



January 26, 2022

Joe Miller  
Facilities Operations Supervisor  
City of Duluth  
Property & Facilities Management  
1532 West Michigan Street  
Duluth, MN 55806

via email: [jmiller@DuluthMN.gov](mailto:jmiller@DuluthMN.gov)

**RE: Proposal for Control Engineering Professional Services  
City Hall Controls Hardware & Software Design  
KFI Proposal # P22-0121**

Dear Joe

KFI Engineers (KFI) is pleased to provide this proposal for Building Automation System (BAS) engineering on the above referenced project. This proposal outlines our scope of work and associated compensation. This proposal is valid for 45 days from the proposal date.

**PROJECT UNDERSTANDING**

The current engineering design project at City Hall includes a scope of work delivered by KFI Engineers. That scope of work includes project management, HVAC mechanical design, HVAC controls design, and Electrical design. This proposal describes an expanded scope of work to be delivered by KFI Engineers. This expanded scope includes controls hardware & software design and supporting tasks.

**BASIC SERVICES SCOPE OF WORK**

1. Provide further detail in the HVAC controls design to include detailed control hardware installation drawings complete with bill of materials, to be utilized by owner, or successful bidder to install HVAC controls.
  - a. HVAC Controls hardware may be purchased directly by owner, or successful bidder.
  - b. HVAC Controls installation work may be done by division 23 mechanical or division 26 electrical.  
This work does not require any knowledge of software programming.
2. Select control components and list them on a bill of materials. Provide list to owner, or successful bidder to support procurement. Provide additional support and answer questions as needed during procurement process.
3. Provide software and graphic design necessary to deliver the HVAC control sequence of operations in accordance with the engineering design documents.
  - a. This includes programming and graphic development and downloading to all controllers in field.
4. Coordinate with City of Duluth IT department on IP-network connection details.
5. Participate in on-site kickoff meeting with controls installation work provider.
  - a. Review control hardware installation drawings, and answer questions.
  - b. Provide on-going guidance and technical installation support.

6. Provide checkout and fine-tuning of HVAC control system. This will include both on-site and remote effort.
7. Provide collaboration, and on-site support as needed for other disciplines including, test and balance (TAB), commissioning (CX), and equipment start-up.
8. Provide project closeout tasks including as-built documentation and owner training.
9. Provide support after substantial completion, throughout the warranty period.

## PROJECT SCHEDULE

Pricing is based upon construction schedule. If the project schedule is significantly modified, and KFI planning is affected, Client agrees to compensate KFI for the modification.

## CLARIFICATIONS AND EXCLUSIONS

### *Clarifications*

1. Owner shall provide temporary, remote access to BAS. It is understood that screensharing is required to accomplish remote access and allow actions to be monitored by owner.
2. Product warranties are provided by the manufacturer. For a period of one (1) year, KFI shall assist in coordinating with the manufacturer replacement of products under warranty
3. KFI has the right to claim the Federal 179D Tax Deductions based on the energy savings on HVAC and Lighting.

### *Exclusions (may be provided as an additional service upon request):*

1. HVAC controls hardware costs are not included in this proposal. This shall be provided by others.
2. HVAC controls installation costs are not included in this proposal. This shall be provided by others.
3. Proposal does not include other control systems. Lighting controls, access controls, and others are not currently part of this proposal.
4. Proposal does not include test and balance (TAB) or commissioning (CX) services. These services are not currently part of this proposal.

## COMPENSATION

### Basic Services Fee

For the Basic Services Scope of Work described above, the Client shall compensate KFI as follows:

Fixed Fee in the amount of \$ 198,000. Included in the Fixed Fee amount are travel and production expenses.

### Additional Services

KFI may be requested by the Client to provide additional services which are in addition to the Basic Services Scope of Work. The Client will compensate KFI for these additional services on a Time and Material basis at KFI's current standard hourly rates. Such compensation will be over and above any maximums set forth above.

### Reimbursable Expenses

No reimbursable expenses this project. KFI standard reimbursable expenses for mileage, travel, etc., shall be waived.

When any portions of the Project are deleted or otherwise not constructed, compensation for those portions shall be payable to the extent services are performed on those portions.

Invoicing will occur on a monthly basis, payment terms are net 30 days, no retainage.

If you find this proposal acceptable, please sign and date this letter and return a copy to our office. A copy of KFI's Terms and Conditions is attached.

Thank you for the opportunity to provide engineering services for this project. Please contact me at (651) 771-0880 if you have any questions.

Respectfully submitted,

**KFI Engineers**



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**Chris Koenig**  
**Controls Design Manager**

**Accepted By:**  
**City of Duluth**

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**Joe Miller**  
**Facility Operations Supervisor**

