and the Architect shall be entitled to reasonably rely upon the accuracy and completeness thereof.

2.8 If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, the Owner shall give prompt written notice thereof to the Architect.

2.9 The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work.

### ARTICLE 3

#### Construction Cost

3.1 A fixed limit of **Construction Cost of amount spelled out (\$\$)** which includes a bidding contingency of 10%, is hereby established as a condition of this Agreement, and it shall be the Architect's responsibility to endeavor to maintain the cost of construction within that amount, unless another amount is agreed upon in writing. The construction cost is the total cost to the Owner of all Work designed or specified by the Architect and shall be determined as follows:

3.1.1 The lowest bona fide bid received from a qualified bidder for any or all of such work.

3.1.2 Construction Cost does not include the compensation of the Architect or the Architect's consultants, the cost of land, right-of-way, or other costs which are the responsibility of the Owner as provided in Paragraph 2.3 through 2.6 inclusive.

3.1.3 If the Bidding or Negotiating Phase has not commenced within six (6) months after the Architect submits the Construction Documents to the Owner, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general

level of prices which may have occurred in the construction industry for the area in which the Project is located. The adjustment shall reflect changes between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

3.1.4 If the fixed limit of Construction Cost, including the bidding contingency (adjusted as provided in subparagraph 3.1.3, if applicable) is exceeded by the lowest bona fide bid, the Owner shall cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. The Architect, without additional charge, shall modify the Drawings and Specifications and assist in rebidding the Project as necessary to bring the Construction Cost within the fixed limit.

#### ARTICLE 4

##### Compensation

4.1 It is expressly agreed and understood that in no event shall the total amount to be paid by the Owner to the Architect under this Agreement exceed **AMOUNT SPELLED OUT (\$\$)** for full and complete satisfactory performance, unless specified by means of written amendments to this Agreement as provided for herein.

4.2 Compensation to be paid by the Owner to the Architect for the Architect's services for each of the Phases specified above shall in no event exceed the following amounts:

- Phase A:     \$ \_\_\_\_\_
- Phase B.     \$ \_\_\_\_\_
- Phase C:     \$ \_\_\_\_\_
- Phase D:     \$ \_\_\_\_\_
- Phase E:     \$ \_\_\_\_\_
- Phase F:     \$ \_\_\_\_\_
- Phase G:     \$ \_\_\_\_\_

4.3 For Additional Services, as described in Paragraphs 1.2.1 through 1.2.20 above, if such services are authorized and if funds are provided therefore in Paragraph 4.5 below, compensation up to the authorized amount shall be computed as follows, unless a fee proposal is included in the Exhibit A attached hereto which supersedes the following:

4.3.1. Principal's time at the fixed rate of \$ per hour. For the purpose of this Agreement, the



completion of each phase, upon presentation of an approved invoice for payment.

5.1.2 If the Contract Time initially established in the Construction Contract is exceeded by more than ## (to be included via amendment) days through no fault of the Architect, compensation for Basic Services performed by Principals, employees and professional consultants required to complete the Administration of the Construction Contract beyond said period shall be computed as set forth in Paragraph 4.3.

5.1.3 Payments for Additional Services of the Architect as defined in Paragraphs 1.2 through 1.2.20 and for Reimbursable Expenses as defined in Paragraph 4.4, shall be made monthly upon presentation of the Architect's statement of services rendered.

5.1.4 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

5.1.5 If the Project is suspended for more than three months or abandoned in whole or in part, the Architect shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all termination expenses as defined in Paragraph 7.3 resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the Architect's compensation shall be subject to renegotiation. Provided that, if after completion of the Work covered by the original form of this Agreement, the Agreement is amended to include any additional work, each such amendment shall not constitute a suspension and resumption event and the provisions of this section shall apply only to the work covered by each such amendment.

## ARTICLE 6

### Architect's Accounting Records

6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the Owner or the Owner's authorized representative at reasonable times.

## ARTICLE 7

### Termination of Agreement

7.1 This agreement may be terminated in whole or in part in writing by either party in the event

of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than seven (7) calendar days' prior written notice (delivered personally, by email or by U.S. mail) of intent to terminate.

7.2 This agreement may be terminated in whole or in part in writing by the Owner for its convenience; provided that the Architect is given (1) not less than seven (7) calendar days' prior written notice (delivered personally, by email or by U.S. mail) of intent to terminate, and (2) an opportunity for consultation with the Owner prior to termination.

7.3 Upon receipt of a notice of intent to terminate from the Owner pursuant to this agreement, the Architect shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the Owner at any reasonable time at a location specified by the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Architect in performing this agreement, whether completed or in process.

7.4 Upon termination pursuant to this agreement, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise.

7.5 In the event of termination by Owner pursuant to Paragraph 7.2 above, the Architect shall be paid compensation for services performed to termination date, including reimbursable expenses then due.

## ARTICLE 8

### Ownership of Documents and Expression

8.1 All drawings, specifications, reports, records, rights to copyright, and other work product developed by the Architect in connection with this Project shall remain the property of the Owner whether the Project is completed or not. Reuse of any of the work product of the Architect by the Owner on extensions of this Project or any other Project without written permission of the Architect shall be at the Owner's risk and the Owner agrees to defend, indemnify and hold harmless the Architect from all damages and costs including attorney fees to Architect arising out of any claim of a third party against Architect which claim arises out of such reuse by the Owner or others acting through the Owner and which damage is directly caused by such use.

## ARTICLE 9

### Successors and Assigns

9.1 The Owner and the Architect each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Architect shall not assign, sublet, or transfer his/her respective interests in this agreement without the written consent of the Owner. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Owner and the Architect.

## ARTICLE 10

### Extent of Agreement

10.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument dated and duly signed by both Owner and Architect.

## ARTICLE 11

### Governing Law

11.1 Unless otherwise specified, this Agreement shall be governed by the applicable laws of the City of Duluth and State of Minnesota.

## ARTICLE 12

### Changes

12.1 The Owner or the Architect may, from time to time, request changes in the scope of the services to be performed hereunder. In order to be in force, such changes, including the increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by and between the Owner and the Architect, shall be incorporated in written amendments to this Agreement.

## ARTICLE 13

### Hold Harmless and Insurance

13.1 To the fullest extent permitted by law, Architect agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents, past or present, from and against any and all claims including but not limited to claims for contribution or indemnity, demands, suits, judgments, costs, and expenses (including attorneys' fees) asserted by itself or any person or persons including agents or employees of the City of Duluth or Architect by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of Architect or its employees while engaged in the execution or performance of services under this Agreement. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Architect, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Architect, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten days' written notice from the City of Duluth, Architect shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Architect shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the sole negligent or intentional acts or omission of the City unless Architect should fail to comply with its insurance obligations in this contract to the detriment of City, in which case Architect shall indemnify, defend, and hold harmless the City for any and all amounts except amounts attributed to intentional, willful or wanton acts of the City.

This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Architect. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

**Architect understands this provision may affect its rights and may shift liability.**

Architect shall defend and hold and save the City, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses,

for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City, unless otherwise specifically stipulated in the Technical Specifications.

13.2 The Architect shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota

- a. Worker's Compensation Insurance in accordance with the laws of the State of Minnesota.
- b. Commercial General and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit 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. Umbrella coverage with a "form following" provision may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.
- c. Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional liability insurance is in the form of "claims made," insurance, Architect hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage ; and in event of any change, Architect 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 Commercial General and Automobile Liability policies. Architect shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Architect to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent

or guarantee that these types of limits of coverage are adequate to protect the Architect's interests and liabilities.

13.3 Certificates showing that the Architect 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 filed with the City during the term of this agreement.

13.4 The City shall be named as an additional insured on each liability policy other than the Professional Liability and Worker's Compensation policies of Architect.

13.5 The certificates shall provide that the policies shall not be changed or canceled during the life of the agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance. For the purposes of Section 13.2 of this Agreement, the term "change," shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.

#### ARTICLE 14

##### General Conditions

14.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

#### ARTICLE 15

##### Miscellaneous

15.1 Exhibit "A," Architect's technical and fee proposal titled **TITLE**, and dated **date**, is hereby incorporated into this Agreement.

*[Remainder of page intentionally left blank. Signature page to follow.]*

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

**CITY OF DULUTH**

**CONSULTANT**

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

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

Attest:

Its: \_\_\_\_\_  
Title of Representative

By: \_\_\_\_\_  
Owner Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Owner Auditor

Approved as to Form:

\_\_\_\_\_  
Owner Attorney