**Date**

Attachments:  
KFI Terms and Conditions

KFI Engineers Controls S & F template version 2021 0202

## TERMS AND CONDITIONS

1. Acceptance of Proposal: The attached proposal for professional services, together with these terms and conditions, is the “**Proposal**”. This Proposal is an offer by KFI that is not binding unless and until CLIENT accepts it. CLIENT may accept this Proposal within 45 days after the date of this Proposal by returning a fully-executed copy of this Proposal to KFI or by otherwise accepting this Proposal in writing. Upon CLIENT’s acceptance, this Proposal will become a binding agreement between CLIENT and KFI (this “**Agreement**”). If CLIENT does not accept this Proposal within the 45 days after the date of this Proposal, it shall expire and shall no longer be binding. No changes to this Proposal will be binding on KFI unless KFI accepts them in writing.
2. Change Requests and Change Orders: This Agreement may not be modified except in writing. If CLIENT wishes to modify the scope of work described in this Agreement, CLIENT must submit a written work scope change request. KFI will respond promptly by stating in writing what effect, if any, the request will have on the price and schedule of delivery of the professional services described by this Agreement (the “**Professional Services**”). If KFI and CLIENT agree on a work scope change request and any adjustment to the price or delivery date, CLIENT and KFI will sign a change request modifying this Agreement.
3. Delays: KFI will not be liable for any delay that results any cause outside of KFI’s commercially reasonable control. If the project covered by this Agreement (the “**Project**”) is delayed for more than 120 days for any reason other than a cause within KFI’s commercially reasonable control, KFI may, at its sole option, cancel this Agreement and the Project by delivering a written termination notice to CLIENT, in which case CLIENT will pay KFI for all fees and charges incurred, and all Professional Services completed, through the date of the termination, and neither party shall have any further rights or obligations under or in connection with this Agreement or the Project.
4. Delivery: KFI will make every commercially reasonable effort to complete the Professional Services by the date or dates stated in this Agreement, but KFI SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF ANY DELAY IN DELIVERY OF THE PROFESSIONAL SERVICES.
5. Limit of Liability: KFI’s liability to CLIENT for any error or omission (including claims for indemnity or contribution) is limited to KFI’s fee.
6. Cancellation: CLIENT may cancel this Agreement by delivering a written cancellation notice to KFI before the Professional Services are completed, provided that CLIENT must pay KFI at KFI’s current standard billing rates for the time and materials that KFI expended through the date of cancellation. All designs, drawings and specifications shall remain the property of KFI.
7. Reuse of KFI’s Plans, Specifications, and Other Documents: All plans, specifications, and other documents furnished by KFI are instruments of KFI’s services for use solely for the Project, and KFI retains all ownership and property rights in them regardless whether the Project is completed. CLIENT may retain copies for reference in connection with the use and occupancy of the Project, but KFI does not represent that the documents are suitable for reuse on extension of the Project or on other projects. CLIENT and others shall not use the documents on other projects or extensions of this Project except with KFI’s express written agreement, which KFI may withhold in its sole discretion. CLIENT will defend and indemnify KFI from all claims or losses arising out of the unauthorized use of the documents.
8. Insurance: KFI will maintain worker’s compensation insurance, professional liability insurance, and comprehensive general insurance and will provide CLIENT with a certificate of insurance upon request.

9. Third-party Indemnification: KFI agrees to hold CLIENT harmless from any claim by any person, firm, corporation, or governmental unit that is caused by or arises out of negligent acts or omissions of KFI. CLIENT agrees to hold KFI harmless from any claim by any person, firm, corporation, or governmental unit that is caused by or arises out of negligent acts or omissions of CLIENT.
10. Resolution of Disputes: Any controversy, claim or dispute arising out of or relating in any manner to this Agreement or the Project shall be resolved as follows: Both parties will first attempt in good faith to promptly resolve the controversy, claim or dispute by negotiations between senior executives of the parties who have authority to settle the matter and who do not have direct responsibility for the administration of the Project. If the controversy, claim, or dispute has not been resolved by such negotiations within 60 days after written request by either party, the matter shall upon written request of either party then be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall be experienced in and have knowledge of the professional service(s) discipline KFI has been contracted for. The parties agree that any arbitration hearing shall be held in Saint Paul, Minnesota. Any claim in connection with this Agreement or the Project not made within 2 years after completion of the Professional Services shall be waived.
11. Resolution of Dispute Costs: The prevailing party to any dispute arising out of or relating to this Agreement or the Project shall be entitled to recover its reasonable fees and costs from the other party, including attorney fees and the costs of any arbitration, lawsuit, or other proceeding.
12. Force Majeure: The obligations of KFI and the CLIENT to perform under this Agreement shall be excused during each period of delay caused by matters which are beyond the reasonable control of the party obligated to perform, such as, acts of God, fire, flood and other weather conditions, war, embargo, explosions, riots, laws, rules, regulations and order of any governmental authority.
13. Miscellaneous: This Agreement comprises the final and complete agreement between KFI and CLIENT. It supersedes all previous or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement and shall be binding upon the heirs, executors, administrators, successors and assigns of KFI and CLIENT. Neither KFI nor CLIENT may assign or transfer this Agreement or any rights or interest in this Agreement, and no third party is intended to be benefited by this Agreement.
14. Payment: Fees and charges are due upon CLIENT's receipt of an invoice. CLIENT will pay a late payment charge of 10% per annum on the balance due beginning 30 days from the original invoice date. Each invoice from KFI shall be deemed correct, conclusive, and binding on CLIENT unless CLIENT, within 10 days after receiving that invoice, notifies KFI in writing of any claimed inaccuracies, discrepancies, or errors. If CLIENT fails to pay KFI within 30 days after receiving an invoice, KFI shall have the right to cancel this Agreement, in which case CLIENT shall pay KFI for all fees and charges incurred, and all Professional Services performed, through the date of termination.